

**Nomination of Brian Benczkowski to be  
Assistant Attorney General, Criminal  
Division Questions for the Record  
Submitted August 1, 2017**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. In response to a question from Senator Franken, you said: “I would not have undertaken the [Alfa Bank] representation had I known at the time that I was going to be a nominee to head the Criminal Division.”

However, you also testified that even after you learned that the Trump Administration was considering you for the Criminal Division, you continued representing Alfa Bank.

- a. Why would you have declined to join the Alfa Bank matter had you known you would be nominated for the Criminal Division?

**Response: I knew at the outset of the representation that the purpose of the internal investigation was to follow the facts wherever they led and to take those facts to the FBI and Department of Justice, including in the form of a final report at the conclusion of the investigation. Once I learned that I was under consideration for the Criminal Division position, out of an abundance of caution, I pulled back from any communications with the government for the reasons I stated at my hearing. Had I known at the outset of the matter that I would not be able to communicate with the government to help explain the results of the investigation, I would have told my law partner that he should find another lawyer at the firm who could undertake the representation without such limitations.**

- b. If you would have declined the matter initially with knowledge of a nomination for the Criminal Division, why did you continue your representation of Alfa Bank once you learned of that possibility?

**Response: Without certainty as to my eventual selection, I believed that I had a duty to the client to continue the representation, subject to the prudential limitation that I would not communicate with the government upon learning (after the representation had been ongoing for a month) that I was under consideration for the Criminal Division position. Continuing to supervise Stroz Friedberg’s internal investigation while walled off from any communication with the government did not present material issues in my mind, particularly because I knew I would be recused from any Alfa Bank matter, including this one, for at least two years upon confirmation.**

2. At your hearing, you spoke about a discussion you had with Attorney General Sessions about former FBI Director James Comey. The discussion took place in December 2016 during your time on the Trump Transition Team. While you said that you had previously

disclosed this discussion with the Attorney General, this was new information to the Committee.

You testified that FBI Director Comey had made mistakes in the course of his approach to the Clinton emails, and you identified what those were.

- a. Since that December 2016 discussion, did you speak again to Attorney General Sessions about Director Comey? If so, how many times? What did you say?

**Response: No.**

- b. When Attorney General Sessions asked for your views on Director Comey, did he indicate why he was asking? Did he make any reference to Director Comey's potential removal?

**Response: Then-Senator Sessions did not indicate why he asked for my views and he did not make any reference to Director Comey's potential removal during our discussion.**

- c. What were your assessments of Director Comey's mistakes based upon? Did Attorney General Sessions agree with your assessment?

**Response: My assessments of Director Comey's mistakes were based upon my own experiences at the Department of Justice, a familiarity with its traditional protocols, and my observation of Director Comey's July 5, 2016 press conference and the content of it. As I testified, then-Senator Sessions did not react to my assessment, which was made during a side conversation at a time when we were discussing other matters. After I made my remarks to him, we returned to discussing those other matters.**

- d. You identified one of Director Comey's "mistakes" to be "converting his role as FBI Director into that of a prosecutor and making prosecutorial decisions that rightfully should have been made at the Department." What did you mean by that?

**Response: In my experience and judgment, it is not the role of the FBI Director or any other federal law enforcement official to publicly announce their judgment that a criminal case should be closed without prosecution. That responsibility lies with federal prosecutors after they have received the complete findings of the criminal investigation from law enforcement, to the extent there is any public announcement at all, particularly when a case is declined for prosecution.**

- e. With whom else did you share your views about Director Comey while you were on the Transition Team?

**Response: I was not asked by anyone other than then-Senator Sessions to share my views about Director Comey in connection with the Trump**

**Transition, and I did not participate in any meetings with anyone on the Trump Transition about this subject. I also had no knowledge that Director Comey would be fired until I read about it in the media on the day it occurred, long after the transition had ended. To the best of my recollection, during the course of informal conversations unrelated to the work of the transition, I shared my views on this topic with a small number of former Department of Justice colleagues -- both before and during my time on the transition.**

3. You testified that the partner at your law firm who asked you to join the Alfa Bank representation was Viet Dinh. You further testified that you believed he asked you to join the matter because of your prior work on corporate internal investigations.

a. In asking you to join the matter, did Mr. Dinh ever state to you his reasons for asking you, in particular, to work on the matter? If so, what were those reasons? Did Mr. Dinh make reference to your work on the Trump Transition Team?

**Response: Mr. Dinh told me he wanted me to work on the matter because we had worked together extensively in the past and because he needed a colleague who had expertise in conducting internal investigations for corporate clients utilizing the services of a third-party expert. He did not reference my work on the Trump Transition when he asked me to join the matter.**

b. Did Mr. Dinh ever ask you whether you had learned anything during your time with the Trump Transition Team regarding Alfa Bank?

**Response: No. And to be clear, I did not learn anything during my time on the Trump Transition regarding Alfa Bank.**

c. While you and Mr. Dinh have practiced at the same law firm, had he previously asked you to join client representations aside from Alfa Bank? If so, do you know approximately how many other clients you have represented with Mr. Dinh at your law firm prior to Alfa Bank?

**Response: Yes. Mr. Dinh and his colleagues from Bancroft PLLC joined Kirkland & Ellis in October 2016. Since he joined Kirkland, Mr. Dinh and I have worked on matters for two additional clients other than Alfa Bank. We also worked together on many matters at Bancroft PLLC during my time at that firm from 2004-2005.**

4. On July 21, your law partner, Viet Dinh, wrote to a letter to me and Chairman Grassley, explaining that “[r]epresentatives of Alfa Bank...previously briefed Committee staff on Alfa Bank’s investigations.” Prior to Mr. Dinh’s letter, the only information the Committee had received about Alfa Bank’s internal investigations was through Committee staff’s interviews with you as part of the background investigation to understand your representation of Alfa Bank.

- a. Are you the “representatives of Alfa Bank” referenced in the letter? If not, please indicate to whom that line refers and when the briefing took place.

**Response: No. I did not participate in the meeting with Judiciary Committee staff referenced in Mr. Dinh’s July 21 letter, and did not become aware of the meeting until after it occurred. I have since learned that Mr. Jeffrey Birnbaum, President of the firm BGR Public Relations, met with Committee majority staff on March 29, 2017. I understand it is that meeting to which Mr. Dinh referred in his letter.**

Attached to Mr. Dinh’s letter were two reports from computer forensics firms, one dated November 4, 2016 (“2016 Report”) and one dated July 19, 2017 (“2017 Report”). The 2016 Report covered data from 2015 to September 2016. You oversaw the 2017 Report, which covered only data after the end of January 2017. Senator Klobuchar asked you asked about Alfa Bank data from September 2016 to January 2017. You testified that you “requested it in an effort to make the investigation as complete as possible,” but that you “didn’t have access to that data” because the “bank systems in 2016 only retain that data for a short amount of time.”

- b. Based on your testimony, the 2016 and 2017 Reports provided to the Committee do not cover any data from September 2016 to January 2017, is that correct? At a minimum, the reports do not cover any Alfa Bank data from November 5, 2016 to January 2017, is that correct?

**Response: The 2017 Report of the investigation that I supervised covers data from various periods between January 29, 2017, to April 6, 2017, as follows: 1) Domain Name System (DNS) logs from all DNS servers in use at Alfa Bank from February 18, 2017, to March 23, 2017; 2) firewall logs from all firewalls at Alfa Bank from February 20, 2017, to March 23, 2017; and 3) email archives containing all messages sent or received by email servers at Alfa Bank from January 29, 2017, to April 6, 2017. These sets of data incorporated all available log and email data available at the time of Stroz Friedberg’s searches.**

**The 2016 Report speaks for itself. Because I did not supervise that review, I cannot say with certainty what data was reviewed by Mandiant during their work.**

- c. Neither report covers any Alfa Bank data prior to 2015, is that correct?

**Response: Please see my response to Question 4b.**

In Mr. Dinh’s letter, he asserts that “[b]oth independent investigations confirm what Alfa Bank has stated clearly and consistently: Neither the bank nor its owners have had any relationship of any kind with the Trump Organization at any time, including over the past year.”

- d. The reports provided to the Committee, including the 2017 Report you oversaw this

year, are limited to computer forensics data, is that correct? Neither report looked at the content of any data or communications, is that correct?

**Response: The 2017 Stroz Friedberg investigation examined email address information and the content of the communications in those emails. The 2017 investigation included a search of the bank’s email archive containing all messages sent or received by email servers at Alfa Bank from January 29, 2017, to April 6, 2017. Based on a review of these email communications, Stroz Friedberg found: 1) any mentions of the name “Trump” in email messages were false-positive results; 2) none of the messages contained any U.S. government email addresses; and 3) none of the messages contained any Trump-related email addresses in any of the address fields. On that basis, Stroz Friedberg concluded that there was no evidence of any connections or communications between Alfa Bank and President Trump or the Trump Organization via email during this period.**

- e. Did you examine any other aspects of the Bank for the 2017 Report, including the personal and professional relationships of the Bank’s owners? If not, can the 2017 Report “confirm” that there was no “relationship of any kind” between Alfa Bank and the Trump Organization “including over the past year”?

**Response: In February 2017, Alfa Bank observed suspicious entries in its DNS logs showing that the bank’s servers received 16 suspicious queries from external computers. These DNS queries were identical to DNS queries previously highlighted publicly in 2016 as suggesting a possible communications link between the bank and the Trump Organization. In March 2017, the bank’s servers received more than 20,000 additional queries of a similar nature. The scope of my work concerned overseeing the internal investigation of this 2017 server traffic and email communications conducted by Stroz Friedberg. Stroz Friedberg concluded that, based on the data it reviewed, there was no indication in that data to suggest any communication between the Trump Organization and Alfa Bank for the periods covered by the data. I did not examine any other aspects of the Bank or its owners for the 2017 Report.**

- f. Can the reports “confirm” there was no “relationship of any kind” between Alfa Bank and the Trump Organization this year between September 2016 and January 2017, and at a minimum November 5, 2016 to January 2017? Can the reports confirm there was no “relationship of any kind” prior to 2015?

**Response: Please see my response to Question 4e.**

- 5. When Senator Durbin asked you about your decision to take on Alfa Bank as a client in March 2017, you said you were “comfortable accepting the representation and the work” because you were “aware” of the 2016 Report from Mandiant, which “looked at the 2016 allegations and found them to be inaccurate, and there to be nothing to it.”

- a. Why did the 2016 Report make you “comfortable” in agreeing to represent Alfa Bank?

**Response: I was comfortable because Mandiant is a well-respected, U.S.-based computer forensics company.**

- b. Would you have decided to represent Alfa Bank if the 2016 report had shown contacts between Alfa Bank and the Trump Organization?

**Response: As I noted at my hearing, my law firm and law partner Viet Dinh undertook the representation of the bank before I was asked to work on the matter. I do not know whether the firm and Mr. Dinh would have agreed to the representation under the circumstances you describe.**

- c. Before you agreed to represent Alfa Bank, did you review the 2016 Report yourself? If not, why?

**Response: I was aware of the conclusions of the 2016 Mandiant report at the time I agreed to work on the matter, at least as the conclusions had been reported in the press. I did not review the report itself until after I began my work.**

- d. If you did review a 2016 report from Mandiant, did you review the version sent to the Judiciary Committee by Mr. Dinh on July 21, 2017? Do you have any knowledge as to why that version has a “DRAFT” notation? Do you have knowledge of a “final” report? If there is a “final” report, will you provide it to the Committee?

If you reviewed a different version of the 2016 Report, how did the report you reviewed differ from the one provided to the Judiciary Committee and will you provide us with a copy?

**Response: I reviewed the same version of the Mandiant report as was sent to the Judiciary Committee by Mr. Dinh. I am not aware of any other version of the report.**

6. You testified at your hearing that prior to April 2017 when the Trump Administration contacted you about your potential nomination for the Justice Department’s Criminal Division, you had expressed your interest in a U.S. Attorney position.

When did you first express your interest in President Trump nominating you for a U.S. Attorney position? How and to whom did you express your interest?

**Response: I first expressed an interest in being considered for a United States Attorney position in a brief conversation with then-Senator Sessions in January 2017. After that, no one at the Justice Department or the White House contacted me to discuss my interest**

**or interviewed me for such a position.**

7. You have never been a prosecutor or even tried a case in court. You have only appeared in court, to your recollection, one or two times. Since 1990, only one confirmed heads of the Criminal Division lacked experience as a prosecutor.
- a. Given your lack of criminal and litigation experience, why do you believe the Administration was interested in having you lead the Criminal Division?

**Response: I do not know specifically why I was chosen, but I believe it was because of my extensive experience: 1) in leading and managing at the highest levels of the Justice Department, and 2) as a white collar criminal defense partner at a widely respected international law firm.**

If you are confirmed, career prosecutors will come to you with recommendations for how to proceed in high stakes, high profile cases.

- b. Under what circumstances would you feel comfortable overruling them, given their level of prosecutorial experience and your own?

**Response: I will feel comfortable overruling any recommendation if, after a thorough review of the law and the facts and a complete discussion with experienced career prosecutors in the Division, I believe that the case does not meet the standards for the commencement of a federal prosecution, including those found in sections 9-27.000 or 9-28.000 of the United States Attorney's Manual relating to the principles of federal prosecution.**

8. In the Bush Administration, you were the chief of staff to Attorney General Mukasey. During your time there, the Justice Department's Office of Professional Responsibility (OPR) found that Office of Legal Counsel lawyers Jay Bybee and John Yoo had engaged in professional misconduct when they issued the "torture memos," which provided legal justifications for waterboarding and other enhanced interrogation techniques. (OPR Report, 7/29/09)

In a recent interview, former Attorney General Mukasey said that you were involved in crafting a response when OPR recommended that state bar disciplinary actions be sought against Yoo and Bybee for that misconduct. (Law 360, 5/4/17) It's my understanding that the Justice Department eventually declined to forward OPR's determinations to Yoo and Bybee's state bars.

- a. What exactly was your role in responding to OPR's determinations?

**Response: My role consisted in part of helping to craft the letter that Attorney General Mukasey and Deputy Attorney General Mark Filip sent to OPR Director H. Marshall Jarrett on January 19, 2009, in response to the draft OPR report we received on December 23, 2008. That letter documented procedural and substantive concerns the Attorney General and Deputy Attorney General raised**

**in person with Mr. Jarrett about the first draft of the report.**

**I also worked to bring procedural fairness to the matter. OPR attorneys had committed to the attorneys for Mr. Yoo and Mr. Bybee that they would be given an opportunity to review and comment on the draft report before it was issued. When I learned in late December 2008 that OPR had not kept that promise, I asked Mr. Jarrett to ensure that it was kept. My understanding is that OPR later permitted such a review.**

- b. Did you recommend that the Justice Department refrain from sending OPR's determinations to the state bars?

**Response: No. That issue was addressed by Associate Deputy Attorney General David Margolis in his memorandum dated January 5, 2010. I had long since departed the Department and played no role in the crafting of Mr. Margolis' memorandum or his conclusions therein.**

- c. Do you agree with OPR's assessment that John Yoo and Jay Bybee disregarded their "duty to exercise independent legal judgment and render thorough, objective, and candid legal advice"? Do you believe that rises to the level of professional misconduct?

**Response: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I have great respect for the independence, integrity and public service of the late Mr. Margolis. I accept the conclusions he made in his January 5, 2010 memorandum, and I am confident they were made after a thorough and careful consideration of the facts and the law.**

9. Please describe with particularity the process by which these questions were answered.

**Response: These answers are my own and reflect my own views. I discussed my answers and consulted with representatives of the Department of Justice. I understand that the Department will submit my answers to the Committee.**



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**QUESTIONS FROM SENATOR DURBIN**

For questions with subparts, please answer each subpart separately.

Questions for Brian Benzckowski

Please note that I expect to follow up with additional written questions after I receive a briefing from the Justice Department and the Intelligence Community regarding Alfa Bank.

1. You were the leader of the Trump Transition's Department of Justice Landing Team from December 2016 through January 2017.

a. What was your role, if any, in the January 27 travel ban executive order, which was reviewed by DOJ's Office of Legal Counsel before its issuance?

**Response: I played no role in the January 27 executive order you reference.**

b. In an unprecedented move, the Justice Department's Office of Legal Counsel was advised not to tell Acting Attorney General Sally Yates about its review and approval of the travel ban order. Were you consulted on, or aware of, the decision to keep Acting Attorney General Sally Yates in the dark about OLC's review of the travel ban?

**Response: No.**

c. What was your role, if any, in President Trump's other immigration executive orders?

**Response: I played no role in any of President Trump's other immigration executive orders.**

2. In an April 11, 2017 memo, Attorney General Sessions directed every U.S. Attorney Office to prioritize the prosecution of immigration offenses and to designate a Border Security Coordinator to oversee prosecution of these offenses. This mandate ignores geographic differences and forces every federal prosecutor to focus limited resources on immigration regardless of whether it is a priority for that district. For example, in Illinois in 2016 only 5.3% of all federal prosecutions were for immigration crimes and other threats, like gun violence, are a higher priority.

a. Do you believe that immigration is one of the most serious criminal threats that our country faces?

**Response: I believe that terrorism, violent crime and drug trafficking are some of the most serious criminal threats facing our country. Many of the street gangs**

**carrying out these types of crimes, including MS-13, have a transnational footprint. Illegal immigration helps to fill the ranks of these dangerous transnational gangs, and therefore can pose a serious threat to public safety and national security.**

- b. What discretion should be granted to individual U.S. Attorney offices to deviate from this policy based on their assessment of how to best use their limited resources to address the threats in their district?

**Response: The Attorney General and Deputy Attorney General are responsible for the supervision of the United States Attorneys' Offices, which is partially carried out through the formulation and execution of Department policy. I therefore must respectfully defer to the Department's leadership on that question.**

3. In a May 10, 2017 memo, Attorney General Sessions rescinded the *Smart on Crime* initiative, which directed federal prosecutors to reserve stiff mandatory minimum sentences for those convicted of the most serious offenses. The new DOJ policy is to "pursue the most serious, readily provable offense," carrying the longest possible sentence, even for low-level nonviolent offenses, and to require prosecutors to apply for approval to deviate from this rule.

- a. If confirmed, how will you enforce this new charging policy? What factors do you believe should be considered in determining whether to grant prosecutors approval to deviate from this rule?

**Response: I will follow Attorney General Sessions' May 10, 2017, Memorandum, which affirms that prosecutors should generally "charge and pursue the most serious, readily provable offense." That Memorandum notes that the policy "fully utilizes the tools Congress has given us." The Memorandum also notes that there may be "circumstances in which good judgment would lead a prosecutor to conclude that a strict application" of this policy is not warranted, and that decisions to vary from the policy must be approved by a U.S. Attorney, Assistant Attorney General, or his/her designee. If such circumstances arise, I will consider them on a case-by-case basis while following any guidance issued by Department leadership on the application of the policy.**

- b. Federal prisons now consume one quarter of DOJ's budget and these expenditures undermine other important priorities, like crime prevention. Won't increasing the length of prison sentences for nonviolent drug offenders send prison costs even higher?

**Response: I believe that the Department generally should focus on the most serious criminal activities that threaten public health, safety, and national security. This includes dangerous violent offenses and offenders – particularly complex and transnational organized crime and drug trafficking organizations, cyber and computer crime and child exploitation, and complex frauds. I have not studied the Bureau of Prisons' budget or potential impacts that may result from the Department's current enforcement activities or any changes to its priorities.**

- c. Do you believe that career prosecutors, who know the facts and circumstances of cases, and know their individual districts' crime trends, should have discretion in charging decisions?

**Response: I believe that prosecutors should consider all the facts, evidence, and applicable laws, as well as Department guidance in making charging decisions.**

- d. Attorney General Sessions criticized Smart on Crime for requiring federal prosecutors to reserve stiff mandatory minimum sentences for the worst offenders, but won't the Attorney General's new policy micromanage prosecutors in the opposite direction by requiring the harshest possible sentences for low-level nonviolent drug offenses?

**Response: As I understand the policy, which I intend to study in greater detail if I am confirmed, it 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.**

- e. Do you believe that mandatory minimums disproportionately affect minority communities? Are you concerned that this has a destructive effect on communities and erodes faith in our criminal justice system?

**Response: I believe that law-abiding citizens in every community want to live their lives free from violent crime. Mandatory minimum sentences can be an effective tool to take the most violent offenders off the streets for the longest period of time, thereby increasing public safety.**

**I also understand that the application of certain sentencing laws can lead some to contend that the laws have a disproportionate effect in minority communities. When that happens, it is Congress's role to assess whether it is appropriate to change the law. In one such instance during my time as a staff member of the Senate Judiciary Committee, Congress passed and President Obama signed the Fair Sentencing Act of 2010, a law that reduced the differential between the amounts of crack and powdered cocaine necessary to trigger certain criminal penalties, and that eliminated the five-year mandatory minimum for simple possession of crack cocaine. If I am confirmed, I would faithfully apply the laws as passed by Congress.**

4. Can a President pardon himself?

**Response: I do not know. Your question raises profound and complex issues of constitutional law about which I am not an expert, nor have I formed an opinion.**

5. You say in your questionnaire that you have been a member of the Federalist Society since 2002. Why did you join the Federalist Society?

**Response: I joined the Federalist Society because I believe it brings together people with a variety of viewpoints to discuss important issues of law and policy.**

6. Do you agree with the statements espoused by the Federalist Society on its website?

**Response: I have not reviewed the Federalist Society’s website, nor am I aware of any particular views espoused on the website. I believe the Federalist Society is an important forum in which speakers and members from across the political and legal spectrums can participate in its programs and debate various important issues.**

7.

- a. Do you believe it was appropriate for the President to announce the involvement of the Federalist Society in the selection of his candidates for the Supreme Court?

**Response: I am not in a position to comment because I am not aware of the context or basis for the remarks or what role any organization has played in the identification and selection of judicial nominees in this Administration.**

- b. Do you believe that the President’s announcement sent a message that lawyers and judges should not assert views that are at odds with the Federalist Society if they aspire to serve on the Supreme Court?

**Response: Please see my response to Question 7a.**

- c. Are you concerned that the announced involvement of the Federalist Society and Heritage Foundation in selecting Supreme Court candidates undermines confidence in the independence and integrity of the federal judiciary?

**Response: Please see my response to Question 7a.**

8. The Federalist Society website lists the organization’s statement of purpose. That statement begins with the following: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.” Do you agree or disagree with this statement? Please explain your answer.

**Response: I am not in a position to speak to any ideology that might dominate at law schools across the country. As a general matter, I think it is important for law schools to provide a forum in which students are exposed to and can discuss a variety of viewpoints. It is also an important trait for lawyers and academics to be able to keep an open mind and appreciate persuasive arguments from any source.**

9. Please list all years in which you attended the Federalist Society’s annual national convention.

**Response: I have not kept records that would permit me to answer this question with particularity. I would estimate that I have attended somewhere between one half and two thirds of the dinners associated with the Federalist Society’s annual national convention since 2002. I have not participated in any panel discussions during the**

**conventions, although I have attended such discussions from time to time if the subject matter was of interest to me.**

10. If you are confirmed, do you believe you have the responsibility to say no to the President if he asks for something that's improper?

**Response: Yes.**

11. If the views that the President wants to execute are unlawful, should the Justice Department say no?

**Response: If any person, including the President, asks me to execute what I believe to be an unlawful order, I am fully prepared to say no.**

12. Do you think Acting Attorney General Sally Yates acted properly when she refused to defend the President's travel ban executive order in court?

**Response: I respect Ms. Yates' many years of service to the Department of Justice. I lack sufficient personal knowledge to express an opinion as to whether she acted properly in the matter you reference.**

13. Do you agree, as a factual matter, with President Trump's claim that 3 to 5 million people voted illegally in the 2016 election?

**Response: I do not know the relevant facts to be able to provide an informed response to this question.**

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**QUESTIONS FROM SENATOR WHITEHOUSE**

1. As you testified in your nominations hearing, after leading President Trump’s DOJ transition team, you returned to private practice as a partner at Kirkland & Ellis LLP. In that capacity you began representing the Russian bank Alfa Bank in March 2017, overseeing an investigation into possible communications between Alfa Bank and the Trump campaign. In early May 2017, it was publicly reported that you were likely to be nominated to be AAG of DOJ’s Criminal Division. Yet you continued to represent Alfa Bank, which has being investigated by the FBI for its connections to the Trump Organization, until early June.

At your hearing, Senator Franken asked you whether, in retrospect, you would have done this differently. You responded: “With perfect hindsight, would I do it differently? The answer is yes. I wouldn’t have undertaken the representation [of Alfa Bank] had I known at the time I was going to be a nominee to head the Criminal Division.”

- a. Given your response to Sen. Franken, why did you continue to represent Alfa Bank after it was publicly reported that you would be nominated to be AAG of the Criminal Division? If, as you testified, you “wouldn’t have undertaken the representation had [you] known at the time I was going to be a nominee to head the Criminal Division,” why didn’t you withdraw your representation as soon as you learned you were going to be nominated to head the Criminal Division?
- b. When did you first learn that you were under consideration to be nominated to be AAG of the Criminal Division?
- c. When did you first learn that you were going to be nominated to be AAG of the Criminal Division?
- d. Do you think your representation of Alfa Bank, while you knew you were to be nominated to be AAG of the Criminal Division, created a conflict of interest?
- e. Do you understand why this relationship may have led to the appearance of impropriety?
- f. Do you think it reflects good judgment that you continued to represent Alfa Bank after you knew you were going to be nominated to lead the Criminal Division?

**Response: I was first asked by one of my law partners to work on the Alfa Bank matter in early March 2017. I had returned to private practice upon completion of the Department of Justice transition on January 20th, and**

**supervising internal investigations had been a significant part of my work in private practice over the previous seven years.**

**After I began supervising the Stroz Friedberg internal investigation, I was contacted by the Department of Justice in early April and was asked whether I would like to be considered for the Assistant Attorney General - Criminal Division position. I was surprised by this outreach because I was under the impression from press reporting that the search for this position had been ongoing for quite some time. I had not been contacted previously about it, and had no reason to believe that I might be viewed as a possible candidate.**

**I then interviewed at the Department of Justice in the morning of April 6, 2017. I was told later that day that the Department would recommend me to the White House for the position, but that the final decision on the nomination - as is customary - rested with the White House. The first public press reporting about the possibility of my nomination occurred in early May 2017. I continued to supervise the internal investigation led by Stroz Friedberg because by that time their investigation was largely complete and all that remained was drafting and finalizing their investigative report.**

**I was contacted in early May by the Office of Presidential Personnel and was asked to complete paperwork related to the FBI background investigation and other materials. I was interviewed by the FBI later that month. All of this, coupled with press reporting, led me to conclude that I was likely to be nominated for this position. On May 31, 2017, the White House informed me that I likely would be nominated the following week. I learned of my formal nomination on June 5, 2017, the day before the White House announced the President's intent to nominate me.**

**I do not believe that supervising the Stroz Friedberg investigation created a conflict of interest or was in any way improper. Upon being asked whether I would like to be considered for the Criminal Division position in April, I spoke with my law partner and he advised the client that I would not be able to communicate with any government entity about this matter going forward. As I testified, I did so out of a concern for the client and the possibility that any communications by me with the government might later be viewed as tainted by the fact that I had been nominated to serve as Assistant Attorney General.**

**Finally, I told Senator Franken at my hearing that if, at the time my law partner approached me about working for the client, I had known that I would be nominated to serve as the Assistant Attorney General for the Criminal Division, my decision to take on the representation would have been different. This is because I knew at the outset of the representation that the purpose of the internal investigation was to follow the facts wherever they led and take those facts to the FBI and Department of Justice in the form of a final report at the conclusion of the investigation. As I stated**

**previously, once I learned that I was under consideration for the position, I pulled back from any communications with the government for the reasons I noted. Had I known at the outset of the engagement that I would not be able to communicate with the government to help explain the results of the investigation, I would have told my law partner that he should find another lawyer at the firm who could undertake the representation without such limitations.**

2. If confirmed, will you commit to recuse yourself from any matter involving your former client Alfa Bank for the duration of your service in this position? If not, why not?

**Response: Yes. I have decided to recuse myself from any matter involving Alfa Bank for the duration of my service as the Assistant Attorney General for the Criminal Division, if I am confirmed.**

3. Given your representation of Alfa Bank and its alleged connections to both Vladimir Putin and the Trump Organization, will you recuse yourself from any matters related to Russian interference with the 2016 election or within the scope of Special Counsel Mueller's investigation for the duration of your service in this position? If not, why not?

**Response: Because I do not know the scope of either matter referenced in your question, I cannot commit to such a recusal at this time. If I am confirmed and a matter comes before me in the Criminal Division where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and make a decision as warranted by the law and the facts.**

4. You advised Alfa Bank about whether to bring a defamation case against BuzzFeed based on information it published through the Steele dossier. That dossier also contained explosive allegations about President Trump.
  - a. Do you think your involvement in matters related to the Steele dossier creates any conflict of interest, or appearance of impropriety, regarding your nomination by the President to this position?

**Response: No. As I testified at my hearing, the scope of my work on the Steele dossier involved reading a portion of the document related to Alfa Bank, which was published and widely-read on the internet, and providing preliminary legal advice on the subject of defamation. I did not independently investigate the allegations in the dossier and did fewer than five hours of work on this issue.**

5. You served as Senate Judiciary Staff Director for then-Senator Sessions from 2009-2010. Attorney General Sessions has recused himself from the investigation into possible collusion between Russia and the Trump campaign as part of Russia's interference in the 2016 presidential election.
  - a. Given your prior relationship with Attorney General Sessions, to the extent you have access, as head of the Criminal Division, to any information concerning Special Counsel Mueller's investigation, will you pledge not to share any such



information with Attorney General Sessions?

**Response: Yes.**

6. During the Bush Administration U.S. Attorney firing scandal, OIG and OPR asked the White House for documents related to the scandal and the Administration refused to hand them over. Then-Attorney General Mukasey did nothing in response, while you were serving as his chief of staff.
  - a. What response do you consider appropriate for an Attorney General or Justice Department official in that situation?
  - b. What advice did you give Attorney General Mukasey about how he should respond to that refusal by the White House to cooperate?
  - c. Do you personally believe that the Department of Justice should be allowed to review documents from the White House in the course of an investigation of DOJ attorney misconduct?

What assurance can you give this Committee that you will act with more independence if confirmed as head of the Criminal Division than your record on this matter reflects?

**Response: The Attorney General (and I) took significant steps in response to the White House's refusal to provide documents to OPR and OIG during the investigation you reference. Most importantly, on September 29, 2008, and in response to concerns raised by OIG and OPR in their report about this matter, Attorney General Mukasey appointed Assistant United States Attorney Nora Dannehy, a respected career prosecutor from Connecticut, to complete the investigation. See <https://www.justice.gov/archive/opa/pr/2008/September/08-opa-859.html>**

**In appointing Ms. Dannehy, Attorney General Mukasey stated that the joint OIG/OPR report "leaves some important questions unanswered and recommends that [Attorney General Mukasey] appoint an attorney to assess the facts uncovered, to conduct further investigation as needed, and ultimately to determine whether any prosecutable offense was committed with regard to the removal of a U.S. Attorney or the testimony of any witness related to the U.S. Attorney removals." That is precisely what Attorney General Mukasey did.**

**I participated in and supported this decision, particularly because Ms. Dannehy's appointment permitted her to exercise the authority as the United States Attorney for the District of Columbia for purposes of the matter. The appointment gave her the full authority to continue the investigation using all the tools normally available to a United States Attorney's Office in conducting a criminal investigation, including the authority to issue grand jury subpoenas to compel the production of documents and testimony as necessary.**

**In making this appointment, Attorney General Mukasey also noted that “the Justice Department has an obligation to the American people to pursue this case wherever the facts and law require.” If I am confirmed to head the Criminal Division, I will follow this same course in any matter that comes before me in the Division.**

7. You have acknowledged participating in discussions about former FBI director James Comey’s performance when you served on the Trump DOJ transition team.
  - a. What exactly did you discuss, when, and with whom?
  - b. Did you ever recommend to anyone that Mr. Comey should be removed as FBI Director?
  - c. Do you believe that Mr. Comey should have been removed as FBI Director based on his job performance?

**Response: As I explained at my hearing, I spoke to then-Senator Sessions in December 2016 about this subject during a brief side conversation while we were addressing other unrelated matters. In response to a question, I told him that I thought the FBI Director had made serious errors in the handling of the email investigation involving Secretary Clinton. I explained what I thought those mistakes were in my hearing testimony. To the best of my recollection, during the course of other informal conversations unrelated to the work of the transition, I shared my views on this topic with a small number of former Department of Justice colleagues -- both before and during my time on the transition.**

**To the best of my recollection, I did not discuss this subject with anyone else in connection with my transition duties. I was not asked during the course of the transition to make a recommendation regarding whether the FBI Director should be removed, and did not do so.**

**In my experience and judgment, it is not the role of the FBI Director or any other federal law enforcement official to publicly announce their judgment that a criminal case should be closed without prosecution. That responsibility lies with federal prosecutors after they have received the complete findings of the criminal investigation from law enforcement, to the extent any public statement is made at all, particularly when a case is declined for prosecution. As such, I believe reasonable grounds existed to remove Mr. Comey based on his actions in connection with the Clinton investigation.**

8. Has anyone in the administration ever asked you to swear a pledge or make a commitment of loyalty, either to the President or his administration?
  - a. Are there any circumstances under which you would offer such a pledge?

- b. If not, how would you react to any such request?

**Response: No one has asked me to swear such a pledge or make such a commitment. I would not offer such a pledge, and I would refuse if asked to do so. If I am confirmed, I will take an oath of office to support and defend the Constitution of the United States and bear true faith and allegiance to the same.**

9. Have you signed the Trump Ethics Pledge? If not, when do you intend to do so? Are you seeking or have you been granted any waivers to that pledge? Please specify.

**Response: By the terms of Executive Order 13770, I am expected to sign the Trump Ethics Pledge upon confirmation. My Ethics Agreement with the Office of Government Ethics notes that I understand that I will be required to sign the pledge and be bound by its terms in addition to the commitments I made in the Ethics Agreement. I intend to sign the pledge on my first day in office, if I am confirmed. I have neither sought nor have I been granted any waivers to the pledge.**

10. Given your near-complete lack of courtroom experience, why do you think you are qualified to lead DOJ's Criminal Division?
- a. Do you think your inexperience in this arena will hinder your ability to manage the Division, given its focus on criminal trials?

**Response: I have extensive experience: 1) in leading and managing at the highest levels of the Justice Department, and 2) as a white collar criminal defense partner at a respected international law firm. The Criminal Division has nearly 700 lawyers and 1,000 other professionals and support staff across 17 sections. Only six of those lawyer positions are political appointments; the remaining 690+ lawyers serve in the career ranks. Serving as the head of the Division in the first instance is largely a management and leadership role, and if confirmed, this would be my sixth such position at the Department. One of the things I learned during my previous service is the importance of consulting and collaborating with the senior career leadership in the Division in working through issues, including cases. If confirmed, I intend to consult and collaborate with those career attorneys on a daily basis. I also intend, as has been my past management style, to surround myself with people who have experiences that are different and complementary to my own, including those who have significant federal criminal trial experience.**

11. Please list five cases that you feel are most indicative of the type of work you would like the Criminal Division to produce under your leadership, if confirmed.

**Response: If confirmed, I will focus the Criminal Division's efforts on protecting the American people from the most dangerous criminals. While by no means an exhaustive list as to subject matter, the following cases are recent examples of the Criminal Division's outstanding work, and are indicative of the work I would like the Criminal Division to continue during my tenure, if I am confirmed:**

**AlphaBay** – The Department, working with seven foreign law enforcement counterparts in Europe and Asia, seized and shut down the largest criminal marketplace on the internet, which had been used to sell illegal drugs, stolen and fraudulent identification documents and access devices, counterfeit goods, malware and other hacking tools, firearms, and toxic chemicals around the globe.

**United States v. Alfredo Beltran Leyva** – Defendant was one of the leaders of the Beltran Leyva Organization, a Mexican drug trafficking cartel responsible for importing multiple tons of cocaine and heroin into the United States. After prosecution for participating in an international narcotics trafficking conspiracy, a court sentenced him to life in federal prison.

**United States v. Jeffrey Van Dyke** – Defendant was sentenced to 18 years in federal prison after he pleaded guilty to conspiracy to produce child pornography for his participation in a website operated for the purpose of coercing and enticing minors as young as eight years old to engage in sexually explicit conduct on a web camera.

**United States v. Eric Pridgen, et al.** – Three defendants were sentenced to life in prison for their roles in multiple murders and robberies in connection with their membership in an organized criminal street gang in Newport News, Virginia.

**United States v. Odebrecht S.A. and Braskem S.A.** – Defendants, a Brazilian construction conglomerate and Brazilian petrochemical company, pleaded guilty and agreed to pay a total of at least \$3.5 billion to resolve charges in the United States, Brazil, and Switzerland related to their schemes to pay hundreds of millions of dollars in bribes to foreign officials in violation of the Foreign Corrupt Practices Act and related foreign statutes.

12. What, if anything, would you change about the enforcement agenda of the Obama-era Criminal Division?

**Response:** In my experience, the work of the Criminal Division has largely remained consistent over the past 10-15 years, focusing on complex and multi-jurisdictional organized crime and drug trafficking organizations, cybercrime/computer crime and child exploitation, complex frauds and foreign bribery, and public corruption. If confirmed, I expect that I would continue to pursue this general agenda.

13. Are there any cases the Obama-era Criminal Division prosecuted that you would have declined to prosecute? Please specify.

**Response:** I am not aware of any Criminal Division cases with which I would disagree. The government may be in possession of information about a given case of which I am not aware that could influence my outlook on the matter, and I would hesitate to comment further without an opportunity to study and understand those facts.

14. Are there any cases the Obama-era Criminal Division did not prosecute that you would have prosecuted? Please specify.

**Response:** I am not aware of any Criminal Division cases with which I would disagree. The government may be in possession of information about a given case of which I am not aware that could influence my outlook on the matter, and I would hesitate to comment further without an opportunity to study and understand those facts.

15. Please articulate your views on the DOJ's use of deferred-prosecution agreements in white collar criminal cases. Do you think there are any drawbacks to such agreements? How would you determine whether to offer a white collar defendant a deferred-prosecution agreement?

**Response:** In my experience, Deferred Prosecution Agreements (DPAs) can be a useful tool in certain cases where the law, facts, and circumstances warrant. The determination whether to offer a business organization a DPA is guided by the principles of federal prosecution of business organizations, found in Section 9-28.000 of the United States Attorneys Manual, which I have found to be a useful framework for the analysis. Ultimately, each situation stands on its own facts and circumstances, and decisions about a DPA require careful consideration and collaboration by relevant Department officials and personnel, including career trial lawyers, AUSAs, and their supervisors.

As a general matter, DPAs can be useful in order to incentivize and reward cooperation after a company learns of the misconduct at issue. DPAs also allow the government to address criminal conduct that warrants a resolution without triggering collateral consequences that could unduly impact innocent third parties, such as employees and shareholders, who played no role in the criminal conduct. However, DPAs should not be treated as an alternative to prosecuting individuals. To the contrary, regardless of whether a case against a company is resolved through a DPA, a guilty plea, or some other criminal resolution, the government should vigorously pursue cases against the individuals responsible for the criminal conduct if the law and facts warrant.

16. In enforcing our nation's criminal laws, would you be bound by Attorney General Sessions's recent guidance to "pursue the most serious, readily provable offense" and harshest sentences? Do you commit to prosecuting the most serious, readily provable white collar offenses you can identify?

**Response:** I will follow Attorney General Sessions' May 10, 2017, Memorandum, which affirms that prosecutors should generally "charge and pursue the most serious, readily provable offense." That Memorandum notes that the policy "fully utilizes the tools Congress has given us." The Memorandum also notes that there may be "circumstances in which good judgment would lead a prosecutor to conclude that a strict application" of this policy is not warranted, and that

**decisions to vary from the policy must be approved by a U.S. Attorney, Assistant Attorney General, or his/her designee. If such circumstances arise, I will consider them on a case-by-case basis while following any guidance issued by Department leadership on the application of the policy.**

17. Do you agree with the policy articulated Sally Yates's September 9, 2015 memo entitled "Individual Accountability for Corporate Wrongdoing"? What changes, if any, would you make to that policy?

**Response: As a general matter, I believe that the Justice Department should prosecute individuals responsible for corporate wrongdoing whenever the law and facts permit. Whether and how to change or amend the principles articulated in the Yates Memo is a responsibility that lies with the Office of the Deputy Attorney General. Should the Deputy Attorney General decide to revise that memo, I will abide by its terms if I am confirmed as the Assistant Attorney General for the Criminal Division.**

**Nomination of Brian Benzowski to be  
Assistant Attorney General, Criminal Division  
Questions for the Record  
Submitted August 1, 2017**

**QUESTIONS FROM SENATOR KLOBUCHAR**

1. In your hearing, I asked you about gaps in the data concerning Alfa Bank communications that were reviewed as part of the two investigations conducted by the firms Mandiant and Stroz Friedberg. In response to my question, you indicated that the reason why data between September 2016 and January 2017 was not included in this review is because Alfa Bank did not retain server traffic data during that time period.

Without a review of the communications that occurred during that gap, can you say with certainty that Alfa Bank did not have communications with the Trump Organization during that time?

**Response: I am only able to speak to the scope of the work I oversaw.**

**In February 2017, Alfa Bank observed suspicious entries in its Domain Name System (DNS) logs showing that the bank's servers received 16 suspicious queries from external computers. These DNS queries were identical to DNS queries previously highlighted publicly in 2016 as suggesting a possible communications link between the bank and the Trump Organization. In March 2017, the bank's servers received more than 20,000 additional queries of a similar nature. The scope of my work concerned overseeing Stroz Friedberg's internal investigation and review of the 2017 server traffic and email communications. Stroz Friedberg concluded that, based on the data it reviewed, there was no indication in that data to suggest any communication between the Trump Organization and Alfa Bank for the periods covered by the data.**

**The 2017 Stroz Friedberg investigation examined email address information and the content of the communications in those emails. The 2017 investigation included a search of the bank's email archive containing all messages sent or received by email servers at Alfa Bank from January 29, 2017, to April 6, 2017. Based on a review of these email communications, Stroz Friedberg found: 1) any mentions of the name "Trump" in email messages were false-positive results; 2) none of the messages contained any U.S. government email addresses; and 3) none of the messages contained any Trump-related email addresses in any of the address fields. On that basis, Stroz Friedberg concluded that there was no evidence of any connections or communications between Alfa Bank and President Trump or the Trump Organization via email during this period.**

**The 2016 Mandiant report speaks for itself. Because I did not supervise that review, I cannot say with certainty what data was reviewed by Mandiant during their work.**

**Nomination of Brian Benzowski to be  
Assistant Attorney General, Criminal Division  
Questions for the Record  
Submitted August 1, 2017**

**QUESTIONS FROM SENATOR COONS**

1. You mentioned in our courtesy meeting that attorneys from your team and consultants from Stroz Freidberg met with the FBI regarding the investigation into Alfa Bank, but you did not participate “out of an abundance of caution.” What were you concerned about?

**Response: My concern was meeting my obligations to the client and whether any communications on the client’s behalf with the government after I knew I was under consideration to be nominated as the Assistant Attorney General for the Criminal Division could somehow be viewed as tainted by my subsequent nomination.**

- a. Did you consult with the Ethics Committee at your law firm regarding your representation of Alfa Bank and work on the Trump transition team?

**Response: My work for the Trump Transition had been complete for more than a month and I had returned to the full-time practice of law when I took on this representation. I therefore did not see any need to consult with anyone about whether the representation was proper, particularly given that at the time I undertook the work, I had no reason to believe that I would be considered for the position for which I have now been nominated and because I did not learn any information about Alfa Bank during the course of the transition.**

- b. Did you consult with the General Counsel of your firm regarding your representation of Alfa Bank and work on the Trump transition team?

**Response: Please see my response to Question 1a.**

- c. Did you yourself consult the ABA Model Rules on Professional Conduct regarding your ethical obligations?

**Response: Please see my response to Question 1a. I believed and continue to believe that the representation was consistent with applicable ethical rules.**

2. In a July 21, 2017 letter to the Judiciary Committee, your colleague at Kirkland & Ellis, Viet Dinh, wrote that “[b]oth independent investigations confirm what Alfa Bank has stated clearly and consistently: Neither the bank nor its owners have had any relationship of any kind with the Trump Organization at any time, including over the past year.” However, the two investigations discussed in the letter, one prepared by Stroz Freidberg



and a second prepared by Mandiant, cover limited periods of time. Are you aware of any additional evidence that would support the conclusion that Alfa Bank and its owners never had any relationship with the Trump administration?

**Response: My work for Alfa Bank was limited to the investigative matters and information described in the Stroz Friedberg report provided to the Committee and discussed during my hearing testimony. During the course of my work, I did not become aware of any additional information to suggest that Alfa Bank had any relationship with the Trump Organization.**

3. When did Mr. Dinh first approach you to represent Alfa Bank in an internal investigation into alleged communications between Trump Organization and Alfa Bank servers?

**Response: In early March 2017.**

4. Was Mr. Dinh, aware of your service on the Trump transition team?

**Response: My work for the Trump Transition was a matter of public record and disclosure, and Mr. Dinh was aware of that work.**

5. Did anyone from Kirkland & Ellis or Alfa Bank discuss your ability to provide legal services before the bank became a client of Kirkland & Ellis?

**Response: My law partner who established the client relationship prior to my involvement in the matter has represented to me that the answer to this question is no.**

6. Was your name used in any documents prepared by Kirkland & Ellis and shared with Alfa Bank before the bank officially became a client of Kirkland & Ellis?

**Response: My law partner who established the client relationship prior to my involvement in the matter has represented to me that the answer to this question is no.**

7. Did you disclose your Alfa Bank representation to the Trump administration in the course of your vetting before you were nominated to serve in the Department of Justice?
  - a. If yes, on what date did you first relay information regarding your representation of Alfa Bank to the administration?
  - b. To whom in the administration did you relay information regarding your representation of Alfa Bank?
  - c. Did anyone in the administration express any concerns with your representation of Alfa Bank?

**Response: I disclosed my work for Alfa Bank (and other foreign clients) in connection with completing the form SF-86 Questionnaire for National Security Positions required of all Department of Justice nominees. My general understanding of the nominations process is that this form and the**

**related FBI background investigation files are reviewed by clearance counsel at the White House in advance of a nomination. I am not aware of when that review took place.**

8. In our courtesy meeting, we discussed your lack of prosecutorial experience and minimal in-court litigation experience. You recognized that “it creates a blind spot” for you. How do you plan to oversee the prosecution of the most important criminal matters in this country given your limited courtroom experience?

**Response: If I am confirmed, I look forward to working with some of the most talented and experienced prosecutors in the country. I intend to assemble a leadership team with skills and experiences that complement my own, which would include a history of working on the very kinds of complex matters that come before the Criminal Division. During my previous service to the Department (particularly in the Office of the Deputy Attorney General and Office of the Attorney General), I participated in the review and decision whether to prosecute some of the most sensitive federal criminal cases. During that period, I also learned the importance of consulting and relying on the judgment of the Department’s senior career prosecutors, which I will continue to do if I am confirmed as the head of the Criminal Division. Finally, for the past seven years I have been a lawyer in private practice and part of my work has focused on white collar matters before government entities, including the Department of Justice. All of this experience, coupled with the humility and judgment to surround myself with experienced prosecutors, will serve me and the Division well, if I am confirmed.**

9. Given your representation of Alfa Bank, would you recuse from any matter at the Department of Justice involving Alfa Bank?
- a. Would you place any conditions on that recusal?

**Response: Yes. I have decided to recuse myself from any matter involving Alfa Bank for the duration of my service as the Assistant Attorney General for the Criminal Division, if I am confirmed.**

10. Would you recuse from any matter related to the Trump campaign?

**Response: I pledge that in any case where I believe a recusal might be warranted, I will review the law and the facts, consult with the career ethics officials at the Department of Justice, and recuse myself from any matter where such a recusal is appropriate.**

11. Recent reports suggest that former Trump campaign manager’s potential ties to Russian banks are being investigated for involvement in money laundering. Would you recuse from any matters related to Paul Manafort?

**Response: Please see my response to Question 10.**

12. What is your general approach to deciding how to focus prosecutorial resources?

**Response: I believe that the Department generally should focus its resources on the**

**most serious criminal activity, including violent offenses that threaten our national security and public safety. Moreover, the Department must allocate resources with an appreciation that many of the most serious crimes -- such as sexual offenses, robberies, and homicides -- have always been overwhelmingly prosecuted by state and local law enforcement. Therefore, there is a particular focus traditionally at the federal level on organized criminal groups that affect multiple states or jurisdictions, or are particularly pernicious because of their scope and/or nature. If confirmed, I intend to respect that traditional focus, which has spanned many decades and Presidential administrations.**

13. Is it ever appropriate, in the interest of justice or to avoid a mandatory minimum, to charge a criminal defendant with a lesser offense than the one you believe the facts support?

**Response: Yes, there are circumstances where that would be appropriate.**

14. It is critical that police departments establish strong, trusting relationships with the communities they serve. Officers who abuse their authority, either through corruption, excessive force, or patterns of constitutional violations, erode these police-community relationships.

- a. Do you think the internal oversight that many departments rely on is sufficient to identify wrongful conduct, provide early interventions, and discipline – or even prosecute – officers when needed?

**Response: The oversight of police departments, including through the use of consent decrees or other mechanisms, would fall under the purview of the Civil Rights Division. If confirmed, I would respectfully defer to that Division on this issue.**

- b. Attorney General Sessions has indicated a shift away from the Department of Justice’s use of consent decrees when working with local law enforcement to resolve pattern or practice investigations. When are consent decrees appropriate to achieve reforms?

**Response: Please see my response to Question 14a.**

- c. Do you believe the Department of Justice should continue to follow the provisions outlined in the Baltimore consent decree?

**Response: Please see my response to Question 14a.**

- d. In your view, should the Department of Justice continue to work with state and local law enforcement to enter into consent decrees?

**Response: Please see my response to Question 14a.**

15. On March 10, 2017, President Trump requested the resignations of 46 U.S. Attorneys appointed by President Obama.

- a. Were you aware of the administration's intention to ask for these resignations before the request was formally issued to U.S. Attorneys?

**Response: No.**

16. Do you agree with the President's decision to make these resignations effective immediately, rather than effective upon filling each position? If confirmed, will you ensure that all investigations into Russian interference with the presidential election and the Trump administration are completed in a thorough and independent fashion?

**Response: As a general matter, all political appointees serve at the pleasure of the President and it is within the President's discretion to ask for the resignation of any or all political appointees upon the change of an administration. I was not privy to the information or discussions that led the President to take the action he did with respect to United States Attorneys on March 10th, and thus cannot provide an assessment of his decision.**

**If confirmed, I will provide all appropriate assistance in support of the Special Counsel that is requested of me by the Deputy Attorney General so that the Special Counsel's investigation can be completed in a thorough and independent manner.**

17. If confirmed, how will you ensure that there is not political interference with the intelligence agencies and U.S. Attorneys' offices, with regard to the investigation into Russian interference with the presidential election and the Trump administration or any other issue?

**Response: The Department has policies in place that govern communications between the White House and the Department. If confirmed, I will follow those policies. I would evaluate any situation with careful assessment of the particular circumstances, in consultation with the appropriate Department officials, and exercise my best judgment about what additional steps might need to be taken to protect the integrity of any investigation.**

18. During his confirmation hearing, Attorney General Sessions stated that he did not have communications with the Russians, even though he had met with the Russian Ambassador on at least two separate occasions.
  - a. Based on these facts, do you believe Sen. Sessions' testimony was accurate?
  - b. Do you agree with Attorney General Sessions' decision to recuse himself from any current or future inquiry into the Trump campaign and administration's interaction with the Russian government?
  - c. How will you ensure, to the best of your ability, that the Attorney General honors his recusal commitment and is not involved in investigations concerning the Trump campaign and administration's interaction with the Russian government?

**Response: I understand that Attorney General Sessions has addressed the question of his testimony in a letter to the Committee. I have no personal**

knowledge of the subject matter of his testimony.

**Nor am I familiar with the full scope of Attorney General Sessions' recusal commitment. Although I was not involved with the Attorney General's recusal decision, as I stated at my hearing, I am confident that he reviewed the law and the facts, applied the relevant standards after consultation with career ethics officials, and made a recusal decision on that basis that he believed was required by the law and canons of ethics.**

**If I am confirmed and to the extent that I come into possession of any information covered by the Attorney General's recusal, I will work to the best of my ability to ensure that neither I nor anyone in the Criminal Division conveys any information that would violate the terms or scope of the recusal.**

19. Evidence shows that solitary confinement has significant mental health consequences when used for extended periods of time.
- a. Do you believe solitary confinement should only be used as a last resort?  
Do you believe solitary confinement should ever be used for juveniles?

**Response: I am not an expert in incarceration or prison policy, and have not had an opportunity to study this issue in detail. If I am confirmed, I look forward to reviewing it if it comes under my purview as the Assistant Attorney General for the Criminal Division. As a general matter, I believe that detention practices must conform to the Constitution and should respect and comply with the scope of applicable individual civil rights.**

20. Individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees. There is often little or no attempt to learn whether these individuals can afford to pay the imposed fines and fees or to work out alternatives to incarceration.
- a. Under your leadership, will the Department of Justice work to help state and local municipalities end this practice?
  - b. What is your position on the practice of imposing unaffordable money bail, which results in the pretrial incarceration of the poor who cannot afford to pay?
  - c. Should parents pay the cost of housing their child if that child has been detained in a juvenile detention facility?

**Response: If I am confirmed, I do not believe that it would fall under my purview to address state and local bail and court practices, but rather would fall under the purview of the Civil Rights Division and the Office of Justice Programs. So I must respectfully defer to those entities to address this issue. As a general matter, I believe all bail and court practices must conform to the Constitution and should respect and comply with the scope of applicable individual civil rights.**

21. The Department of Justice established the Office for Access to Justice (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible

to all, irrespective of wealth and status.

- a. How will you improve access to justice for indigent criminal defendants?
- b. What affirmative steps will you take to improve access to justice?
- c. How will you support the work of the Department of Justice Office for Access to Justice?

**Response: I agree that all individuals should have access to the criminal and civil justice system. The work of the ATJ would not fall under the purview of the Assistant Attorney General for the Criminal Division, but if I am confirmed and to the extent I am consulted on these issues, I look forward to studying them in greater detail.**

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

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

- a. Will you continue to follow the Cole memorandum?
- b. Will you encourage Department of Justice prosecutors to bring actions against those who use state-sanctioned medical marijuana, provided they are using it in accordance with the guidance of the Cole memorandum?
- c. Do you agree that the Department of Justice’s resources are best focused on “significant threats” and that individuals who use medical marijuana in accordance with state law do not present such a threat?
- d. Do you believe that prosecution of the seriously ill is a good use of the Department of Justice’s limited resources?

**Response: Because I am not currently in the Department, I do not know the full scope of the policies that currently govern the Department’s actions with respect to marijuana investigations and cases. As a general matter, however, I do believe that the Department’s resources should be used to address the most serious criminal activity, including violent crime and large scale drug trafficking. If I am confirmed, I will follow the Department’s policies and priorities as established by the Attorney General and Deputy Attorney General.**

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

**Response: I am not yet familiar with the use-of-force data collection project you reference, but I understand that accurate data in this area is important, particularly for enforcement and policy purposes. I look forward to learning more about this issue if I am confirmed.**

24. Then-President-elect Trump claimed that millions of people voted illegally in the presidential election.

- a. Do you believe three to five million individuals illegally voted during the 2016 U.S. election?

- b. If so, what evidence are you relying upon?
- c. Do you believe there should be an investigation into alleged instances of voter fraud in the 2016 presidential election?

**Response: I do not know the relevant facts to be able to provide an informed response to this question.**

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

**Response: I believe crimes motivated by bigotry or prejudice cannot be tolerated. It is important for the Department to aggressively investigate and prosecute hate crimes and also work to prevent them in partnership with local communities. I am not familiar with the data you cite, but I am committed to ensuring that all Americans receive the full protection of the law. If I am confirmed, I will fully and fairly enforce federal hate crime statutes and will ensure that the Criminal Division, in conjunction with the Civil Rights Division, devotes appropriate resources to obtain justice on behalf of hate crime victims.**

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

**Response: Because I am not currently at the Department, I cannot speak to whether there is sufficient internal guidance on this issue or how it should be interpreted. As a general matter, I do believe it is important that the Department's prosecutors have training and guidance on Rule 41. If I am confirmed, I will ensure that the Criminal Division continues to serve as a resource for federal criminal law enforcement personnel on the laws related to lawful access to electronic evidence.**

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

**Response: It is my understanding that the Attorney General's Guidelines for Domestic FBI Operations contain specific standards that govern investigations and surveillance. If I am confirmed, I will follow these and all policies issued by the Department and the Attorney General.**

28. Do you believe that a religious institution should be targeted because it is of a particular faith, *i.e.*, should a religious institution be targeted because it is a Muslim institution?

**Response: No.**

29. Will you commit to issuing guidance to the FBI that the agency should not surveil a

house of worship unless there is probable cause of criminal activity?

**Response: It is my understanding that the Attorney General's Guidelines for Domestic FBI Operations contain specific standards that govern investigations and surveillance. If I am confirmed, I will follow these and all policies issued by the Department and the Attorney General.**

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

**Response: Public corruption offenses have long been a priority for the Criminal Division through the work of the Public Integrity Section. If I am confirmed, I will make every effort to ensure that the Criminal Division continues to fully and fairly investigate suspected criminal violations that implicate the integrity of our public officials.**

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

**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 further on this question.**

32. How would you ensure that hirings and dismissals of Department of Justice employees are not politicized?

**Response: I believe it is important that all Justice Department officials understand and comply with the laws that govern their conduct, including the civil service protection laws. If I am confirmed, I will be committed to ensuring that those with hiring and dismissal authority in the Criminal Division understand and comply with their obligations with respect to those laws.**

33. Do you believe that there are clear instances when an investigation should be turned over to an independent or special counsel?

**Response: The Department's regulations found at 28 C.F.R. Part 600 set forth the circumstances under which a Special Counsel may be appointed and the powers of the Special Counsel. If I am confirmed, I will follow these regulations and all policies issued by the Department in that regard.**

34. What factors would you use to evaluate when an independent or special counsel is appropriate?

**Response: The Department's regulations found at 28 C.F.R. Part 600 set forth the circumstances under which a Special Counsel may be appointed and the powers of**



**the Special Counsel. In particular, Section 600.1 sets forth the factors that must be considered in making any such appointment. If I am confirmed, I will follow these regulations and all policies issued by the Department in that regard.**

35. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI with instructions on how to conduct an ongoing criminal investigation?
- a. What, in your view, are the circumstances when contacts between the President or another White House official and the Department of Justice or the FBI with instructions on how to conduct an ongoing criminal investigation are appropriate?
  - b. What factors or criteria would you examine to determine if contacts were appropriate?
  - c. What would you do if there were inappropriate communications between the White House and the Department of Justice regarding an investigation?
  - d. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI to recommend or request that they open a new investigation?
  - e. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI to recommend or request suspending or closing an ongoing investigation?
  - f. Is it ever appropriate for the President or another White House official to ask the Department of Justice or the FBI about an ongoing investigation that potentially implicates the President and/or other White House officials?

**Response: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I will follow those policies. I would evaluate any situation with careful assessment of the particular circumstances, in consultation with the appropriate Department officials, and exercise my best judgment about what additional steps might need to be taken to protect the integrity of any investigation.**

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

**Response: If I am confirmed, combatting intellectual property crime would continue to be one of the Criminal Division's priorities. Intellectual property crime, whether through copyright piracy, trademark counterfeiting, or economic espionage and trade secret theft, can have devastating effects not only on the bottom lines of U.S. businesses, but on our economy as a whole and on the health and safety of the American public. Because these cases may involve multiple components of the Department, I would coordinate with those components and investigative agencies to ensure we are devoting adequate resources to maximize our effectiveness in this area.**

37. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.
- a. Will you prioritize enforcement actions to combat trade secret theft by foreign nationals?
  - b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

**Response: I understand that this issue is important to you, as a lead co-sponsor of the Defend Trade Secrets Act, which became law last year and provided the Department with additional tools under federal law. If I am confirmed, I would support the Department's prioritization of foreign economic espionage and trade secret theft cases. Likewise, I would support the Criminal Division's close collaboration with other Department components and investigative agencies on these cases, which play important roles in investigating and prosecuting commercial theft of trade secrets.**

38. As a Justice Department lawyer, when is it appropriate to refuse to follow a directive of the President?

**Response: If the President or any other official asks a Department of Justice lawyer to follow a directive that the lawyer believes is clearly contrary to the Constitution or laws of the United States or would violate the lawyer's ethical obligations, the Department lawyer should first report up the chain of command and request that the Attorney General or Deputy Attorney General seek to persuade the President or senior official of their views or to defer to the lawyer's judgment. If the lawyer nonetheless is directed to advance the position, the lawyer should then consider resignation and resign if appropriate.**

- a. When is it appropriate for the Department of Justice to decide not to defend a federal law?

**Response: Traditionally, the Department will defend laws passed by Congress when a reasonable legal defense is available, so long as the law is consistent with the U.S. Constitution. I believe that a similar standard applies to Executive Orders and other executive actions.**

39. How would you respond if your role at Department of Justice required you to follow a policy directive that was unconstitutional?

**Response: In my experience, such circumstances are rare and typically resolved by a reasoned discussion among lawyers for the government to reach a consensus about modifying the directive so that it passes constitutional and legal muster. However, if such a rare circumstance arose, and I believed that I could not constitutionally discharge my obligations and duties as the Assistant Attorney General of the Criminal Division, I would resign.**

40. How would you respond if you were asked to fire Special Counsel Robert Mueller?

**Response: As I testified at my hearing, I have great respect for Mr. Mueller and his record of service to our country. Pursuant to the Department's regulations found in 28 C.F.R. Part 600, the responsibility to oversee the Special Counsel lies with the Attorney General or Acting Attorney General for purposes of the underlying matter, not with the Assistant Attorney General for the Criminal Division. If confirmed, I will support the Special Counsel and provide all appropriate assistance requested of me by the Acting Attorney General so that the Special Counsel's investigation can be completed in a thorough and independent fashion.**

41. Do you agree that the Department of Justice has an independent obligation to evaluate the legality of the President's policy proposals?

**Response: In my experience, whether the Department formally evaluates the legality of a particular policy proposal is typically decided on a case-by-case basis when called upon to do so by the President or his senior advisors.**

42. Do you agree that even in the areas of immigration and national security, the executive's exercise of prosecutorial discretion and other policies must be constitutional?

**Response: Yes.**

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

**Response: I am not familiar with the referenced studies, but reducing violent crime in America is a top priority of the Department and the Criminal Division, and enforcing gun laws is an effective tool to that end. Although the Deputy Attorney General's Office is responsible for oversight of the Bureau of Alcohol, Tobacco, Firearms and Explosives, if I am confirmed, I will support prosecutions of criminals who obtain firearms illegally and gun dealers who violate the law.**

**Nomination of Brian Benzowski to be  
Assistant Attorney General, Criminal Division  
Questions for the Record  
Submitted August 1, 2017**

**QUESTIONS FROM SENATOR HIRONO**

1. During the hearing, in response to a question about your lack of prosecutorial experience and your oversight of the Criminal Division's career prosecutors, you discussed your other experience working in the Department of Justice and noted that you would be forced to give discretion to career prosecutors because there are only a few political appointees.
  - a. If confirmed, what specific processes would you follow or put in place regarding oversight of career prosecutors?
  - b. Given that the majority of your public service career has been in political or policy positions, what steps would you take to ensure that DOJ criminal prosecutions are free from political influence?

**Response: The work of career prosecutors is supervised in the first instance by career-level supervisors, followed by Section Chiefs, Deputy Assistant Attorneys General, and ultimately the Assistant Attorney General. Throughout this process, career prosecutors are expected to consult and follow Department policies and guidelines in conducting criminal investigations and prosecutions, and supervisors are expected to exercise oversight of the same, to ensure that all Criminal Division matters are conducted in accordance with the law and free of any outside influence, including political influence. If I am confirmed as the Assistant Attorney General for the Criminal Division, I would continue to follow this time-tested model.**

2. During the hearing, a number of questions were asked about your firm's representation of Alfa Bank, a Russian bank that has been investigated for possible ties to the Trump Organization, as well as your decision to join the representation of Alfa Bank in March 2017.
  - a. You stated during your hearing that you expressed an interest in being appointed as a U.S. Attorney during your time on the Trump transition team. When exactly did you express that interest? Did you have conversations about a possible appointment, whether to that position or any other position, between the end of your time on the transition team and your decision to represent Alfa Bank?

**Response: I first expressed an interest in being considered for a United States Attorney position in a brief conversation with then-Senator Sessions in January 2017. After that, no one at the Justice Department or the White House contacted me about my interest or interviewed me for such a position.**

- b. Please detail any formal or informal contacts you had with DOJ officials after leaving the transition team. Was there any mention during those discussions about you receiving an appointment of any sort?

**Response: After my transition duties formally ended on January 20, 2017, I continued to meet on a small number of occasions with Department officials to discuss the transition team's work and recommendations. Those meetings ended in early February. During these meetings, no one discussed with me the possibility of receiving an appointment. I also have personal friendships with many people who serve at the Department of Justice and regularly see these individuals socially, and some of those individuals were generally aware of my interest in serving in the Department. I was first contacted about the possibility of serving as the Assistant Attorney General for the Criminal Division in early April 2017.**

- c. When you made the decision to join the representation of Alfa Bank, was there any thought in your mind that you might be appointed to a position in the Trump Justice Department? If there was, did you think that your representation might be a problem? If there was not, why not? After all, you are a former high-level DOJ official who had expressed an interest in an appointment, and had connections to the incoming DOJ, including to the Attorney General.

**Response: As I testified, I had expressed an interest in January 2017 in serving as a United States Attorney, but the process had not sufficiently progressed by the time I decided to join the Alfa Bank matter such that I thought working for the client would in any way be a problem. At that time, no one from the Department or the Administration had contacted me or interviewed me for the position. Instead, I believed that I had returned to private practice, where I had an obligation to my partners to continue working until such time as the possibility of an appointment became more firmly established.**

- d. When you were asked to join the representation of Alfa Bank, did you disclose to others at your firm that you had expressed interest in a DOJ appointment?

**Response: Yes. A small number of lawyers at my firm were aware of my interest, but were also aware that such an appointment was not guaranteed.**

- e. Why have you refused to state that you would recuse yourself from any matters involving Alfa Bank for the duration of your service as Assistant Attorney General?

**Response: I have decided to recuse myself from any matter involving Alfa Bank for the duration of my service as the Assistant Attorney General for the Criminal Division, if I am confirmed.**

- f. Why have you refused to state that you would recuse yourself from any matters involving Special Counsel Mueller's investigation for the duration of your service as Assistant Attorney General?

**Response: As I testified at my hearing, I have not refused to recuse myself**

**from any matters involving Special Counsel Mueller's investigation. Because I do not know the full scope of the Special Counsel's investigation, I cannot commit to such a recusal at this time. If I am confirmed and if any matter comes before me in the Criminal Division where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and make any recusal that is warranted by the law and the facts. This commitment extends to matters within the scope of the Special Counsel's investigation.**

- g. If confirmed, will you commit to following all recommendations you receive from government ethics officials?

**Response: I will follow their recommendations to the extent I believe they are consistent with the law and my ethical obligations.**

3. When you learned that President Trump had decided to fire FBI Director Comey, were you surprised? Did you find it inappropriate, or did it raise any flags? In light of his attack on judges, and now on Attorney General Sessions and Acting FBI Director McCabe, have you reconsidered whether the decision was appropriate?

**Response: I believed that reasonable grounds existed to terminate Mr. Comey as FBI Director based on his handling of the investigation involving Secretary Clinton. In my experience and judgment, it is not the role of the FBI Director or any other federal law enforcement official to publicly announce their judgment that a criminal case should be closed without prosecution. That responsibility lies with federal prosecutors after they have received the complete findings of the criminal investigation from law enforcement, to the extent any public statement related to the declination is made at all, particularly when a case is declined for prosecution. Based on public reporting, I understand that Special Counsel Mueller may be investigating the circumstances surrounding Mr. Comey's firing, and it would not be appropriate for me to comment further on the matter.**

4. Are you committed to the independence of Special Counsel Mueller's investigation? If there are any criminal prosecutions as a result of that investigation, do you promise that the Criminal Division will not interfere?

**Response: Yes and yes. I will support the Special Counsel and provide all appropriate assistance so that his investigation can be completed in a thorough and independent fashion.**

5. Are you committed to the independence of the FBI? What would be your response to any efforts by the President or the White House to influence its work?

**Response: I believe that the FBI must operate free of any political influence from the White House or any other source and, if I am confirmed, I pledge to do whatever I can to protect the independence of its mission.**

6. Attorney General Sessions has issued guidance ordering that federal prosecutors “charge and pursue the most serious readily provable offense” in all cases unless their good judgment suggests otherwise. What is the justification for this policy? What conditions would suggest that an exception to the policy is warranted?

**Response: I will follow Attorney General Sessions’ May 10, 2017, Memorandum, which affirms that prosecutors should generally “charge and pursue the most serious, readily provable offense.” That Memorandum notes that the policy “fully utilizes the tools Congress has given us.” The Memorandum also notes that there may be “circumstances in which good judgment would lead a prosecutor to conclude that a strict application” of this policy is not warranted, and that decisions to vary from the policy must be approved by a U.S. Attorney, Assistant Attorney General, or his/her designee. If such circumstances arise, I will consider them on a case-by-case basis while following any guidance issued by Department leadership on the application of the policy.**

7. When testifying before the Senate Intelligence Committee, Attorney General Sessions repeatedly stated that his personal conversations with the President were privileged, and refused to discuss them. What is the legal basis of that privilege? Would it extend to you as an Assistant Attorney General?

**Response: I am not familiar with the basis of the Attorney General’s remarks or with the basis of his assertion of privilege, so I am not in a position to offer an opinion on the subject.**

8. A Politico article from 2009, when you were Republican staff director on the Judiciary Committee, discussed your role in the hearings for Justice Sotomayor. It stated that when some Republican staffers suggested the Judiciary Committee stall on her nominee questionnaire “to gum up the process,” you “instead pushed ahead quickly.” Why did you think it was important to have a speedy confirmation process and a vote for President Obama’s Supreme Court nominee?

**Response: The substance of the Senate Judiciary Committee questionnaire had remained relatively consistent throughout the previous several Congresses, and I did not believe it was appropriate to use the pretext of seeking to modify the questionnaire as the basis for attempting to delay consideration of the nomination. This was particularly the case given that any individual Senator could ask the nominee whatever questions he or she chose at the hearing or through written Questions for the Record following the hearing.**

9. The Trump administration’s DOJ budget summary shows the Criminal Division losing 88 positions, 27 of which are attorneys, leaving it with 688 attorneys. How would this affect enforcement, particularly against corporations that can afford large legal teams to defend themselves?

**Response: The Criminal Division’s mission is to protect the American people from the most serious forms of criminal activity, including transnational criminal**

**organizations, violent gangs, cybercrime, child exploitation, corruption, fraud, and money laundering. The Criminal Division’s specialized prosecution units develop and enforce federal criminal laws that target complex, international, and multi-district crime. If I am confirmed, I will be committed to maintaining standards of excellence among the Division’s attorneys, and I will strongly advocate within the Department for ample resources so the Division can continue to fulfill its mission of combatting and prosecuting criminal activity.**

10. You co-authored a writ of certiorari in *Smith v. University of Washington Law School*, a challenge to the university’s use of race as a factor in admissions. The Ninth Circuit had upheld the university’s policy as narrowly tailored, and the Supreme Court refused to hear the case. Why did you choose to co-author that writ? Do you understand the Constitution to allow for race-conscious university admissions policies to promote class diversity, as the Supreme Court held in *Grutter v. Bollinger*?

**Response: I chose to assist in drafting the petition for writ of certiorari in the *Smith* case because I believed the case presented important and novel questions of law regarding how universities should implement admissions policies in the aftermath of the recently-decided *Grutter* and *Gratz* cases in the United States Supreme Court. I fully recognize and accept that the Supreme Court has held that class diversity is a compelling state interest.**

11. On July 28, during a speech to law enforcement officers in Brentwood, NY, President Trump said: “When you see these towns and when you see these thugs being thrown into the back of a paddywagon, you just see ’em thrown in rough. I said please don’t be too nice. Like when you guys put somebody into the car and you’re protecting their head, you know, the way you put your hand, like, don’t hit their head, and they just killed somebody, don’t hit their head. I said, you can take the hand away, okay?”
- a. When law enforcement officers are moving an arrestee into a vehicle, is it appropriate for them to throw them in a rough manner? Is it appropriate for them to deliberately allow an arrestee to hit their head, or to injure them or allow them to injure themselves in any way? Does your answer change if the arrestee is a murder suspect?
  - b. In what kind of manner should law enforcement officers treat arrestees? Should they be held responsible for mistreatment?
  - c. Do you understand the President’s statement to be an endorsement of police violence? If not, what do you think he was conveying?

**Response: I am not in a position to speak for the President or speculate on what he was conveying. I believe law enforcement should never use excessive force against an arrestee and should always treat arrestees consistent with the Constitution, all laws of our country, and with the professionalism that is expected in every community.**