

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR DURBIN

1. In your June 8, 2018 memo, you acknowledge that there are many ways in which a President could commit obstruction of justice – for example by altering evidence, suborning perjury, or inducing a witness to change testimony. But your memo makes an assumption that Special Counsel Mueller’s obstruction theory relies on one particular obstruction of justice statute, 18 U.S.C. 1512—a statute you believe should not be used to investigate actions that you feel are within a President’s lawful authority.

Based on this assumption about Special Counsel Mueller’s obstruction theory, your memo concludes that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.” In other words, you urge Special Counsel Mueller’s supervisor not to allow Mueller to take a certain action in an ongoing investigation and not to allow Mueller to ask the President any questions about obstruction, even though you concede that you are “in the dark about many facts” and that you are making assumptions about the legal obstruction theory.

- a. Is it appropriate for you to urge Special Counsel Mueller’s supervisor to block Mueller from taking an action in an ongoing criminal investigation when you do not know all the facts and were speculating about Mueller’s legal theory?
- b. Is it appropriate for you to flatly urge Special Counsel Mueller’s supervisor that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” when there are numerous potential obstruction theories besides 18 U.S.C. 1512 that Special Counsel Mueller may want to question the President about?
- c. Is it still your view that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction”?
- d. In your January 14 letter to Chairman Graham, you said of your memo that “my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory.” You noted in your January 14 letter that you shared the memo with the several of the President’s defense attorneys. Did you also forward the memo to the Special Counsel’s Office so they could consider your views the potential implications of the theory? If not, why not?

- e. Did any of the President's attorneys whom you sent your memo tell you that they agreed with your view that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?
- f. Did any of the President's attorneys whom you sent your memo tell you that they used your memo to argue that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?

RESPONSE: As I stated in my June 8, 2018 memorandum and explained in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, my memorandum was narrow in scope. It was premised on an assumption based on public accounts – which the memorandum acknowledged may be incorrect – that the Special Counsel's basis for questioning the President was that the firing of former FBI Director Comey constituted obstruction under a specific statute – namely, 18 U.S.C. § 1512(c). In other words, the memorandum assumed, for purposes of analysis, that the Special Counsel's sole predicate for interviewing the President was the single obstruction theory that it was addressing. The memorandum did not address whether the President could be questioned under any of the other possible obstruction theories that have been publicly discussed in connection with the Special Counsel's investigation, or any other theories of liability the Special Counsel may be pursuing.

After drafting the memorandum, I provided copies to several officials at the Department of Justice who I thought would be in a position to assess whether it was actually relevant to the Special Counsel's work, including Deputy Attorney General Rosenstein, who by law at the time was charged with overseeing the Special Counsel. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. As I have stated, I sent a copy to the President's lawyers and spoke with them to explain my views. I do not know what impressions they had regarding my views or what, if anything, they did with my memorandum after receiving it.

As I stated during my hearing before the Committee, I remain in the dark regarding the specific facts and legal theories currently at issue in the Special Counsel's investigation. If confirmed, I will approach the investigation with an open mind as to all issues and will make any decisions based on the relevant law and the facts at the time.

- 2. Because your June 8, 2018 memo expresses stark views about what you feel should and should not be permitted as part of the Special Counsel's ongoing criminal investigation, and because you sent your memo to Special Counsel Mueller's supervisor and to members of President Trump's defense team without informing the Special Counsel's Office of your memo, a reasonable person could conclude that you would not be impartial if issues arise as part of the Special Counsel investigation that require the Attorney General to make decisions regarding obstruction of justice, including decisions about what information about obstruction of justice should be included in reports to the Committee and the public.

Therefore you should, at minimum, seek the advice of career Department ethics officials regarding recusing yourself from such decisions, pursuant to 5 CFR 2635.502(a)(2), given the legitimate questions that your memo and your use of it have raised about your impartiality.

- a. Will you commit, if confirmed, to seek the advice of DOJ career ethics officials on this recusal question?

RESPONSE: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

- b. If so, will you commit to promptly inform the Committee what advice the DOJ career ethics officials gave and whether you will follow it?

RESPONSE: Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department’s established policies and practices, applicable rules and regulations, and recognized Executive Branch confidentiality interests.

3. At your hearing you said that you would decline to follow the advice of career DOJ ethics officials “if I disagree with them.” When you previously worked in the Justice Department, did you ever decline to follow the advice of career DOJ ethics officials? If so, please discuss when you did so and why.

RESPONSE: While I do not recall specific recusal decisions I made for myself at that time, I have no recollection of declining to follow ethics advice I received about any recusals.

4. At your hearing, Professor Neil Kinkopf said: “It is clear that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict—declination decisions. In combination with the DOJ view that a sitting president may not be indicted, this suggests that Barr will take the position that any discussion or release of the Mueller report relating to the President, who, again, cannot be indicted, would be improper and prohibited by DOJ policy and regulations.”

- a. Do you take DOJ regulations to mean that you should release not the Mueller report, but rather your own report?

RESPONSE: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special

Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, if confirmed, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

- b. Do you read DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict?

RESPONSE: The regulations governing public discussion of a Special Counsel's declination decisions are discussed above in my response to Question 4(a). In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

- c. Do you believe it would be improper and/or prohibited by DOJ policy or regulations to provide Congress or the public with any discussion or release of parts of Mueller's report relating to the President?

RESPONSE: Please see my responses to Questions 4(a) and 4(b) above.

- d. 28 CFR 600.9(c) provides that "The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions" (emphasis added). Do you read the term "these reports" to include the report issued by the Special Counsel to the Attorney General pursuant to 28 CFR 600.8(c)?

RESPONSE: Please see my response to Question 4(a) above.

- e. 28 CFR 600.9(c) also provides that “All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.” Is it your view that this sentence governs the release of information concerning matters handled by Special Counsels to Congress, as opposed to public release?

RESPONSE: Please see my response to Question 4(a) above.

- f. Do you adhere to OLC’s view, stated in its October 16, 2000 opinion “A Sitting President’s Amenability to Indictment and Criminal Prosecution,” that “a sitting President is immune from indictment as well as from further criminal process” and that the Constitution provides the Legislative Branch the only authority to bring charges of criminal misconduct against a president through the impeachment process?

RESPONSE: Although I have not studied this issue in detail, my understanding is that the October 16, 2000 opinion by the Office of Legal Counsel remains operative at the Department.

- g. If you believe the answer to (f) is yes, then shouldn’t Congress be given access to the Special Counsel’s full investigative findings so that Congress can best evaluate whether or not to hold a President accountable for potential criminal misconduct through the impeachment process?

RESPONSE: I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, if confirmed, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

- 5. At your hearing you said “well, under the current regulations the special counsel report is confidential. The report that goes public would be a report by the attorney general.” You later said “the AG has some flexibility and discretion in terms of the AG’s report.”

If confirmed, will you use this flexibility and discretion to make sure the public can see Special Counsel Mueller’s own words about his findings and conclusions to the greatest

extent possible, rather than your own summary or interpretation of Special Counsel Mueller's words?

RESPONSE: As I stressed repeatedly in my testimony, I believe that it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can consistent with these regulations, applicable law, and the Department's longstanding practices and policies.

6. Do you agree with the statement of then-CIA Director Pompeo, who said on July 21, 2017 that "I am confident that Russians meddled in this election, as is the entire intelligence community....This threat is real."

RESPONSE: I agree with then-CIA Director Pompeo's statement.

7. Will you commit that, if you are confirmed:
- a. You would be willing to appear before the Senate Judiciary Committee to testify and answer questions specifically about the Special Counsel investigation after Special Counsel Mueller submits his concluding report?

RESPONSE: Yes.

- b. You would not object to Special Counsel Mueller appearing before the Senate Judiciary Committee to testify and answer questions about the Special Counsel investigation after he submits his concluding report?

RESPONSE: I would consult with Special Counsel Mueller and other Department officials about the appropriate response to such a request in light of the Special Counsel's findings and determinations at that time.

8. During your confirmation hearing in 1991, you said "[t]here are a lot of different ways politics can come into play in a case." You went on to say "you shouldn't sweep anything under the rug. Don't cut anyone a special break. Don't show favoritism."
- a. Do you still stand by these principles?
 - b. Will you ensure that Special Counsel Mueller's findings are made available to Congress and to the public, so that the Special Counsel's findings are not swept under a rug?
 - c. The President's attorneys, led by Rudy Giuliani, are apparently preparing their own report to counter the Mueller report. Presumably there will be no redactions sought and no executive privilege claimed by the Administration over the contents of the Giuliani report, in contrast to the President's expected efforts to hide much of the Mueller report from Congress and the people. Are you concerned that it would

seriously undermine the confidence of the American people in our justice system if the Special Counsel Mueller's findings were swept under the rug or heavily redacted while the full Giuliani report was tweeted out to the American people?

RESPONSE: The Department's investigations and prosecutorial decisions should be made based on the facts, the applicable law and policies, admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and should be made free of bias or inappropriate outside influence.

I believe that it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can consistent with the law, including the Special Counsel regulations discussed in my prior answers, and the Department's longstanding practices and policies.

9. Other than your 19-page memo that you sent to Deputy Attorney General Rosenstein and OLC head Steven Engel on June 8, 2018, have you sent any other memos to Justice Department officials urging them to follow a course of action in an ongoing criminal investigation since you left the Department in 1993? If so, please describe the date and contents of each memo you sent.

RESPONSE: As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials in both the Executive branch and Congress. For example, following the attacks of September 11, 2001, I contacted numerous officials within the administration of President George W. Bush, including officials at the White House and the Department of Justice, to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. As a more recent example, I expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

10. Why did you not mention in your June 8, 2018 memo that you had met with President Trump in June 2017 and discussed the possibility of joining the President's legal defense team? Would that information have been relevant for the recipients of your June 8, 2018 memo to know?

RESPONSE: As I testified during my hearing before the Committee, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. I did not reference this meeting in my June 2018 memorandum because I did not believe that it was relevant to my legal analysis.

11. On November 14, 2017, you emailed Peter Baker of *The New York Times* and said “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] foundation, is far stronger than any basis for investigating so-called ‘collusion.’”
- a. Why did you describe collusion as “so-called” in this email?
 - b. Why did you put the word collusion in quotation marks in this email?
 - c. Why have you long believed that the predicates for investigating the uranium deal and the foundation are “far stronger” than any basis for investigating potential crimes that are commonly described as falling under the umbrella of collusion?

RESPONSE: My November 2017 comments to the New York Times were based on media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. To the best of my recollection, I used the term “so-called” and employed quotation marks when referring to “collusion” because, as many lawyers have observed, “collusion” is an informal, colloquial term that does not refer to a specific federal crime.

12. Why did you put the word obstruction in quotation marks in the subject line of your June 8, 2018 memo?

RESPONSE: To the best of my recollection, I used quotation marks when referring to “obstruction” in the subject line of my June 8, 2018 memorandum because I was using the term as a shorthand for the phrase “obstruction of justice.”

- 13.
- a. Was Attorney General Sessions wise to follow the advice of DOJ ethics officials and recuse himself from matters relating to the presidential campaign, including the Mueller investigation?
 - b. Was Acting Attorney General Whitaker unwise to disregard the advice of DOJ ethics officials that he should recuse himself from the Mueller investigation because a reasonable person would question his impartiality?
 - c. What message does it send to the American people if Attorneys General establish a practice of disregarding the ethics advice of career DOJ ethics officials?

RESPONSE: If confirmed, I will consult with the Department’s career ethics officials, review the facts at the time, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

My understanding is that the basis for Attorney General Sessions’ recusal was 28 C.F.R. § 45.2, which generally prohibits any Department employee from participating in a criminal investigation or prosecution if he has a “personal or political relationship with . . . any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; . . . or any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.” I do not know all the facts, but I have stated that I believe he probably reached the correct result under the regulation.

I am not familiar with the specific facts relevant to Acting Attorney General Whitaker’s recusal decision and therefore am not in a position to comment on it.

If confirmed, it will be my goal to ensure that the public has the utmost confidence in the integrity of the Department’s law enforcement activities.

14. In your hearing testimony you quoted the following statement from your 1991 confirmation hearing: “The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of law.”

President Trump has repeatedly denigrated Special Counsel Mueller and his investigation, calling it “unfair,” a “witch hunt” and a “hoax.” He also has tweeted and sent public signals to witnesses and targets in the investigation regarding their conduct. In your view, has the President gone too far with political interference in Mueller’s investigation?

RESPONSE: Neither Members of Congress, the public, nor I know all of the facts. That is why I believe that it is important that the Special Counsel be allowed to complete his investigation.

As I testified at the hearing, President Trump has repeatedly denied that there was collusion. It is understandable that someone who felt like he or she was being falsely accused would describe an investigation into him or her as a “witch hunt.”

If confirmed, I will ensure that the Special Counsel is allowed to finish his work, and that all of the Department’s investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence.

15. When you were working as a private sector attorney:
- a. Did you ever represent Russian individuals or corporations as clients? If so, please provide details on the dates and nature of the representation.

- b. Did you ever have dealings with the Russian government or Russian oligarchs? If so, please provide details.

RESPONSE: I do not have complete records reflecting all of the clients that I have represented over the course of my four-decade legal career. After leaving the Department of Justice in 1993, I worked in-house for a single U.S. corporation until 2008. Since then, I have represented a handful of non-Russian clients as a private attorney in connection with matters having nothing to do with Russia. To the best of my recollection, these clients are reflected in the questionnaire that I submitted to the Committee. Prior to my last service at the Department of Justice 30 years ago, so far as I recall, and based on the records I have been able to access, I did not personally represent any Russian nationals or corporations organized under the laws of Russia while practicing law as a private attorney.

In approximately 1980, the federal judge for whom I clerked introduced me to someone I understood to be a consular officer from the Soviet Embassy, and I subsequently had several lunches with him at the request of the FBI. I debriefed the FBI following each meeting. This matter has been included in all of my subsequent background investigations. Other than that, to the best of my recollection and knowledge, I have not had dealings with the Russian government or anyone I understood to be a “Russian oligarch.”

16. During your 1989 confirmation hearing to head the Office of Legal Counsel, you said at one point that the Attorney General is “the chief lawyer in the administration. He is the President’s lawyer; he is the lawyer for the cabinet” (emphasis added). Do you stand by this characterization of the Attorney General’s role?

RESPONSE: Yes. That characterization is consistent with the way Presidents and Congress have understood the Attorney General’s role since the Founding. Since the Judiciary Act of 1789, the Attorney General has been charged with providing opinions and advice on matters of law to the President and the cabinet. Of course, the President may also have other lawyers that serve the office of the President (such as the White House Counsel) as well as lawyers that serve him in his personal capacity.

17. During your hearing we discussed a January 25, 1996 speech you gave at the University of Virginia’s Miller Center, in which you essentially admitted to taking actions as Attorney General for political purposes. You said: “After being appointed, I quickly developed some initiatives on the immigration issue that would create more border patrols, change the immigration rules, and streamline the processing system. It would furthermore put the Bush campaign ahead of the Democrats on the immigration issue, which I saw as extremely important in 1992. I felt that a strong policy on immigration was necessary for the President to carry California, a key state in the election.”

This admission that you developed initiatives to “change the immigration rules” to “put the Bush campaign ahead” stands in stark contrast to the commitment you made in your 1991 confirmation hearing for Attorney General, where you said: “The Attorney General must

ensure that the administration of justice, the enforcement of the law, is above and away from politics.”

- a. Why did you feel it was appropriate to develop initiatives to “change the immigration rules” as Attorney General for purposes of helping the political fortunes of the Bush campaign despite the commitment you made during your confirmation hearing?
- b. Is it appropriate for an Attorney General to “change the rules” to help the political campaign of the President who appointed him?
- c. If confirmed, do you believe it would be within your proper role to develop initiatives to “change the immigration rules” in ways that would help the 2020 Trump campaign?

RESPONSE: The actions referenced above and my discussion of those actions was appropriate for reasons that I explained at the hearing. As I discussed, the Attorney General plays three general roles within the Executive Branch. The first role is as the enforcer of the law; as to that role, the Attorney General must keep the enforcement process separate and free from political influence. The second role is as a legal advisor; as to that role as well, the Attorney General must provide legal advice that reflects what the Attorney General believes is the correct answer under the law. The third role is a policy role, which involves setting legal and law enforcement policy, including as it bears on immigration issues. The Attorney General is a political subordinate of the President, and, when acting in that third role, the Attorney General may propose and pursue legal policies that are in furtherance of the President’s agenda.

18. In an April 5, 2001 panel at the University of Virginia’s Miller Center, you said “my experience with the Department is that the most political people in the Department of Justice are the career people, the least political are the political appointees.” Do you stand by this characterization of DOJ career employees?

RESPONSE: In this portion of the interview, I was emphasizing the importance of utilizing the government’s prosecutorial power responsibly. To illustrate the point, I highlighted a case involving former Senator Charles Robb as one “where adult supervision prevailed.” Immediately after making the statement quoted above, I noted that it was “an overstatement to dramatize a point.” Although I have not been in the Department for many years, I believe the vast majority of men and women of the Department of Justice, whether they be career employees or political appointees, set aside personal political preferences to ensure the rule of law is enforced fairly and free from improper political influence. If confirmed, I will work to ensure politics plays no role in law enforcement decisions at the Department.

19. Did anyone at the White House or the Justice Department advise you not to meet with Democratic members of this Committee in advance of the hearing, and if so, who gave you this advice?

RESPONSE: No. I met with members of the Committee from both parties prior to my confirmation hearing and will continue to meet with Senators from both parties following my hearing. If confirmed, I look forward to working with all Members of Congress, regardless of party affiliation.

20. On October 18, 2017, Attorney General Sessions testified before the Senate Judiciary Committee for a Department of Justice oversight hearing. This was the only time he testified before the Committee as Attorney General. At this hearing, Attorney General Sessions did not provide a written copy of his testimony to the Committee members in advance of the hearing; in fact, an electronic copy of his testimony was emailed to my committee staff by the Department only after the hearing had begun. As a result of this late submission, Committee members were denied the opportunity to prepare questions in advance based on the Attorney General's written testimony. Will you commit that if you are confirmed, you will provide your written testimony to the full Committee 24 hours in advance of each hearing where you testify in accordance with the Committee's long-standing rules?

RESPONSE: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information needs, including the submission of hearing testimony, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will endeavor to see that the Committee's needs are appropriately accommodated and its rules followed.

21. Attorney General Sessions never provided responses to written questions from this Committee from the Department of Justice oversight hearing on October 18, 2017. Other former Department officials have provided responses to this Committee's oversight questions after they have left the Department, including former FBI Director Comey who provided responses on December 4, 2018 to written questions following his appearance before the Committee on May 3, 2017. If confirmed, will you ensure that the Committee receives prompt answers to all the written questions that were submitted to Attorney General Sessions from the October 18, 2017 oversight hearing?

RESPONSE: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

22. I appreciate that in your testimony you pledged to "diligently implement" the First Step Act.
- a. Will you direct prosecutors not to oppose eligible petitions for retroactive application of the Fair Sentencing Act if you are confirmed?

RESPONSE: If I am confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act consistent with congressional intent.

- b. The First Step Act authorizes \$75 million in annual funding for the next five fiscal years to carry out the Act’s provisions. The actual cost of implementation is likely to be higher, and the Bureau of Prisons is already facing severe funding and staffing shortages. Will you pledge that, if confirmed, you will ensure that the Justice Department’s budget requests include an increase of at least \$75 million, as authorized to implement the First Step Act, as well as any additional funding needed to address previous shortfalls?

RESPONSE: It is important that the Bureau of Prisons is funded at a level that allows it to effectively discharge all of its duties, including implementation of the FIRST STEP Act. If I am confirmed, I will work with the President and the Office of Management and Budget to ensure that such funding is requested in the President’s budget and will work with Congress to see that such funding is provided.

- c. The First Step Act became law on December 21. It mandates the Attorney General begin immediate implementation of certain reforms, and establishes deadlines for others. Among other things, it requires that an Independent Review Committee be established by the National Institute of Justice by Tuesday, January 21, 2019. This deadline has already been missed.

The First Step Act requires the Attorney General, not later than 210 days after the date of enactment, and in consultation with the Independent Review Committee, to develop and release publicly on the Department of Justice website a risk and needs assessment system. What steps will you take in order to ensure the risk assessment system is established by this deadline if you are confirmed?

RESPONSE: If I am confirmed, I will work with relevant Department components to ensure the Department implements the requirements of federal statutes, including the FIRST STEP Act, consistent with the bounds set by the Antideficiency Act.

- d. The First Step Act broadens applicability of the Safety Valve under 18 U.S.C. § 3553(f). Do you agree that this change applies to cases where a sentence for the offense has not yet been imposed? If you are confirmed, what guidance will you provide to prosecutors on the applicability of the safety valve in such pending cases?

RESPONSE: Section 402(a) of the FIRST STEP Act broadens the class of defendants who are eligible for safety-valve relief. Section 402(b) provides that the Act’s safety-valve amendments “shall apply only to a conviction entered on or after the date of enactment of this Act.” If I am confirmed, I will ensure that

prosecutors receive implementing guidance for pending cases that is consistent with the applicability provision in the Act.

23. In 1993 you co-wrote an article in *The Banker* entitled “Punishment that exceeds the crime – The crackdown on corporate fraud threatens to stifle the financial system.” In this article, you criticized what you described as an “overly hostile enforcement atmosphere” when it comes to investigation and prosecution of corporate fraud and white collar crimes.” You said this aggressive enforcement risks deterring entrepreneurial investment and “offending our notions of fundamental fairness.”

- a. Why did you urge caution when it comes to investigating and prosecuting white collar crimes as opposed to your aggressive approach to investigating and prosecuting drug offenses?

RESPONSE: If confirmed, I will be committed to fully and fairly enforcing the law, including relating to fraud and white collar crime. I also believe that appropriate prosecutorial discretion plays an important role in all types of prosecutions. As I noted at my hearing, I believe my prior experience overseeing the Department’s aggressive response to the savings and loans crisis demonstrates that I will not shy away from prosecuting corporate fraud or other white collar crimes, where appropriate.

- b. Should white collar criminals get different treatment from other criminals?

RESPONSE: No. As I explained at my hearing, I care deeply about the rule of law. Laws should be evenly applied and enforced. The American people must know that the Department will treat all people fairly based solely on the facts and the law and an evaluation of each case on the merits.

24. At a panel discussion before the Federalist Society in 1995 you said “violent crime is caused not by physical factors, such as not enough food stamps in the stamp program, but ultimately by moral factors.” You went on to say “spending more money on these material social programs is not going to have an impact on crime, and, if anything, it will exacerbate the problem.”

Since you made these comments, new research has gone a long way toward rebutting them. For instance, scientific evidence now shows that childhood exposure to trauma affects brain development and perpetuates the cycle of violence. Social programs that help prevent and address exposure to trauma in children can have a significant impact on ending the cycle of violence.

- a. Do you regret these comments you made in 1995 to the Federalist Society?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in

effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement. During my time as Attorney General, the Department of Justice implemented “Weed and Seed.” This program focused on removing violent criminals and repeat offenders from high-crime areas while delivering vital social services to improve neighborhoods in partnership with local communities. This program, among other enforcement actions, helped reduce crime rates and was an effective strategy for controlling crime.

- b. Have your views on the relationship between social programs and violent crime changed since 1995?

RESPONSE: Please see my response to Question 24(a) above.

- c. Is it your view that white collar crime is also ultimately caused by moral factors?

RESPONSE: Yes.

25. In 1992, when you were Attorney General, you issued a lengthy report called “The Case for More Incarceration” that said: “First, prisons work. Second, we need more of them.” And in an October 2, 1991 speech you described a high prison population as “a sign of success.” Over the last three decades, as a result of stiff mandatory minimums, the federal prison population grew by over 700%, and federal prison spending climbed nearly 600%. Federal prisons now consume one quarter of the Justice Department’s budget. And we hold more prisoners, by far, than any other country in the world. America has five percent of the world’s population but 25 percent of the world’s prisoners – more than Russia or China.

Meanwhile, use of illegal drugs actually increased between 1990 and 2014. The availability of heroin, cocaine, and methamphetamine also increased. And recidivism rates for federal drug offenders did not decline. Today the data is clear – there is no significant relationship between drug imprisonment and drug use, drug overdose deaths, and drug arrests.

Have your views about the value of incarceration changed as a result of what we’ve learned in the last three decades?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement. As I said at my hearing, I will diligently implement the FIRST STEP Act, which seeks to address some of what you describe.

26. Now, we are facing another deadly drug epidemic, and some are proposing that we again respond with harsh mandatory minimum sentences. Today, a large body of research establishes that stiffer prison terms do not deter drug use or distribution. Do you agree that we cannot incarcerate our way out of the fentanyl epidemic?

RESPONSE: A comprehensive response to any drug epidemic should involve multiple lines of effort. This Administration has a three-pronged strategy to combat the opioid epidemic: prevention and education; treatment and recovery; and enforcement and interdiction. These efforts should be complementary and mutually reinforcing. I agree that we cannot incarcerate our way out of the opioid epidemic, but I also think that law enforcement plays a critical role in protecting public safety and reducing access to deadly drugs. If confirmed as Attorney General, I will ensure that the Justice Department continues to prioritize the prosecution of significant drug traffickers, rather than drug users or low-level drug offenders. And, as I testified at my hearing, I will work with Congress to implement the FIRST STEP Act.

27. During your testimony before this Committee, you acknowledged that “the heavy drug penalties, especially on crack and other things, have harmed the black community, the incarceration rates have harmed the black community.”

On May 10, 2017, Former Attorney General Sessions directed all federal prosecutors to always seek the maximum penalty in federal criminal prosecutions. During your confirmation hearing, you testified that you intend to continue this policy unless “someone tells me a good reason not to.” Yet you also testified that the “draconian policies” enacted in reaction to the crack epidemic resulted in “generation after generation of our people . . . being incarcerated,” and that it is time to “change the policies.” I agree. This seems to be a “good reason” not to continue the Sessions policy, which applies to violent and non-violent offenders alike. Will you commit to reviewing and revising the Sessions charging guidance if you are confirmed as Attorney General?

RESPONSE: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. It is my understanding that the Department’s current charging policy allows prosecutors the discretion to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so. As I noted in my testimony, if confirmed, I will not hesitate to assert myself - either with regard to the overall policy or in any particular case - if I believe justice is not being served.

28. In recent years, the Federal Bureau of Prisons (BOP) workforce has faced a number of significant challenges—including severe staffing shortages that jeopardize their ability to ensure the safety of inmates, staff, and the public. These staffing concerns resulted from a hiring freeze imposed by the Trump Administration and implemented by former Attorney General Sessions. Additional hiring was also delayed after President Trump proposed an FY 2019 budget that inexplicably sought to cut an additional 1,168 BOP positions, while projecting an increase in BOP’s prison population.

These staffing shortages have led to widespread reliance on “augmentation,” a practice that forces non-custody staff, such as secretaries, counselors, nurses, and teachers, to work as correctional officers—despite the fact that these employees lack the experience and extensive training of traditional correctional officers. Augmentation places staff at risk and reduces access to programming, recreation, and education initiatives—all of which are key to maintaining safe facilities and reducing recidivism.

- a. If confirmed, how will you address the ongoing staffing challenges at BOP?

RESPONSE: As I am not currently at the Department, I am not familiar with the details of staffing at the Bureau of Prisons. It is my general understanding that all staff working in an institution are considered correctional workers first and expected to supervise inmates. As for the concept of augmentation, other than what I have garnered from news media reports about this issue, I am not directly familiar with the Bureau’s staffing and current budget requests. If confirmed, I look forward to reviewing the Bureau’s resource allocation, staffing needs, and practices.

- b. Will you commit, if confirmed, to ensuring that BOP is adequately staffed so that augmentation is no longer needed?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about the BOP’s staffing situation and any impact it may have on safety and security.

- c. The ongoing government shutdown has exacerbated an already-dangerous situation for BOP staff and has caused significant financial stress as they continue to work without a paycheck. If confirmed, how will you address the impact that this shutdown has had on BOP and other DOJ staff?

RESPONSE: I share your concern about the impact the lapse in appropriations has had on Federal employees. It is my understanding that Congress has now passed, and the President has signed, legislation to restore appropriations for the Department of Justice and other federal agencies.

29. In an op-ed last November you praised Attorney General Sessions’ immigration policies including, among other things, for “breaking the record for prosecution of illegal-entry cases.” This praise came in the aftermath of Attorney General Sessions’ disastrous “zero-tolerance” policy directing U.S. Attorneys along the Southwest border to criminally prosecute every illegal entry misdemeanor case referred by DHS, which included parents fleeing gang and sexual violence. The President of the American Academy of Pediatrics saw the zero-tolerance policy differently than you did— she called it “government-sanctioned child abuse”. It led to the separation of thousands of families, some of whom have still not been reunited today.

- a. As Attorney General, would you adhere to the zero-tolerance policy?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they are going to apprehend, whom they are going to refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

- b. Do you think the zero-tolerance policy has been a success?

RESPONSE: Please see my response to Question 29(a) above.

- c. Was it appropriate for a Federal District Court Judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matter, and thus it would not be appropriate for me to comment on this matter.

30. On June 5, 2018, when asked, “Is it absolutely necessary . . . to separate parents from children when they are detained or apprehended at the border?” Attorney General Sessions answered, “Yes.” Yet on June 21, 2018, after widespread public backlash, Attorney General Sessions claimed that the Administration did not anticipate the separation of families, stating: “We never really intended to do that.” The Justice Department’s Inspector General (IG) is reviewing the Justice Department’s poorly planned and chaotic implementation of the zero-tolerance policy.

- a. Will you pledge that, if confirmed, you will implement the IG’s recommendations so we can avoid a repeat of this disaster?

RESPONSE: I cannot speculate on how I would hypothetically respond to future, unknown recommendations on any matter. If confirmed, I look forward to working closely with the Office of Inspector General on this and other matters and will certainly strive to implement recommendations as appropriate.

- b. Do you agree with Attorney General Sessions’ comment that it is absolutely necessary to separate parents from children when they are detained or apprehended at the border?

RESPONSE: Without having additional information beyond what has been reported in the news media, I am not in a position to comment on this statement. President Trump’s June 20, 2018 Executive Order directed that families should

be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

31. On June 17, 2018, DHS Secretary Nielsen stated on Twitter “We do not have a policy of separating families at the border. Period.” Was this an accurate statement?

RESPONSE: I have not had the opportunity to study this statement and, as a private citizen, am not familiar with all the facts and details of the policies of the Department of Homeland Security. I therefore do not have a basis for commenting on this statement.

32. Justice Department resources were reportedly diverted from federal drug-smuggling felony cases to handle immigration charges under the zero-tolerance policy. Was the zero-tolerance policy a wise use of Department resources?

RESPONSE: I have not had the opportunity to study the policy beyond what has been publicly reported in the news media and would therefore not be in a position to comment on this matter.

33. Congress received a letter on January 9, 2019 from Judge Ashley Tabaddor, the President of the National Association of Immigration Judges. Judge Tabaddor explained that every immigration judge across the country is currently in a no-pay status. She added that every day the immigration courts are closed, thousands of cases are cancelled and have to be indefinitely postponed.

Judge Tabaddor stated that there is currently a backlog of more than 800,000 pending immigration cases, an increase of 200,000 cases in less than two years despite the largest growth in the number of active immigration judges in recent history. At the end of Fiscal Year 2016 there were 289 active judges, while currently there are over 400.

Judge Tabaddor said “When a hearing is delayed for years as a result of a government shutdown, individuals with pending cases can lose track of witnesses, their qualifying relatives can die or age-out and evidence already presented become stale. Those with strong cases, who might receive a legal status, see their cases become weaker. Meanwhile, those with weak cases – who should be deported sooner rather than later – benefit greatly from an indefinite delay.”

Do you agree that the shutdown has hurt the administration of justice in our immigration courts and is worsening the immigration court backlog?

RESPONSE: I am generally aware that the immigration court backlog has increased since 2008 but also that immigration courts last year were completing more cases than at any other time in recent years. I do not know whether the backlog has worsened during the government shutdown, though I understand that immigration judges have continued to adjudicate cases of detained aliens.

34. Do you believe a child can represent herself fairly in immigration court without access to counsel?

RESPONSE: It is my general understanding that all respondents in immigration proceedings, including minors, are afforded due process protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. Otherwise, I understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation, and it would not be appropriate to comment further.

35. During the presidency of George H.W. Bush, the U.S. generously accepted refugees fleeing persecution from around the world. In Fiscal Year 1989 the U.S. resettled 107,070 refugees, in 1990, 122,066, in 1991, 113,389, and in 1992, 132,531. By contrast, in Fiscal Year 2018 the U.S. resettled just 22,491 refugees, less than half of the 50,000 target established by President Trump, and for 2019 the Trump Administration has established the lowest refugee admissions goal since the Refugee Admissions Program was created in 1980: a mere 30,000 refugees may be admitted this year, at a time when there are more than 25 million refugees worldwide, more than ever before, according to UNHCR.

a. Did you have any role in the refugee admissions policy of the George H.W. Bush Administration, including providing any opinions to other cabinet departments and officials about the number of refugees admitted? Please describe your role, if any, in initiating and implementing this policy.

RESPONSE: As the Attorney General, Deputy Attorney General, and Assistant Attorney General for the Office of Legal Counsel, I was present for many discussions and meetings within the Department of Justice or other executive branch offices on a wide range of issues and matters. Although I do not recall specifics, it is possible that I advised on legal issues related to these policies.

b. Did you support the admission of over 100,000 refugees per year during President George H.W. Bush's Administration?

RESPONSE: The President was responsible for setting policy with respect to refugee admissions. In my various roles at the Department of Justice during President Bush's Administration, I worked to ensure that the President's admissions policies were consistent with applicable law. Although I do not recall specifics, it is possible that I advised on legal issues related to these policies.

c. Do you believe the refugee admissions ceiling established by President Trump for Fiscal Year 2019 (30,000) is an adequate response to the unprecedented global refugee crisis?

RESPONSE: I have not considered the admissions ceiling established for Fiscal Year 2019 and thus am not in a position to comment on it at this time.

36. You have described yourself as a “strong proponent of executive power.” In your June 8, 2018 memo, you went so far as to state that “constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He *alone* is the Executive branch.”

President Trump has taken an aggressive and expansive view of presidential power. He has shown contempt for the federal judiciary unlike any president we can recall. He has undermined and ridiculed your predecessor, whom he chose. He has shown disrespect for the rule of law over and over again.

- a. In light of this record, do you believe President Trump is a faithful steward of executive power?

RESPONSE: I respectfully disagree with the premises of this question. In any event, if confirmed, the oath I will take will be to protect and defend the Constitution of the United States, and I will continue to honor that oath. The American people elected President Trump using the procedures prescribed by our Constitution. And Article II of the Constitution vests the entirety of “the executive power ... in a President of the United States of America.” In other words, the Supreme Court has said, “Article II ‘makes a single President responsible for the actions of the Executive Branch.’” *Free Ent. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496-97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)). And “[t]he Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so. ... Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else. Such diffusion of authority would greatly diminish the intended and necessary responsibility of the chief magistrate himself.” *Id.* at 513-14 (internal quotation marks omitted).

- b. Do you stand by your argument that President Trump *alone* is the Executive branch?

RESPONSE: I stand by my statement, which reflects the way the Founders of our Constitution and the Supreme Court have long viewed the President’s role in the Executive Branch. I cannot improve upon the words of former Attorney General and Supreme Court Justice Robert Jackson, who observed that “Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality his decisions so far overshadow any others that almost alone he fills the public eye and ear.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 653 (1952) (concurring opinion).

- c. Are you concerned about President Trump continuing to abuse executive power?

RESPONSE: Please see my responses to Questions 36(a) and 36(b) above.

- d. Are you confident that the Justice Department and OLC will serve as a check and balance on any abuses of executive power by President Trump?

RESPONSE: I have confidence in the Department of Justice and the Office of Legal Counsel, and I believe that they will properly discharge their responsibilities to the Constitution, the law, the Executive Branch, and the Office of the President. As I stated in my confirmation hearing, “I love the Department ... and all its components. ... I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity. ... And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.” Moreover, as I explained in a speech I gave at Cardozo law school on November 15, 1992: “In my view, the President has a responsibility to his office to advance responsible positions in law. Ultimately, if you attempt to push too hard—even as a matter of litigation risks—and take legal positions that clearly will not be sustained, or that are not responsible and reasonable legal positions, you will lose ground. That certainly was the consequence of the Steel Seizure Case.”

37. On multiple occasions, President Trump has issued pardons without any apparent consultation or vetting from the DOJ Office of the Pardon Attorney. For example, Scooter Libby, Joe Arpaio and Dinesh D’Souza were all pardoned by President Trump without even applying for a pardon, let alone going through the Justice Department’s vetting process.
- a. In your view, is it appropriate for a President to exercise the pardon power without any input from the Justice Department?
- b. If you are confirmed, would you insist on the Department having input into clemency decisions, including the opportunity for the Office of the Pardon Attorney to vet clemency applicants?

RESPONSE: As a general matter, Article II, Section 2 of the Constitution grants the President the unqualified power to “grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” Generally, Presidents have exercised this authority after receiving advice from the Department of Justice. Throughout history, however, there have been exceptions. The President is not required to involve the Office of the Pardon Attorney or the Department of Justice prior to making clemency decisions.

38. On June 15, 2018, President Trump’s attorney Rudy Giuliani said of the Special Counsel’s Russia investigation: “When this whole thing is over, things might get cleaned up with some presidential pardons.”

- a. In your view, does a statement like this constitute inappropriate interference in an investigation?

RESPONSE: As the nominee for Attorney General, I do not believe that I should express an opinion on matters concerning an ongoing investigation. As I testified, if confirmed, I will scrupulously follow the Special Counsel regulations and ensure that the Special Counsel is allowed to complete his work.

- b. When does it cross into obstruction of justice for a President or his representative to publicly hint that the pardon power might be used to reward investigation witnesses and targets who refuse to cooperate?

RESPONSE: Please see my response to Question 38(a) above.

- c. In your view, would it constitute inappropriate interference in Special Counsel Mueller’s investigation for President Trump to issue pardons to people under investigation or indictment by Special Counsel Mueller?

RESPONSE: Please see my response to Question 38(a) above.

- d. On June 4, 2018, President Trump tweeted “I have the absolute right to pardon myself.” Do you agree?

RESPONSE: No court has ever ruled on whether the President can pardon himself. I have not studied the issue.

- e. Would you advise a President against attempting to pardon himself?

RESPONSE: No President has ever sought to pardon himself. In all matters, if I am confirmed, I would ground my advice on my best judgment of the law and the facts of a particular case.

- f. You have not been shy in discussing how you urged President George H.W. Bush to pardon Defense Secretary Caspar Weinberger and five other government officials involved in the Iran-Contra scandal. After President Bush issued these pardons in 1992, Lawrence Walsh, the independent counsel who led the Iran-Contra inquiry, said that the pardon of Weinberger and other Iran-contra defendants “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office — deliberately abusing the public trust without consequence.” If confirmed, how would you ensure that

President Trump does not use the pardon power in a way that undermines the principle that no man is above the law?

RESPONSE: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. If confirmed, I would advise the President to carefully consider these and other appropriate factors in exercising his pardon power.

39.

- a. As a general matter, do you believe it is a worthy goal for the Department of Justice to seek to remedy systematic constitutional and civil rights violations by police departments?

RESPONSE: The Department has an important duty to investigate constitutional and civil rights violations by police departments when they occur. My understanding is that these matters are often initially reviewed by state or local prosecutors and the internal affairs division of the particular police department. To the extent that such violations may require the Department’s review, I am committed to working closely with the Department and FBI to conduct thorough investigations and, when the facts warrant it, use Department resources to initiate prosecutions against officers who abuse their authority and to bring appropriate civil actions against police departments.

- b. On November 7, Attorney General Sessions issued a memo that drastically curtails DOJ pattern or practice investigations of police departments and limits the use of consent decrees to bring police departments into compliance with the Constitution. If confirmed, will you revisit the Sessions memo, which was hastily issued right before his resignation, to ensure the Department is fulfilling its responsibility to protect the American people from systemic Constitutional violations by police?

RESPONSE: I take seriously the Department’s role in protecting Americans’ civil rights. As I stated during the hearing, I generally support the policies reflected in former Attorney General Sessions’ memorandum. However,

because I am not currently at the Department, I recognize that I do not have access to all information. As in all matters, if confirmed, I would look at the individualized facts of the situation as well as the governing law and the policies of the Department in determining what the next, appropriate steps might be with respect to Attorney General Sessions' memorandum.

- c. In a March 31, 2017 memo, Attorney General Sessions stated that: "Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies." Do you share that position? If so, was it inappropriate for Attorney General Sessions to petition a federal court in opposition to the policing reform consent decree that was independently negotiated between the City of Chicago and the Illinois State Attorney General last year?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter. The government may be in possession of information of which I am not aware that could influence my outlook on the matter, and it would be inappropriate to comment further without an opportunity to study and understand those facts.

40. Earlier this month, the *Washington Post* reported that the Trump Administration is "considering a far-reaching rollback of civil rights law that would dilute federal rules against discrimination in education, housing and other aspects of American life."

Senior civil rights officials within DOJ were reportedly instructed to "examine how decades-old 'disparate impact' regulations might be changed or removed in their areas of expertise, and what the impact might be." Officials at the Department of Education and the Department of Housing and Urban Development are also reportedly reviewing disparate impact regulations under their jurisdictions.

Disparate impact liability is a key civil rights enforcement tool.

The Supreme Court reaffirmed this in a 2015 case, holding that disparate impact claims are cognizable under the Fair Housing Act. Justice Kennedy, writing for the majority, noted that "[m]uch progress remains to be made in our Nation's continuing struggle against racial isolation.... But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse." The opinion concluded with the Court acknowledging the Act's "continuing role in moving the Nation toward a more integrated society."

- a. Do you agree that disparate impact liability is an important and valid civil rights enforcement tool?
- b. If so, will you agree not to take any actions to undermine disparate impact liability if you are confirmed?

RESPONSE: Beyond what I have seen reported publicly in the news media, I am not familiar with the facts and circumstances surrounding these issues. Therefore, I am not in a position to comment on the matter.

41. In your 1991 confirmation hearing, you said “discrimination is abhorrent and strikes at the very nature and fiber of what this country stands for.” You also said “I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.”

- a. Do you stand by that pledge today?

RESPONSE: Yes. As I did then, I pledge to remain vigilant in looking for discrimination and to enforce vigorously federal laws against discrimination.

- b. Does your pledge include discrimination against LGBTQ Americans?

RESPONSE: If confirmed, I will enforce federal anti-discrimination laws for all Americans, including LGBTQ Americans.

- c. Do LGBTQ Americans face discrimination today?

RESPONSE: Yes. LGBTQ Americans, like many in America, face discrimination.

- d. Do you believe LGBTQ Americans have protections against discrimination under federal law?

RESPONSE: It is my understanding that certain federal laws expressly provide LGBTQ Americans with protections against discrimination, such as in the Shepard-Byrd Hate Crimes Prevention Act. I also understand that the issue whether other federal laws, such as Title VII, provide such protections is subject to ongoing litigation.

- e. If so, in your opinion, what is the scope of federal protections for LGBTQ Americans?

RESPONSE: Please see my response to Question 41(d) above.

- f. Do you agree that an individual cannot choose or change their sexual orientation, any more than an individual can choose or change their race or national origin?

RESPONSE: I have no basis to reach a conclusion regarding that issue.

42. In recent years, you have made troubling statements in opposition to efforts to combat LGBTQ discrimination. For example, in November 2018, you wrote a joint op-ed with

former Attorneys General Ed Meese and Michael Mukasey “saluting” former Attorney General Sessions. You specifically praised Sessions for changing DOJ’s litigation position to argue that transgender people are not protected by Title VII’s prohibition on sex-based discrimination in the workplace. You suggested that this reversal “help[ed] restore the rule of law.” Further, in a 2007 panel discussion, you criticized the Supreme Court’s decision in *Lawrence v. Texas*, stating that “the striking down of the anti-sodomy laws in Texas on the grounds that ‘liberty’ entails some right to engage in sodomy and therefore the state’s ability to regulate that... [threw] out hundreds of years of understanding about the ability of local and state governments to engage in ‘moral’ legislation.”

Do you stand by those statements today?

RESPONSE: Respectfully, my November 2018 op-ed did not oppose “efforts to combat LGBTQ discrimination.” I understand that the question of whether Title VII’s prohibition on sex-based discrimination in the workplace covers gender identity is currently pending in litigation, and the Department’s position is that it does not. Of course, the scope of Title VII and the question whether transgender individuals should be protected from workplace discrimination as a matter of policy are two different issues. With respect to *Lawrence v. Texas*, it remains my belief that the decision led to the invalidation of certain laws, some of which had been on the books for many years.

43. When former Attorney General Sessions came before this Committee for an oversight hearing in October 2017, I asked him about his recently-issued guidance to all administrative agencies and executive departments on religious liberty issues. You praised this guidance in your November 2018 joint op-ed.

However, the guidance has received significant criticism, particularly in relation to its impact on the rights of LGBTQ Americans. The Human Rights Campaign had this to say about the guidance:

“A preliminary analysis of the Trump-Pence administration’s license to discriminate indicates that LGBTQ people and women will be at risk in some of the following ways:

- A Social Security Administration employee could refuse to accept or process spousal or survivor benefits paperwork for a surviving same-sex spouse;
- A federal contractor could refuse to provide services to LGBTQ people, including in emergencies, without risk of losing federal contracts;
- Organizations that had previously been prohibited from requiring all of their employees from following the tenets of the organization’s faith could now possibly discriminate against LGBTQ people in the provision of benefits and overall employment status; [and]
- Agencies receiving federal funding, and even their individual staff members, could refuse to provide services to LGBTQ children in crisis, or to place adoptive or foster children with a same-sex couple or transgender couple simply because of who they are.”

I asked then-Attorney General Sessions for his response to this analysis. He said he would get back to me, but he never did.

Do you believe that under this guidance, it is acceptable for a Federal government employee to cite their religious beliefs in refusing to serve or assist a same-sex couple?

RESPONSE: While I was not present in the Department of Justice for the events you describe, it is my understanding that the Department of Justice’s guidance on “Federal Law Protections for Religious Liberty” does not address that question. The guidance merely describes existing law. It does not—and could not—change the law. And it certainly does not abrogate existing antidiscrimination laws.

44. In an April 1995 news report following the Oklahoma City bombing, you discussed the Bush administration’s work countering domestic right-wing groups. You said “[w]e were concerned about extreme rightwing groups in the country, but the surveillance and investigation of these groups was not as thorough as it should have been because of domestic restrictions.”

Right-wing extremism remains a significant threat today. To name just two recent examples, we’ve seen alleged fatal attacks by right-wing extremists in Charlottesville, Virginia and at the Pittsburgh Tree of Life Synagogue. A recent analysis by the *Washington Post* found the following: “Of 263 incidents of domestic terrorism between 2010 and the end of 2017, a third—92 —were committed by right-wing attackers.”

- a. Do you agree that “extreme right-wing groups,” to use your words, remain a significant domestic terrorism threat today?

RESPONSE: Yes. Although I am not familiar with the *Washington Post*’s analysis, I believe that extremist ideological groups, including right-wing groups, remain a significant domestic terrorism threat.

- b. If confirmed, what steps will you take to combat this threat?

RESPONSE: If confirmed, I will vigorously support efforts to investigate domestic terrorism and hold any and all perpetrators accountable. I do not, however, want to prejudge or otherwise influence any outcomes by commenting directly on any of the Department’s ongoing investigations.

- c. Do you agree with President Trump’s statement that “You also had some very fine people on both sides” of the white supremacist demonstrations in Charlottesville?

RESPONSE: I am not in a position to speak for the President or speculate on what he was conveying.

- d. Will you pledge to ensure that the Department of Justice directs sufficient resources to combat domestic terrorism?

RESPONSE: I am not familiar with the Department’s current budget and related funding requests. If confirmed, I will review the Department’s resource allocations, needs, and funding proposals. I believe that the Department should focus its resources generally on the most serious criminal activity, including domestic terrorism that threatens our national security and public safety.

- e. Will you also commit to ensuring that the Department of Justice provides regular briefings to this Committee on the Department’s efforts to combat domestic terrorism?

RESPONSE: I appreciate the Committee’s desire for information related to the Department’s efforts to combat domestic terrorism. If confirmed, I will be pleased to work with Congress through the Department’s Office of Legislative Affairs to keep the Committee appropriately informed of the Department’s efforts in this area, consistent with the Department’s law enforcement, national security, and litigation responsibilities.

- 45. In 2017, I introduced the Domestic Terrorism Prevention Act. This legislation would enhance the federal government’s efforts to prevent domestic terrorism by requiring federal law enforcement agencies to regularly assess those threats and provide training and resources to assist state, local, and tribal law enforcement in addressing these threats.

Would you commit, if you are confirmed, to review this legislation and give us your feedback on it?

RESPONSE: I am not familiar with the details of the legislation. If confirmed, I can commit to working with Committee regarding legislation that supports the Department’s mission and priorities.

- 46. During your tenure as Attorney General, you oversaw the publication of the Justice Department’s annual reports. The 1992 report emphasized the Department’s “efforts to assure minorities a fair opportunity to elect candidates of their choice to public office through its administrative review of voting changes under Section 5 of the Voting Rights Act, as well as through litigation.”

The 1992 report also specifically noted that “[t]he Attorney General interposed Section 5 objections to 16 statewide redistricting plans,” including in Alabama, Georgia, and North Carolina.

Unfortunately, in 2013, a divided Supreme Court voted 5-4 in *Shelby County v. Holder* to gut the Voting Rights Act. The Court struck down the formula that determined which jurisdictions were subject to Section 5 preclearance.

- a. In your experience as Attorney General, did you find Section 5 preclearance to be an effective tool to combat voter suppression efforts?

RESPONSE: As Attorney General, I was committed to protecting and upholding the civil rights and voting rights of all Americans. If confirmed, I will bring that same commitment to the Department of Justice. During my time as Attorney General, I interposed Section 5 objections where those objections were valid based on the facts of the particular case and the governing law. As Congress and the Supreme Court had determined, Section 5 was an appropriate tool to protect voting rights based on the facts and circumstances at that time.

- b. In light of your experience, what was your reaction to the *Shelby County* decision?

RESPONSE: I understand that the *Shelby County* decision rested on the Supreme Court's determination that Congress had relied upon outdated findings to justify the reauthorization of Section 5 in 2006, which was thirteen years after my tenure as Attorney General concluded. The Department of Justice is bound to enforce the laws that Congress enacts, subject to the authoritative interpretations of the Supreme Court. If confirmed, I am committed to protecting and upholding the civil rights and voting rights of all Americans.

- c. What role do you believe that the Voting Section of the Civil Rights Division should play in enforcing federal voting laws?

RESPONSE: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. It is my understanding that the Voting Section of the Civil Rights Division bears primary responsibility for the Department's enforcement of federal laws that protect the right to vote.

- d. If confirmed, will you commit to ensuring that the Voting Section of the Civil Rights Division will be more aggressive in pursuing Section 2 cases against states and localities engaging in voter suppression efforts?

RESPONSE: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

47. In the lead-up to the 2018 midterm election, we saw a number of significant voter suppression efforts across the country:

- Several states engaged in significant voter purges—a problematic method of cleaning up voter registration rolls that often deletes legitimate registrations, preventing voters from casting their ballots on Election Day. For example, in Georgia, on a single day in July

2017, more than a half million people were purged from the voter rolls—which totaled eight percent of Georgia's registered voters.

- Georgia also employed a controversial “exact match” system, which required names on voter registration records to exactly match voters’ names in the state system—so if you filled out one form as “Tom” and another as “Thomas,” your registration would be blocked. This led to 53,000 “pending” registrations being held up in the weeks before the election; nearly 70 percent of these registrations were for African-American voters.
- In North Dakota, a strict new voter ID law went into effect that required voters to present an ID with their residential street address. It was clear that the law would have a disproportionate impact on Native American communities, in which many community members do not have street addresses. It was estimated that 5,000 Native American voters would need to obtain qualifying identification before Election Day.
- Voters across the country also saw reduced access to voting after state and local governments shuttered polling locations and curtailed early voting opportunities. In Florida, election officials were ordered to block early voting at the state’s college and university campuses. And since the Supreme Court’s 2013 ruling in *Shelby County v. Holder* to gut the Voting Rights Act, almost 1,000 polling locations across the country have been closed—many of them in predominantly minority communities.

a. Do you agree that these are examples of voter suppression?

- i. If so, what steps would you take as Attorney General to address similar voter suppression efforts in the future?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these instances beyond what I have seen reported in the news media. Therefore, I am not in a position to comment on these instances. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- ii. If not, what do you consider to be an incident of voter suppression?

RESPONSE: I cannot comment on a hypothetical question. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

b. Do you think voter fraud is a problem that justifies these types of restrictive voting measures?

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- c. Do you agree with President Trump's claims that 3-5 million people illegally voted in the 2016 election?

RESPONSE: I have not studied this issue in detail. Therefore, I have no basis for reaching a conclusion on this issue.

48. Despite frequent claims from Republicans that voter fraud is a rampant problem that must be addressed through restrictive voter laws, the most salient recent example of alleged election fraud was perpetrated by a Republican in the 9th Congressional District of North Carolina. A Republican House candidate, Mark Harris, apparently employed contractors who collected absentee ballots from mostly African-American voters and either filled them out for Harris or discarded them if they supported Harris' opponent. The North Carolina State Board of Elections has refused to certify Harris' purported 900-vote victory, and a local prosecutor has confirmed that an investigation is underway.

Do you support a federal investigation into apparent election fraud in North Carolina's 9th District?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. As a result, I am not in a position to comment on this matter.

49. In your 1991 confirmation hearing, you were asked your views on the right to privacy. You stated:

I believe that there is a right to privacy in the Constitution...I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled.

Do you stand by that statement today in light of the Court's subsequent decisions in *Planned Parenthood v. Casey* (1992) and *Whole Women's Health v. Hellerstedt* (2016), which each affirmed the right to abortion?

RESPONSE: *Roe v. Wade* is an established precedent of the Supreme Court.

50. Attorney General Sessions tried to block federal Byrne-JAG violence prevention grant funds in an effort to try to force unrelated immigration policy reforms on cities and states. At least 5 district courts and the 7th Circuit have held that the Justice department does not have the authority to impose unrelated grant conditions on programs like Byrne-JAG. However, Attorney General Sessions nonetheless refused to release these vital funds to cities like Chicago, which hurts the fight against deadly gun violence.

I don't think the Byrne-JAG program should be used as a political football in the immigration debate. Byrne-JAG is a formula grant program that was designed by Congress to give state and local jurisdictions flexibility to address their public safety needs. Ironically, the Byrne-JAG program was named for a New York City police officer who heroically gave his life to protect an immigrant witness who was cooperating with law enforcement.

Will you commit that if you are confirmed you will stop DOJ's withholding of Byrne-JAG funds to state and local communities as part of an effort to force immigration policy reforms?

RESPONSE: I am generally aware that the Department has sought to require law enforcement grant recipients to provide cooperation with federal authorities with respect to criminal aliens in their custody. As a general matter, I believe that, where authority exists to do so, this is a common sense requirement that should be continued. I am not familiar with the specifics of any withholding of Byrne-JAG grant funds. But, if confirmed, I would expect to use lawful tools available to the Department to ensure that all jurisdictions provide the level of cooperation required by law.

51. In a June 5, 2005 hearing before the Senate Judiciary Committee, you said regarding the Bush Administration's detention policy: "Rarely have I seen a controversy that has less substance behind it. Frankly, I think the various criticisms that have been leveled at the administration's detention policies are totally without foundation and unjustified." In July 2005, you sat on a panel entitled "Civil Liberties and Security" hosted by the 9/11 Public Disclosure Project and said that "under the laws of war, absent a treaty, there is nothing wrong with coercive interrogation, applying pain, discomfort, and other things to make people talk, so long as it doesn't cross the line and involve the gratuitous barbarity involved in torture."

- a. Do you reject the reasoning of the OLC "torture memo," which claimed that the torture statute unconstitutionally infringed on the President's authority as Commander-in-Chief and was subsequently rescinded by the Bush Administration Justice Department?

RESPONSE: That opinion was written prior to the passage of section 1045 of the National Defense Authorization Act for Fiscal Year 2016. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force. Any future questions on the issue would have to address that statutory provision, as well as any related constitutional issues.

- b. Do you acknowledge that the McCain Detainee Treatment Act, which passed the Senate with 90 votes in 2005 and which outlawed cruel, inhuman and degrading treatment, is constitutional? Do you pledge to abide by it?

RESPONSE: Yes.

- c. Is waterboarding torture?

RESPONSE: Regardless of the label, section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of waterboarding on any person in U.S. custody. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force.

- d. Can terrorists be successfully prosecuted and incarcerated in our domestic criminal justice system?

RESPONSE: The Department of Justice can, and routinely does, successfully prosecute and incarcerate terrorists in our domestic criminal justice system.

52. Under Attorney General Sessions, the Justice Department changed its previous litigation position and decided to stop defending the constitutionality of the Affordable Care Act in court, instead arguing that the ACA's protections for people with pre-existing conditions should be invalidated. Two career DOJ attorneys withdrew from the case rather than sign DOJ's brief, and one of these attorneys resigned.

- a. Was it appropriate for the Justice Department to change its previous litigation position and decline to continue defending the constitutionality of the Affordable Care Act?
- b. Did you agree with that decision?
- c. Will you review the Department's decision if you are confirmed?
- d. You have previously argued in an amicus brief that the Affordable Care Act is unconstitutional. Do you still hold that view?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of the decision you reference, and I am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the Department's position in this case. With regard to my prior amicus work, the Supreme Court upheld the constitutionality of the Affordable Care Act in *NFIB v. Sebelius*. If confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but on the law.

53. You have described Attorney General Sessions as “an outstanding attorney general” in your November 2018 *Washington Post* op-ed. Please identify any actions or policies that Attorney General Sessions implemented during his tenure that you think were misguided and that should be revisited by the next Attorney General.

RESPONSE: I am not aware of any specific decisions from the prior Attorney General’s tenure that I am currently in a position to characterize as misguided. The Department of Justice may be in possession of information of which I am not aware that could influence my outlook on the matter. I would hesitate to comment further without an opportunity to study and understand those facts.

54. In order to reduce the number of shootings in Chicago, we must address the flow of illicitly-trafficked guns from out-of-state into the city.

- a. Will you commit that, if you are confirmed, you will make it a priority of the Department of Justice to investigate and prosecute those who are selling guns that supply Chicago’s criminal gun market?

RESPONSE: I believe that the Department should focus its resources on the most serious criminal activity, including violent offenders who threaten public safety and those who illegally supply them with firearms. If confirmed, I intend to continue focusing Department resources on reducing violent crime, particularly in communities like Chicago that are facing unacceptable levels of firearms violence.

- b. If you are confirmed, what steps will you take to ensure that cases involving straw purchasing, gun trafficking, and dealing in firearms without a license are prosecuted?

RESPONSE: If confirmed, I expect to continue to pursue violent crime reduction as a top priority for the Department, and would expect federal prosecutors to target their efforts against those driving the violence in their communities - including persons who unlawfully arm criminals and others who cannot lawfully possess firearms.

- c. Will the Department of Justice’s budget requests support additional resources, specifically for ATF, to enforce these laws?

RESPONSE: If confirmed, I look forward to reviewing the Department’s resource allocations, needs, and funding proposals to ensure that ATF and the Department’s other law enforcement components have the resources necessary to effectively combat violent crime, including gun-related violent crime.

- d. If confirmed as Attorney General, would you take steps to enable and encourage all state and local law enforcement agencies to use eTrace and NIBIN for all guns and ammunition casings recovered in crimes?

RESPONSE: If confirmed, I look forward to working with ATF to enhance local and state participation in these important programs.

55. There is an important program in the Justice Department's Office of Justice Programs called the John R. Justice Program. Named after the late former president of the National District Attorneys Association, the John R. Justice Program provides student loan repayment assistance to state and local prosecutors and public defenders across the nation

Congress created this program in 2008 and modeled it after a student loan program that DOJ runs for its own attorneys. The John R. Justice program helps state and local prosecutors and defenders pay down their student loans in exchange for a three-year commitment to their job. This is a very effective recruitment and retention tool for prosecutor and defender offices. And since DOJ is giving hundreds of millions of dollars in grants each year to state and local law enforcement, which generates more arrests and more criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The John R. Justice Program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to funding this program and to carefully administering it.

Will you commit to support this program during your tenure if you are confirmed?

RESPONSE: If confirmed, I would seek to ensure that the Department effectively implements whatever programs Congress funds.

56. In your 1991 confirmation hearing you were asked by Senator Thurmond about the pace of filling judicial vacancies while you were Deputy Attorney General. You said "it is a long process because we have to make sure that we are putting people who have the proper character and integrity and competence on the bench, and that requires the FBI background check, it requires the ABA screening process, and that takes a lot of time."
- a. Is it still your view that the ABA screening process is required to ensure that judicial nominees have the proper character, integrity and competence to serve on the bench?

RESPONSE: At the time, it was the practice of the George H.W. Bush administration to submit nominees to the ABA screening process pre-nomination. I am not familiar with the current judicial-selection process, but I do not believe that it is required.

- b. If so, will you commit to doing all in DOJ's power to ensure that the Committee has the benefit of the results of the ABA screening process before the Committee holds a hearing on a judicial nominee?

RESPONSE: I am not familiar with the current judicial-selection process. If confirmed, I look forward to learning more about the current process.

57. Will you commit that, if you are confirmed, you will take steps to ensure that the FBI and the Department of Justice work together to improve hate crime reporting by state and local law enforcement?

RESPONSE: Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I will be committed to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

58. When I was Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held two hearings on the human rights, fiscal, and public safety consequences of solitary confinement. Anyone who heard the chilling testimony of Anthony Graves and Damon Thibodeaux—exonerated inmates who each spent more than a decade in solitary confinement—knows that this is a critical human rights issue that we must address.

In light of the mounting evidence of the harmful—even dangerous—impacts of solitary confinement, states around the country have led the way in reassessing the practice. Some progress was made at the federal level as well; however, much of the progress has been erased during the Trump Administration, and there are currently more than 11,000 federal inmates in segregation.

- a. Do you believe that long-term solitary confinement can have a harmful impact on inmates?
- b. If you are confirmed, can you assure me that you will examine the evidence and work with BOP to make ensure that solitary confinement is not overused?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to reviewing the issue, including the facts of the situation and existing law and policies. Because I am not currently at the Department, and I am not familiar with these facts, it would not be appropriate for me comment further.

59. When asked at your hearing about the Foreign Emoluments Clause to the Constitution, you said “I cannot even tell you what it says at this point.”

The Foreign Emoluments Clause in Art. I, Section 9, Clause 8 of the Constitution states that “No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

The Foreign Emoluments Clause reflects a fundamental priority of the Founding Fathers as they designed our form of government. They were worried about foreign powers attempting

to influence and corrupt the leadership of our nation, so the Constitution included safeguards against pressure from such powers, particularly the Foreign Emoluments Clause, which was adopted unanimously at the Constitutional Convention. As Delegate Edmund Randolph of the Continental Congress said during the ratification debates in Virginia, “[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”

- a. Do you believe that all current provisions of the Constitution must be followed and enforced, including the Foreign Emoluments Clause?

RESPONSE: I believe that all provisions of the Constitution should be followed and enforced, as appropriate. If confirmed, I will honor my oath to protect and defend the Constitution of the United States.

- b. If you are confirmed as Attorney General, what steps will you take to ensure that the Foreign Emoluments Clause is followed and enforced?

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment on what specific actions I would take on this issue if confirmed.

60.

- a. In an April 5, 2001 interview, conducted in connection with the preparation of an oral history of the presidency of George H.W. Bush, you called the *qui tam* provisions of the False Claims Act “an abomination and a violation of the Appointments Clause under the due powers of the President. . . .” At your hearing you said you no longer consider the False Claims Act an abomination. What changed your mind?

RESPONSE: The False Claims Act is an important tool used by the government to detect fraud and recover money. As stated at my hearing, if confirmed I will diligently enforce the False Claims Act. More generally, if confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but instead on the law and the best interests of the United States. The long-term interests of the United States with respect to the False Claims Act would be determined through, among other things, consultation with the Solicitor General, the Assistant Attorney General for the Civil Division, and other individuals within the Department, as well as with other relevant agencies within the federal government.

- b. In 2000, the year before your April 5, 2001 interview, the Supreme Court made it clear in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*--a decision authored by Justice Scalia--that *qui tam* relators have Article III standing to bring False Claims Act cases on behalf of the government. Do you think this case was wrongly decided?

RESPONSE: *Vermont Agency of Natural Resources v. United States ex rel. Stevens* is a precedent of the Supreme Court and is entitled to all respect due settled precedent. If confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but instead on the law and the best interests of the United States. The long-term interests of the United States with respect to the False Claims Act would be determined through, among other things, consultation with the Solicitor General, the Assistant Attorney General for the Civil Division, and other individuals within the Department, as well as with other relevant agencies within the federal government.

- c. If you are confirmed, will you commit to vigorously enforcing the False Claims Act and its qui tam provisions?

RESPONSE: As stated at my hearing, if confirmed I will diligently enforce the False Claims Act.