

**Questions for the Record
Senator Dianne Feinstein**

**James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation**

Lessons Learned from Your Objections to the CIA's Enhanced Interrogation Techniques

1. In December 2012 the Senate Intelligence Committee adopted a bipartisan 6,300-page Study of the CIA's former detention and interrogation program. The review is by far the most comprehensive intelligence oversight activity ever conducted by the Committee. The Study—which builds a factual record based on more than 6 million pages of intelligence community records—uncovers startling new details about the management, operation, and representations made to the Department of Justice, Congress, and the White House. I believe the Study will provide an important lessons learned opportunity for Congress, the executive branch, and the American people. You have testified that you raised objections about the CIA interrogation program with Attorney General Gonzales in May 2005 before departing the Department of Justice. In one of your emails that was made public in 2009, you described telling the Attorney General that the CIA interrogation techniques were “*simply awful*,” that “*there needed to be a detailed factual discussion*” of how they were used before approving them, and that “*it simply could not be that the Principles would be willfully blind*.” In your confirmation hearing you expressed frustration that there was not a wider policy discussion on this matter, which you believed—rightfully so—was of great importance and contrary to our values and ideals as a nation.

Should you be confirmed, how will your experience raising concerns about CIA's so-called “Enhanced Interrogation Techniques” behind closed doors influence your approach and leadership at the Federal Bureau of Investigation, your interactions with Congress, and your communications with the American people?

RESPONSE: My experience as Deputy Attorney General reinforced my long-standing view about the importance of fostering a culture of transparency, which I will bring to the FBI if I am confirmed as its new Director. I believe, as I did when I served as Deputy Attorney General, that if there are questions about whether proposed conduct is appropriate—consistent with our values—we should seek a vigorous debate about that conduct before going forward. In those circumstances, I am prepared to detail my concerns and reasoning to the relevant stakeholders, as I have done in the past. If confirmed, I intend to foster a culture at the Bureau that encourages subordinates to provide their candid advice to me and transparency with Congress and the American people, consistent with the Bureau's law enforcement and national security responsibilities, and long-standing Executive Branch confidentiality interests.

Role in the Indefinite Detention of U.S. Citizen Jose Padilla

2. As US Attorney for the Southern District of New York you supported, and later as Deputy Attorney General publicly defended, the military detention without charge or trial for several years of Jose Padilla, a U.S. citizen apprehended on U.S. soil on suspicion of involvement in terrorism plots.
 - a. *Is it your current belief that it is Constitutional to indefinitely detain persons apprehended on U.S. soil in military detention without charge or trial?*
 - b. *If so, do you also believe it is Constitutional to indefinitely detain U.S. citizens apprehended on U.S. soil in military detention without charge or trial?*
 - c. *If you believe it is Constitutional to indefinitely detain U.S. citizens apprehended on U.S. soil, are you basing that on the President's Article II powers or are you saying the 2001 Authorization for Use of Military Force (AUMF) provides that authority?*

RESPONSE: It is my view that, as long as the armed conflict with al Qaeda and its associated forces is ongoing, it would be constitutional to detain persons, including U.S. citizens, apprehended on U.S. soil in connection with that conflict. Those persons would have the right to challenge their detention in habeas corpus actions. This detention authority, in my view, stems from the 2001 Authorization for Use of Military Force, which I believe permits detention until cessation of hostilities. The U.S. Court of Appeals for the Fourth Circuit concluded that Padilla's detention was lawful. I understand that the President has stated that, as a matter of policy, his Administration will not hold U.S. citizens in indefinite military detention without trial, and if I am confirmed as FBI Director, the FBI would act consistent with that policy.

Ongoing Need for Congress to Receive OLC Opinions

3. After some unnecessary resistance, earlier this year the Intelligence Committee and the Judiciary Committee were finally able to access all of the OLC opinions related to the targeted killing of Americans outside the United States and *outside* areas of active hostilities, such as Afghanistan. In the area of surveillance, one of the documents allegedly leaked by Edward Snowden indicates that a 2004 OLC opinion on the legality of a NSA surveillance program was not shared with even the General Counsel of the NSA because it was considered confidential legal advice to President Bush.
 - a. *Does it seem appropriate to you for anyone in the Executive Branch to withhold an OLC opinion on a specific NSA program from the NSA's top lawyer?*

RESPONSE: I am not in a position to comment specifically, except I understand that the President has the authority to seek advice from OLC about any matter and I would be reluctant to opine on whether he has an obligation to share that advice with anyone else.

b. Do you believe that the congressional committees of jurisdiction should have access to the legal analysis underpinning the classified operations they oversee?

RESPONSE: I believe that congressional oversight is important and essential to good government. If confirmed as FBI Director, I will do my best to ensure cooperation with legitimate and appropriate oversight requests from relevant committees. I believe it is important for oversight committees to receive information about the legal bases for classified operations they oversee, but the best method to accomplish that may depend upon a variety of facts and circumstances.

Did OLC Reach the Legal Result its Client Wanted?

4. Several of the OLC opinions on the CIA's interrogation techniques stressed that their legality was a close call, yet this was the same determination even when the legal standard changed. Some OLC memos analyzed whether the CIA's techniques were "torture." Others analyzed whether the techniques were "cruel, inhuman, or degrading." Yet, each time the OLC determined that the CIA techniques were "legal."

If the OLC is supposed to be the gold standard for candid, independent, and principled advice—even when that advice is inconsistent with the aims of policymakers—how do you account for what happened at the OLC during the Bush Administration?

RESPONSE: Although I reviewed three of the opinions to which you refer, I was not involved in the research, analysis, or actual drafting of those opinions. I do not feel that I am in a position to explain the drafters' thought processes or to otherwise comment on OLC opinion practices during the Bush Administration.

Surveillance Issues

5. There has been an intense focus on some of the NSA surveillance programs recently. Regarding the Phone Call Records Metadata program, we've been told recently that the program helped disrupt 12 of the 13 U.S. homeland terrorist events since 2007 that have been analyzed by NSA.

Assuming that other counterterrorism tools may have contributed to all or some of these 12 terrorist events as well, what would you say about the effectiveness of the Phone Call Records Metadata program?

RESPONSE: I am not familiar with that specific program other than what I have learned from public sources. However, as I understand it, the program is congressionally authorized and court approved, with oversight by all three branches of government. We need to use all of the tools that are legally available and appropriate to connect the dots and counter the threats to our national security.

**Senator Sheldon Whitehouse
Questions for the Record**

**James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation**

Cybersecurity

1. At a hearing of the Subcommittee on Crime and Terrorism on May 8, 2013, the Subcommittee heard about the FBI's continued efforts to build up and structure its cyber resources in the manner that best addresses cyber threats from four sets of malicious actors: foreign intelligence services, terrorist groups, organized criminal enterprises, and hacktivists. Director Mueller subsequently testified to the House Judiciary Committee that he anticipates that "in the future, resources devoted to cyber-based threats will equal or even eclipse the resources devoted to non-cyber based terrorist threats."

Do you agree that we must continue to build up the FBI's cyber capabilities? If you are confirmed, will you work with me and my colleagues to ensure that these resources are appropriately structured and scaled so that the FBI best protects American national security, economic security, and privacy from cyber threats? And will you support continuing meetings and efforts with the Office of Management and Budget and the Justice Department regarding our cyber law enforcement structure and resources?

RESPONSE: As I noted in testimony at my confirmation hearing, I believe that the threat from cyber espionage, cyber crime and cyber terrorism is growing exponentially. Ensuring that the Bureau has appropriate resources that are efficiently structured will continue to be an important part of addressing this growing threat. If confirmed as Director, I would work within the Executive Branch, including the Office of Management and Budget, and with Congress, to ensure that the cyber threat is addressed in the best way possible within the bounds of the law and available resources.

False statements to the Internal Revenue Service

2. At a hearing of the Subcommittee on Crime and Terrorism on April 9, 2013 on "Current Issues in Campaign Finance Law Enforcement," the Subcommittee examined a pattern of what appear to be material false statements made to the government by 501(c)(4) organizations and organizations seeking 501(c)(4) status. These apparent false statements, which pertain to how much political activity the organizations have engaged in or plan to engage in, were made on IRS forms 1024 (application for exempt status), and 990 (return of exempt organization). On first impression, these false statements would seem to violate both 18 U.S.C. § 1001 (false statements) and 2 U.S.C. § 7206 (fraud and false statements made under penalty of perjury).

Both the Department of Justice and the IRS have suggested that the Justice Department, and presumably the FBI, would not take an active role in investigating these apparent false

statements until specific cases were referred by IRS to the Justice Department. This is in spite of the fact that 18 U.S.C. § 1001 false statement cases are, as Acting Assistant Attorney General for the Criminal Division Mythili Raman described them, “bread-and-butter” cases that investigators and prosecutors handle on a regular basis. Meanwhile, as a number of witnesses and experts have stated, the IRS is ill-equipped to investigate these cases. Neither the Justice Department nor the IRS was able to provide examples of any referrals having been made.

- a. Do you believe that where “open and notorious” violations of material false statement statutes are alleged, the FBI should step in to investigate regardless of action or inaction by the IRS?*
- b. Would you, if confirmed, act to ensure that the FBI exercises its authority to investigate potential violations of criminal statutes pertaining to material false statements regarding political activity on IRS forms?*

RESPONSE: I am committed to the fair, impartial, and responsible enforcement of the law. To that end, I believe that law enforcement should investigate credible evidence indicating violations of criminal statutes and follow the facts wherever they lead. While I am not in a position to determine what investigative decisions I might make if confirmed as Director, I recognize that material false statements that violate 18 U.S.C. § 1001 may warrant appropriate law enforcement action.

Political Interference with Prosecutions

3. On April 15, 2002, Attorney General Ashcroft issued a memorandum to the heads of Justice Department components and the United States Attorneys. This memorandum established Department policy regarding communications between the Department and the White House. Because of an exception in this policy, its practical effect was to permit, by the Committee’s count, 417 individuals within the White House to speak with 42 individuals at the Department of Justice about criminal investigations.

On May 4, 2006, Attorney General Gonzales issued a memorandum that affirmed the Ashcroft memorandum and further expanded the exception so that, by the Committee’s count, 895 individuals at the White House were permitted to speak with 42 individuals at the Department of Justice about criminal investigations and prosecutions.

It is my opinion that these policies created an environment in which undue political interference with the administration of justice could flourish, and were one cause of the scandal relating to the firing of United States Attorneys.

The Ashcroft memorandum was in effect during your tenure as the Deputy Attorney General. In light of this fact please:

- a. describe your awareness of this policy and of any inappropriate consequences during your time as the Deputy Attorney General;*

- b. explain your views about political interference in criminal investigations by the White House, elected officials, or other political actors; and*
- c. provide assurance that you will protect the FBI and the Justice Department from political interference by the White House if you are confirmed.*

RESPONSE: When I served as the Deputy Attorney General, I was aware of the policy to limit communications by representatives of the White House to appropriate policy level officials at the Department, and it was my understanding that such contacts were extremely limited. The policy served an important purpose of insulating line level employees from political influence and the perception of political interference. I do not recall any inappropriate contacts during my service as the Deputy Attorney General. Consistent with my testimony before the Committee, I believe that federal law enforcement efforts should be non-partisan and free of any political influence or interference. If I am confirmed as Director of the FBI, I will be committed to protecting law enforcement efforts by the Bureau and the Department from political interference from any source.

**Senator Amy Klobuchar
Questions for the Record**

**James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation**

1. Earlier this year, I joined Senator Cornyn in introducing the Human Trafficking Reporting Act. It is a simple bill that requires that human trafficking offenses to be reported as Part I violent crimes for purposes of the FBI's Uniform Crime Reports. Requiring this reporting would help us better understand the problem so that we can assist law enforcement and victim advocates to fight this scourge of human trafficking. And, because grant funding levels are often tied to the number of Part I violent crimes in a given jurisdiction, the bill will incentivize for law enforcement to train their officers to identify and investigate potential cases of human trafficking.
 - a. *Is this legislation you could support?*
 - b. *From your experience in law enforcement as a former prosecutor, what do you think are the most effective tactics for fighting human trafficking?*
 - c. *If confirmed, will you work with us to find ways to step up or fight against human trafficking?*

RESPONSE: Human trafficking, whether involuntary servitude or the commercial sexual exploitation of children, is a kind of modern-day slavery. If confirmed, I will vigorously work to combat human trafficking in all its forms. I know the Bureau is dedicated to aggressively fighting human trafficking. I believe a multi-disciplinary approach involving training, outreach and victim services is important because it enlists our valuable law enforcement partners in the fight. While I am not in a position to comment on legislation, it is my understanding that the FBI has announced that its Uniform Crime Reporting Program (UCR) will collect offense and arrest data for human trafficking from participating law enforcement agencies.

2. During the hearing, you seemed to agree with Senator Grassley about the importance of government whistleblowing and protection of bona fide government whistleblowers who witness and disclose waste, fraud, abuse, illegality and/or risk to public safety.
 - a. *Do you think whistleblower provisions enacted to protect government employees from retaliation should apply to those who work in national security or intelligence agencies?*
 - b. *If so, how should such protections vary in those contexts in contrast to the protections for other government workers?*
 - c. *If not, what should someone working in the national security or intelligence sector do when they witness fraud, waste or abuse?*

RESPONSE: Whistleblowers play an important role in discovering and preventing waste, fraud, and abuse in the government. I am not familiar with the particular rules that apply to whistleblowers who seek to disclose information that implicates national security information. All employees who witness waste, fraud, or abuse should be encouraged to report it to appropriate supervisors and, if they choose, to the Inspector General. If I am confirmed, I will work to ensure that FBI employees do not face retaliation for making protected disclosures. I also have long believed that it is the duty of every supervisor to create a climate in which employees feel empowered to call out problems of all kinds and, if I am confirmed, I will bring that approach with me to the Bureau.

**Senator Al Franken
Questions for the Record**

**James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation**

1. In response to a question from Chairman Leahy, you testified that you believe that waterboarding is torture and is illegal. Nonetheless, you concurred in a May 10, 2005, memorandum by Stephen Bradbury, which concluded that waterboarding is not torture and is not illegal. (This was the first of two memoranda issued by Mr. Bradbury on May 10, 2005. It discussed the individualized application of several interrogation techniques. I refer to this memorandum as the Bradbury I Memorandum throughout this document. This memorandum is distinct from the “combined effects” memorandum issued on the same day.)

Please explain the discrepancy between the position you took during your confirmation hearing and the position you took when you concurred in the Bradbury I Memorandum. In your response, please state whether you believe that waterboarding is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

RESPONSE: I appreciate the opportunity to clarify my position on this matter. Ever since I became the Deputy Attorney General, my reaction as a person, a citizen, and a leader has been that waterboarding is torture. It is, therefore, inappropriate. I cannot speak with authority to whether it is effective, but I believe that the FBI’s long-standing refusal to participate in such techniques has not in any way impaired the Bureau’s effectiveness in gathering information. If I am confirmed as FBI Director, I will continue that tradition.

The first OLC memorandum of May 10, 2005, presented the narrow legal question of whether waterboarding, standing alone and without being combined with other techniques, violates 18 U.S.C. §§ 2340 and 2340A. The opinion, in my view, set forth a serious and reasonable legal analysis of vague statutory language, as it would apply to waterboarding only, on the assumption that the technique could be viewed in isolation. Since I believed that the techniques described, including waterboarding, were always used in combination, I objected strongly to the second OLC memorandum on both legal and policy grounds. I believed that those objections would stop the entire program, if they prevailed, but they did not. Even though I lost on the legal issue, I continued to raise policy objections about the appropriateness of these techniques, but my arguments were rejected. By that time, I had already announced my resignation and I remained as the Deputy Attorney General until my predetermined departure date in order to fulfill other responsibilities, particularly those pertaining to violent crime.

I did not then and do not now believe that the United States government should engage in waterboarding. It is not appropriate for us to do so as Americans. I also believe that, for a variety of reasons, such conduct would be unlawful today.

2. In response to one of my questions, you testified that you believe that sleep deprivation, as described in the Bradbury I Memorandum, is torture. Nonetheless, you concurred in the Bradbury I Memorandum.

Please explain the discrepancy between the position you took during your confirmation hearing and the position you took when you concurred in Mr. Bradbury's memorandum. In your response, please state whether you believe that sleep deprivation is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

RESPONSE: Please see my response to Question 1, above, regarding waterboarding. My response to that question also applies to sleep deprivation.

3. The Bradbury I Memorandum said the following about cramped confinement:

This technique involves placing the individual in a confined space, the dimensions of which restrict the individual's movement. The confined space is usually dark. The duration of confinement varies based upon the size of the container. For the larger confined space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down. Confinement in the larger space may last no more than 8 hours at a time for no more than 18 hours a day; for the smaller space, confinement may last no more than two hours.

The Bradbury I Memorandum goes on to say that this technique is not torture because it does not involve any significant physical pain or suffering or any severe mental pain or suffering.

Do you agree with that analysis? If not, please explain the discrepancy between that position and the position you took when you concurred in the Bradbury I Memorandum. In your response, please state whether you believe that cramped confinement is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

RESPONSE: Please see my response to Question 1, above, regarding waterboarding. My response to that question also applies to cramped confinement, although my primary focus in 2005 was on waterboarding and sleep deprivation.

4. Mr. Comey, in response to my question you stated that you believe it is lawful to detain an American citizen, captured on American soil, without access to a lawyer if that citizen is deemed to be a prisoner of war. Previously, when discussing Jose Padilla's case in a 2004 press conference, you stated you believe it is (1) lawful and (2) good policy for the Federal Bureau of Investigation to transfer citizens to military custody and deny them access to counsel if the government believes they are "enemy combatants." However, you have also recognized that federal courts are effective at trying suspected terrorists. You published an op-ed in 2009 applauding Attorney General Holder's decision to try Khalid Sheik Mohammed in federal court, and Jose Padilla was ultimately convicted in a civilian trial. We have a proud tradition in this country of a strong court system that is effective at trying the most heinous criminals, and we

know that ensuring all sides have access to counsel strengthens our justice system, rather than weakens it.

- a. *Can you elaborate on your statements regarding when you believe it is appropriate to transfer a suspect from FBI detention to military detention, and when you believe it is acceptable to deny a suspect access to their lawyer?*
- b. *Can you please identify who you believe has the authority to make the unilateral determination that a suspect should be transferred to military custody or held without access to a lawyer, and what statute provides that authority?*

RESPONSE: As a former prosecutor, I agree that we have a strong and effective system of Article III courts. I also believe that it is important to retain our ability to use military tribunals and law of war detentions if deemed necessary to protect national security.

I held the June 1, 2004, press conference because I believed that it was important then, and remains important now, for the American people to understand the President's decision to declare Mr. Padilla an enemy combatant, and for there to be an opportunity for public debate about these issues. When Mr. Padilla was arrested in May 2002, we believed that he posed a significant threat to national security, that he had undertaken a mission to kill Americans, and that he possessed important information about others who sought to harm the American people. He was appointed an attorney and, through that attorney, moved to vacate the material witness warrant that had authorized his arrest. With time running out in our ability to prevent Mr. Padilla's release, which we considered a serious threat to national security, the President ordered the Department of Defense to take Mr. Padilla into custody as an enemy combatant.

Ultimately, we learned from Mr. Padilla's own admissions that he was recruited, trained, and funded by Al Qaeda. He met with senior Al Qaeda operatives including Abu Zubaida and Khalid Sheik Mohammed, the master mind of the September 11, 2001 attacks. They had asked him to conduct an operation involving devastating natural gas explosions in apartment buildings in American cities, which had the potential to kill hundreds, if not thousands, of Americans, and, by his own admission, Mr. Padilla accepted that assignment. The U.S. Government arrested him when he returned to the United States, equipped by Al Qaeda, for the purpose of carrying out that assignment.

As I described in the press conference, had Mr. Padilla remained in the criminal justice system, on advice of his attorney, he would likely have refused to speak with us, and he would have been set free. Instead, the U.S. Government was able to gather intelligence from Mr. Padilla as an enemy combatant, with the understanding that we would not be able to use that information against Mr. Padilla in an Article III court. Indeed, Mr. Padilla was ultimately charged and convicted in an Article III court of other offenses, including material support to terrorism, and sentenced to 17 years in prison.

It is my understanding that the President has the power to determine whether an individual is an enemy combatant, subject to relevant legal constraints and appropriate judicial review. I would not have that authority if confirmed as Director of the FBI.

**Senator Charles Grassley
Questions for the Record**

**James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation**

1. The Congressional Research Service (“CRS”) reported in 2012 that illegal cigarette trafficking remains one of the top three funding sources for terrorists and organized crime. Based on this, I have some questions regarding how DOJ prioritizes investigations of domestic cigarette smuggling, given the demonstrated link between such smuggling and terrorist financing. The obvious reason terrorists and organized crime groups smuggle cigarettes is the easy profit. By some estimates, a single case (60 cartons) yields \$3,000 in illegal profit, and criminals can reap illegal profits of \$2,400,000 from a single truckload (typically 800 cases).

The NYPD recently arrested for cigarette smuggling several individuals with ties to Hamas, Hezbollah and other convicted terrorists. The arrested individuals allegedly obtained cigarettes from a wholesaler in Virginia and smuggled the cartons through storage facilities in Delaware and New Jersey for resale in New York. When the New York authorities announced this case, hardly a mention was made of any role by the federal government or DOJ. (May 16, 2013 Press Release <http://www.ag.ny.gov/press-release/ag-schneiderman-nypd-commissioner-kelly-announce-take-down-massive-eastern-seaboard>) DOJ is supposed to be the principal federal law enforcement agency on the issue of terrorism prosecutions.

Unfortunately, a July 2012 memo sent by ATF headquarters (the investigative agency that oversees illicit cigarette trafficking) and obtained by this Committee seems to de-prioritize enforcement against cigarette smuggling. This memo indicates that ATF agents should only pursue such smuggling when there is a “nexus” to violent crime.

With this background, it concerns me that the recent New York case was apparently handled by state law enforcement, without much involvement by federal officials. As I mentioned, the press release from the New York Attorney General announcing the case barely mentioned a federal role, and primarily mentioned the federal government as assisting in forfeiture issues.

a. What role do you foresee the FBI taking in cases such as these?

RESPONSE: I believe that, as a general matter, the FBI is the lead investigative agency in terrorism cases. I would expect that the FBI’s involvement in a particular case would depend on the facts and circumstances, coordination with other law enforcement agencies, and judgments about the best allocation of FBI resources.

b. Do you believe that these potential terrorist financing operations should be pursued by federal authorities only if there is a nexus to violent crime? Please explain.

RESPONSE: I believe that, as a general matter, the FBI has lead responsibility for investigating terrorism cases, including cases that may involve financing or other material support to terrorists, such as cases brought pursuant to 18 U.S.C. §§ 2339A, 2339B and 2339C.

c. Do you believe the link between terrorist financing and the violent acts that the terrorists will be able to pursue with such funds is a sufficient nexus to justify federal law enforcement involvement? Please explain.

RESPONSE: I believe that, as a general matter, the FBI has lead responsibility for investigating terrorism cases, including cases that may involve financing or other material support to terrorists, such as cases brought pursuant to 18 U.S.C. §§ 2339A, 2339B and 2339C. I would expect that the FBI's involvement in a particular case would depend on the facts and circumstances, coordination with other law enforcement agencies, and judgments about the best allocation of FBI resources.

2. During your hearing before the Committee, we discussed my concerns about the FBI's poor record involving whistleblowers. As I stated, one of my concerns is that whistleblowers involved with national security matters are treated differently than those in other areas of the government. During the hearing, you stated that you were not well versed enough in the law that causes this disparate treatment among whistleblowers.

a. Have you had an opportunity to adequately review the applicable law and regulations?

RESPONSE: No, but I will do so if confirmed.

b. If so, do you believe whistleblowers who know of problems with matters of national security should be treated differently?

RESPONSE: Please see my response to Question 2a, above.

3. Outgoing Director Mueller stated in his recent testimony before this Committee that the FBI was using drones for surveillance and the FBI was in the process of developing guidelines and policies for drone use by the FBI.

When evaluating the use of drones by the government, do you think the 4th Amendment provides sufficient privacy protections to American citizens or do you think we need to pass laws to provide greater privacy protection? Please explain.

RESPONSE: I am not yet familiar with the way in which the FBI uses Unmanned Aerial Systems (UAS) in its work. I recognize that it is important that the Bureau's use of UASs complies with applicable law and, if confirmed, I will review the FBI's policies and practices regarding UASs to ensure such compliance.

4. As you mentioned in your testimony, the FBI must address the ever growing cyber threat to both our government and private industry. Outgoing Director Mueller has stated that the FBI must "develop channels for sharing information and intelligence quickly and effectively." While I

applaud the fact the FBI has taken a more proactive role in working with the private sector, there are still gaps that need to be filled.

- a. You spent several years as General Counsel for Lockheed Martin and Bridgewater Associates. In those roles, I suspect that dealt with issues arising from cyber threats that the government and private enterprise face as well as the barriers that make it difficult to minimize cyber attacks. In your experience, what barriers currently prevent a free flow of information sharing between the government and the private sector?*

RESPONSE: Although I cannot comment specifically about particular concerns of my former employers, I do know that industry groups are keenly interested in working with the government to thwart cyber attacks, but some have expressed concerns that information they share with the government not be disclosed publicly or be used for other government purposes outside of the cyber security purpose for which it was shared. In addition, some industry representatives have expressed concern about the risk of civil liability for sharing information with the government. These concerns should be addressed so as to ensure a coordinated public/private effort to protect our nation and its valuable intellectual property.

- b. What incentives could be provided to the private sector to encourage information sharing with the government and with other private businesses?*

RESPONSE: There are a variety of incentives that could be given to the private sector to encourage sharing. These may include assurances about the way the information is stored and processed, liability protections, and privacy protections.

- c. Is legislation required to provide these incentives to the private sector? If so, please explain.*

RESPONSE: Some of the possible incentives could be achieved without legislation but others may require legislative action.

5. The Presidential pardon of Marc Rich is a blemish on the record of both President Clinton and Attorney General Holder. In 2008 you wrote a personal letter of recommendation in support of Mr. Holder's confirmation. In that letter you specifically addressed your involvement with the Rich investigation. You condoned Mr. Holder's role in the pardon process.

Do you still believe that the Rich pardon made Mr. Holder a "better steward of the Department of Justice?" Please explain.

RESPONSE: I spoke in my confirmation hearing about my belief in the importance of learning from one's mistakes, because some mistakes are inevitable. In my 2008 letter in support of then-nominee Holder, I explained that I believed he is a man of integrity, committed to the rule of law, who made a serious mistake with respect to the pardon of Marc Rich.

6. The Director of the FBI is an extremely powerful individual. It is his or her responsibility to set the policies and procedures for the entire agency. Sometimes, Congress passes legislation that, as an individual, the Director may not agree with. The problem arises when that individual uses his or her position of power to reflect personal and not professional guidelines. Unfortunately, this seems to be becoming a regular feature of this administration. Nonetheless, as Director of the FBI, it will be your job to enforce the laws as written by the legislative branch, regardless of your personal views.

Please explain your commitment to enforce the laws and the Constitution, regardless of your personal position on a matter.

RESPONSE: If I am confirmed as Director of the FBI, I will faithfully discharge my responsibilities to enforce the laws and uphold the Constitution of the United States with vigor and to the best of my ability.

7. Inter-Agency cooperation is a vital aspect of successful criminal investigations. Given the complex and interconnected world we live in, it is not uncommon for the FBI to rely on the National Security Agency or the Bureau of Alcohol Tobacco and Firearms to help close a case. Unfortunately, many federal law enforcement agencies have reported that the FBI “does not play well with others.” In fact, recently I have read reports documenting the infighting between the FBI and other agencies, including the New York Police Department.

As the Director of the FBI, you will be responsible for managing both your agency and your agents when they interact with other members of the executive branch. While not the most glamorous aspect of the job, The Bureau’s development of good inter-agency relationships can be the difference between closing a major case or not.

Since the culture of an organization starts at the top, I’m concerned about what may be going on in management at the FBI.

- a. Given your role as the Deputy Attorney General, how did you handle inter-agency disputes? What methods did you use that were successful and what methods were not? How will you apply this experience to being FBI Director?***

RESPONSE: I agree that interagency cooperation is essential to successful criminal investigations. Even before my experience as Deputy Attorney General, I understood the importance of using the full interagency team in the criminal cases I worked on when I was a United States Attorney and an Assistant United States Attorney. Throughout my career, I have been successful at working within the interagency structure and resolving disputes among various components. At the center of my approach was treating others with respect and listening well to their concerns and ideas. If I am confirmed, I will use the skills I have gained in these positions to continue Director Mueller’s work in building strong alliances with the FBI’s partner agencies.

b. Please explain your commitment to the FBI working with all appropriate federal partners in addressing issues such as national security.

RESPONSE: I know that Director Mueller believes that it is important that the Bureau interact effectively and cooperatively with other law enforcement agencies and, if I am confirmed as Director, I intend to continue his work in this area by reinforcing that message from senior management down and throughout the Bureau.

c. What are your plans to improve the FBI's working relationships with state and local law enforcement agencies and how do you plan to relay that message to the line agents and supervisors?

RESPONSE: Please see my response to Question 7b, above.

8. Former FBI Director William Webster investigated the attack at Ft. Hood by Major Nidal Hasan. Major Hasan attacked the Ft. Hood deployment center on November 5, 2009, killing 12 U.S. soldiers, 1 employee of the Department of Defense, and injuring 42 others. The commission report showed the FBI had information indicating Hasan was in contact with terrorists, but the Washington D.C. Field Office assessed that Hasan was not involved in terrorist activities. However, the San Diego Field Office disagreed. The report found that neither office took steps beyond this to prevent something from happening.

The Webster Commission made several recommendations, and I know that the FBI has implemented many changes to its procedures since November 2009.

a. Are you familiar with the Webster Commission Report's recommendations?

RESPONSE: I am not.

b. Do you agree with the recommendations of the Webster Commission?

RESPONSE: Please see my response to Question 8a, above.

c. Will you continue to implement the recommendations, as the FBI has indicated they are doing?

RESPONSE: I am not familiar with what the FBI is doing in this area. I am unable to answer this question based on my current knowledge, but I will promptly review this matter if I am confirmed.

d. Do you have any suggestions with how to improve the FBI systems and procedures to ensure something like Ft. Hood does not happen again?

RESPONSE: I am not familiar with what the FBI is doing in this area. I am unable to answer this question based on my current knowledge, but I will promptly review this matter if I am confirmed.

9. With any appointed position, there is some concern that a nominee will succumb to improper partisan or special interest group influence.

a. Please explain what procedures or safeguards you will continue or put in place to ensure the independence of the FBI from political and partisan influence.

RESPONSE: I can assure you that if I am confirmed as Director, partisan political considerations will play no role in the discharge of my responsibilities. The FBI is and must be an independent entity, and it cannot be associated with any political party or partisan interest. In accordance with law and long-standing traditions, the FBI will carry out its law enforcement mission independent of political and partisan influence. If confirmed, I will expect all FBI agents and employees to carry out their work as I will, with fairness and with uncompromising personal and institutional integrity. I cannot say at this point whether there are procedures or safeguards that would be helpful.

b. Please explain what procedures or safeguards you will continue or put in place to guaranty transparency within the FBI?

RESPONSE: In general, I believe that transparency and openness within a government agency strengthens the agency and our democracy. If confirmed as Director, I will support a culture of transparency within the FBI. I cannot say at this point whether there are procedures or safeguards that would be helpful.

c. Please explain what procedures or you continue or put in place to facilitate Congressional oversight of the FBI.

RESPONSE: Oversight is an important function of Congress and is a necessary part of our system of checks and balances. If confirmed, I will work to respond to oversight by relevant congressional committees and accommodate their needs, consistent with the FBI's law enforcement and national security responsibilities.

10. In April, former Attorney General Michael Mukasey wrote an op-ed raising concerns about the FBI's reluctance to look for ties that radical jihadists may have overseas. Mr. Mukasey pointed out that since 9/11, the FBI has questioned five terrorists before they committed their attacks. However, the FBI was unable to prevent the attacks.

In contrast, a Washington Post editorial in the same time period pointed out that "the FBI has devoted considerable resources to sting operations against people it judges to be terror suspects, sometimes on what look like dubious grounds." The editorial concluded: "[I]t's not clear that a

sometimes far-fetched plot would have gone forward without the encouragement and help of FBI informants.”

a. Do you think the FBI needs to rethink how it deals with information about radical Jihadists in the United States? Please explain.

RESPONSE: I am familiar with the FBI’s actions in this area only from publicly available information. If confirmed, I will consider how the FBI addresses ties that radical jihadists may have overseas and will implement any changes that are necessary to protect our national security.

b. Please explain your views on whether or not the FBI should attempt sting operations on people such as the five terrorists mentioned in Attorney General Mukasey’s article?

RESPONSE: I am familiar with the FBI’s actions in this area over the last eight years only from publicly available information. I know from my prior experience that sting operations can be a useful tool against those inclined to terrorist acts. If confirmed, I will consider how the FBI addresses sting operations against would be terrorists and will implement any changes that are necessary to protect our national security.

11. A recent *Wall Street Journal* editorial criticized you for supporting the FBI’s pursuit of Dr. Stephen Hatfill in the anthrax case. One book about the anthrax investigation states that former Deputy Defense Secretary Paul Wolfowitz recalls speaking with you about the investigation prior to a meeting in the White House Situation Room. According to the book, Wolfowitz recalled that you were “absolutely certain that it was Hatfill.” Wolfowitz said you cited the evidence provided by bloodhounds in the case.

a. Is this account accurate?

RESPONSE: I have no recollection of such a conversation with Mr. Wolfowitz.

b. Do you believe the FBI handled the anthrax investigation properly?

RESPONSE: The anthrax investigation was a matter of national importance. The investigation was extensive, complex, and involved significant FBI resources. I do not have all of the information about the investigation because it remained active long after I left the Department. Therefore, I am not in a position to assess the manner in which the investigation was handled.

c. What lessons do you think the FBI should learn from the anthrax case?

RESPONSE: Again, given the level of complexity of this investigation and the fact that I left the Department while it remained on-going, I cannot offer an opinion on this matter.