

QUESTIONS FOR THE RECORD
RACHEL L. BRAND
NOMINEE TO BE ASSOCIATE ATTORNEY GENERAL

SENATOR CHRISTOPHER COONS

1. What are your enforcement priorities for the Civil Rights Division?

RESPONSE: If I am confirmed as Associate Attorney General, I will supervise many components of the Department of Justice, including the Civil Rights Division. I will work with the subject matter experts in each of those components to develop their goals and priorities. If confirmed, I will not come into my role as Associate Attorney General with a pre-conceived agenda for any of those components, other than to ensure that they have the resources they need to do their jobs well and to ensure that they undertake investigations and litigation based on a full, fair, and open-minded review of the facts and a serious and impartial analysis of the law.

2. Will you continue to investigate and bring actions for violations of the Voting Rights Act?

RESPONSE: I am committed to enforcement of the Voting Rights Act, which has been a critical law enforcement function of the Department of Justice for many years.

3. President 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 have no personal knowledge that would enable me to express an opinion on these factual questions. While investigations into voter fraud are handled by the Department's Criminal Division and therefore are not under the Associate Attorney General's supervision, I believe an investigation of any specific credible allegation of voter fraud should proceed as any other investigation should proceed -- based on a full, fair, and open-minded review of the facts and a serious and impartial analysis of the law.

4. A 2014 report by Justin Levitt published in the *Washington Post* (available at https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.dc645a28fb6b) found that since 2000, there were only 31 credible allegations of voter impersonation, during a period in which there were 1 billion ballots cast. In light of this report, do you think it is justifiable for the Department of Justice to spend resources on combatting in-person voter fraud?

RESPONSE: Please see the response to Question 3.

5. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?

RESPONSE: Ensuring access to the voting franchise through enforcement of the Voting Rights Act is a critical law enforcement function of the Department of Justice. An allegation of a violation of the Voting Rights Act, including an allegation that a Voter ID law disenfranchises otherwise eligible voters, must be assessed based on a full, fair, and open-minded review of the facts in the particular case and a serious and impartial analysis of the law.

6. Do you agree with the Department's recent motion for voluntary dismissal of the discriminatory purpose claim asserted in the ongoing *Veasey v. Abbott* litigation over Texas Senate Bill 14?

RESPONSE: I have not been involved in the case you referenced and had no role in formulating the Department's position. Because that case involves pending litigation, it would not be appropriate for me to comment on it.

7. 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. Recently, Attorney General Sessions 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?
 - b. In your view, should the Department of Justice continue to work with state and local law enforcement to enter into consent decrees?

RESPONSE: I agree that it is essential for law enforcement agencies to have strong and trusting relationships with the communities they serve. This both better serves the community and enables law enforcement to more effectively deter crime and bring perpetrators to justice. I believe that the vast majority of law enforcement officers in the United States are dedicated public servants who work hard every day to keep their communities safe, too often putting their own lives in danger. However, I also agree with you that law enforcement officers who fall short of that standard and abuse their authority should be held accountable. In some cases, it is appropriate for that accountability to be imposed by the Department of Justice. Consent decrees have long been one of the potential remedies available to the Department in resolving pattern or practice investigations. Whether a consent decree is the appropriate remedy in any particular case would necessarily depend on the specific facts and circumstances of that case. As in evaluating any enforcement question, I would consult the subject matter experts in the Department and proceed based on a full, fair, and open-minded review of the facts and circumstances and a serious and impartial analysis of the law.

8. 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. 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?
 - b. 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 believe it is very important that all Justice Department officials abide by their ethical obligations, including any obligation to recuse from a particular matter. I do not have personal knowledge of the facts and circumstances relevant to this particular recusal question. With respect to any ethical question that arises under the supervision of the Associate Attorney General, if confirmed I will consult with the Justice Department's ethics officials to ensure that the rules are followed.

9. 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: I have not had occasion to study these questions, but if confirmed and if these questions come before me, I will review the facts and consult with the Department's subject matter experts to find an appropriate solution.

10. 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 and civil 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 believe it is essential that our justice system be equally accessible to all, irrespective of wealth or status. Because the ATJ did not exist during my previous tenure in the Department of Justice, at which time criminal and civil justice policy was handled by other components of the Department, I will need to familiarize myself with the ATJ's work if I am confirmed.

11. 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: Whenever there is a rapid spike in federal crime, it should be a priority of the Department of Justice to understand its causes and to formulate an appropriate response. Which response is appropriate depends on the specific facts and circumstances, and could involve a reallocation of resources, changes in policy, or increased cooperation with state and local law enforcement, among other things.

12. Do you believe internment of American citizens or residents is lawful?

RESPONSE: If this question refers to internment similar to the internment of U.S. citizens of Japanese descent during World War II, if presented with such a proposal if I were confirmed, I would not need to reach the legal question. Any such proposal would be morally repugnant and unacceptable as a policy matter, and I would oppose it.

13. Would you ever rely on *Korematsu v. United States*, 323 U.S. 214 (1944), as precedent?

RESPONSE: No.

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

RESPONSE: As I said during my confirmation hearing, I believe it is important that all Justice Department officials understand and comply with the laws that govern their conduct. I believe that an important component of ensuring compliance is providing adequate training. If I am confirmed, I am committed to ensuring that personnel in the divisions I would supervise receive proper training about their legal obligations.

15. Does the President of the United States have a duty to serve with integrity and always pursue the public interest, not personal profit?

RESPONSE: Yes.

16. Do you believe that President Trump has sufficiently distanced himself from his private, for-profit enterprises?

RESPONSE: I do not have personal knowledge of facts that would enable me to answer this question.

17. How do you intend to ensure that conflicts of interest of the President and administration officials will be eliminated?

RESPONSE: It is my understanding that questions concerning the President's ethical obligations are handled primarily by the White House Counsel's Office. With respect to the ethical obligations of Justice Department personnel under the supervision of the Associate Attorney General, I believe that an important component of ensuring compliance is adequate training. If confirmed, I am committed to ensuring that personnel under my supervision received adequate training as to their obligations under the federal ethics laws.

18. 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 had occasion to study the Emoluments Clause, and I do not have personal knowledge of facts that would enable me to answer this question.

19. The plan then-President-elect Trump outlined on January 11, 2017 to address his potential conflicts and violation of the Emoluments Clause did not require President Trump to relinquish ownership of his business or to establish a blind trust. The plan also did not indicate that President Trump would seek the consent of Congress to keep the benefits he receives from foreign entities through his businesses. The Director of the Office of Government Ethics has stated that this plan breaks with the practice of past presidents.
- a. Based on these facts, has President Trump, in your view, complied with the requirements of the Emoluments Clause?
 - b. If your answer is “yes,” what is the basis for your understanding that the President is not receiving monetary or other benefits from foreign entities through his continued ownership interests in the Trump Organization, even if he does not have day-to-day control?

RESPONSE: I have not had occasion to study the Emoluments Clause, and I do not have personal knowledge of facts that would enable me to answer this question.

20. The Office of Legal Counsel (OLC) supports the Attorney General in fulfilling his responsibility to provide legal advice to the President, heads of executive departments, and heads of military departments.
- a. Do you agree that, as discussed in the Best Practices for OLC Legal Advice and Written Opinions (May 16, 2005 and July 16, 2010), the Attorney General and OLC should provide “candid, independent, and principled advice—even when that advice may be inconsistent with the desires of policymakers” including the President?
 - b. What standard do you believe must be met before an Attorney General or OLC opinion is overturned?

RESPONSE: Although I have not had occasion to read the referenced document, I do believe that OLC should give candid, independent, and principled advice. I believe that Attorney General and OLC legal opinions should be afforded great weight.

21. As you know, a number of political hiring decisions occurred at the Department of Justice during the time in which you were in charge of the Office of Legal Policy.
- a. Do you agree that this politicized hiring scandal was a management failure of the Department of Justice?
 - b. Did you have any role in hiring decisions that considered applicants' political leanings?
 - c. How would you ensure that hirings and dismissals of Department of Justice employees are not politicized?

RESPONSE: If confirmed, I am committed to ensuring that the civil service protection laws, and all other laws governing the conduct of Justice Department officials, are followed by personnel under the supervision of the Associate Attorney General. I believe that training is essential to ensuring that Department personnel understand their legal obligations. Any violations of those obligations should be handled through appropriate disciplinary mechanisms. As to the details of the episode you reference, the Inspector General extensively investigated those issues and his findings and conclusions were thoroughly elaborated in his report.

22. In one of these cases of politicized personnel decisions, your Principal Deputy was told that an Assistant U.S. Attorney who was rejected from a detail to the Office of Legal Policy was "politically unreliable" and may not have supported the agenda of the President and Attorney General.
- a. Were you aware that your Deputy had been told these things about the applicant?
 - b. How would you respond if you had reason to suspect that a superior was inappropriately considering politics in a hiring decision?
 - c. Assuming civil servants continue to carry out their responsibilities effectively, should they be required to support the policy agenda of the administration?

RESPONSE: Please see the response to Question 21.

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

RESPONSE: I have not had occasion to consider the potential appointment of a Special Counsel in a specific case. If presented with such an occasion as Associate Attorney General, I would refer to the Department of Justice regulations that govern such appointments and consult with the experts in the Department, basing a judgment on a careful examination of the facts and circumstances of the particular case.

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

RESPONSE: Please see the response to Question 23.

25. Is it ever appropriate for the President or another White House official to contact the Department of Justice with instructions on how to conduct an ongoing investigation?

RESPONSE: The Department of Justice is governed by procedures issued by the Attorney General that place strict limits on communications between the White House and the Justice Department concerning criminal prosecutions and civil litigation. These policies are important to ensuring that civil and criminal cases proceed free from either inappropriate political influence or the appearance of inappropriate influence. If confirmed, I am committed to following and enforcing this policy and ensuring that Justice Department personnel under my supervision understand and comply with this policy.

26. If you answered “yes” above: What, in your view, are the circumstances when it is appropriate for the President or another White House official to contact the Department of Justice with instructions on how to conduct an ongoing criminal investigation?

RESPONSE: Please see the response to Question 25.

27. What factors or criteria would you examine to determine if contacts were appropriate?

RESPONSE: Please see the response to Question 25.

28. What would you do if there were inappropriate communications between the White House and the Department of Justice regarding an investigation?

RESPONSE: If confirmed as Associate Attorney General, I am committed to ensuring that Department employees understand and comply with the Attorney General’s policy limiting communications between the Justice Department and White House concerning criminal investigations and civil litigation. Failures to comply with this policy should be handled through appropriate disciplinary mechanisms.

29. Is it ever appropriate for the President or another White House official to contact the Department of Justice to recommend or request that they open a new investigation?

RESPONSE: Communications between the Department and the White House concerning civil litigation or criminal investigations are strictly limited by Attorney General policy. With respect to criminal investigations, in general, I do not believe it would be appropriate for the White House to direct that an investigation be opened, but there may be rare circumstances when a recommendation or request would be appropriate, such as if White House computers were hacked or in other situations in which the White House was victimized by criminal activity.

30. Is it ever appropriate for the President or another White House official to contact the Department of Justice to recommend or request suspending or closing an ongoing investigation?

RESPONSE: In general, I do not think it would be appropriate for the President or the White House to contact the Department to recommend or request closing an ongoing investigation, but a presidential pardon would effectively close an investigation.

31. Is it ever appropriate for the President or another White House official to ask the Department of Justice about an ongoing investigation that potentially implicates the President and/or other White House officials?

RESPONSE: As the Attorney General has noted, it may be appropriate to set up firewalls between the White House and the Department of Justice to avoid conflicts of interest or the appearance of conflicts of interest in certain circumstances. Such determinations would necessarily be fact-specific.

32. It was recently reported that FBI Director James Comey asked the Justice Department to publicly reject President Trump's March 4 assertion on Twitter in which he wrote, "Terrible! Just found out that Obama had my 'wires tapped' in Trump Tower just before the victory. Nothing found. This is McCarthyism!"

- a. Do you agree that if the President's statement is false, the Department of Justice should correct it?
- b. Why or why not?

RESPONSE: I have no personal knowledge of this matter and cannot speak to the President's statement. It is my understanding that this matter is being discussed between the Committee and the Department. I have not been involved in those conversations and therefore cannot comment.

33. President Trump’s recent tweets regarding the alleged tapping of his phone suggest he may not appreciate how provisions of Section 702 or Title III probable cause warrants function and are carried out.
- a. In your view, can President Trump direct the Department of Justice to target Americans for wire taps?
 - b. Can any President petition U.S. courts to obtain surveillance for political purposes?

RESPONSE: The courts’ Fourth Amendment jurisprudence, the Foreign Intelligence Surveillance Act (FISA), and the Wiretap Act provide extensive guidance as to when electronic surveillance is permissible in either the foreign intelligence context or the criminal investigative context. The procedures governing electronic surveillance depend on the circumstances. They are too extensive and complex to recite here but, for example, Section 702 of FISA only permits electronic surveillance targeting non-U.S. persons located outside the United States for the purpose of acquiring foreign intelligence information. Other provisions of FISA authorize the FISA Court to order surveillance targeting foreign powers or agents of foreign powers. The Wiretap Act similarly authorizes a Federal Court to order surveillance in the criminal investigative context. Under caselaw and statute, no U.S. court would be permitted to authorize a wiretap for political purposes.

34. You have stated that “[s]ecurity and liberty are not conflicting goals” and argued that the PATRIOT Act strikes a balance between protecting security and civil liberties. When security and liberty interests conflict, what factors would you prioritize in weighing those interests?

RESPONSE: It is essential that our national security laws and policies both safeguard the American people from a wide range of threats and maintain the individual liberties and freedoms that define American life. I do not view this as a zero-sum game – security does not necessarily have to mean less liberty, and it is critical that we develop nuanced policies that preserve both interests. How exactly to ensure that neither interest is short-changed is heavily dependent upon the circumstances. Some of the many relevant considerations include the gravity of a threat, the intrusiveness of a particular investigative tool, the efficacy of that tool in protecting the national security, the availability of alternatives, the adequacy of oversight mechanisms, and the degree of public transparency about the law or policy.

35. You have expressed concern that if we allow shifting public opinion to place a higher importance on civil liberties than national security, intelligence officers might end up blamed for an attack that could have been prevented if the public had placed a greater interest in national security.

- a. Do you agree that public servants should be accountable to the public for the infringements on civil liberties they are willing to tolerate to advance national security?
- b. What branch of the federal government is responsible for ensuring that privacy rights and other civil liberties are protected?

RESPONSE: All three branches of government play important roles in ensuring that privacy and civil liberties are protected, and all public servants should be held accountable for the decisions they make.

36. While you were a member of the Privacy and Civil Liberties Oversight Board, the Board conducted a review of Section 702 of the Foreign Intelligence Surveillance Act. Section 702 allows the government to collect the contents of electronic communications of foreign citizens located outside of the U.S., but the realities of electronic communication mean that some information about U.S. citizens living in the U.S. is collected “incidentally” in this process. The Board recommended updating the procedures that allow the FBI to search this data in non-foreign intelligence criminal matters to better protect the privacy of Americans whose information is incidentally collected, but you disagreed. While the Board recommended limiting the FBI’s ability to search this data, you instead advocated for limits on who can view this data or how it can be used in non-foreign intelligence criminal matters once a search has been performed. Please explain why you recommended these different limitations.

RESPONSE: The Board unanimously recommended that “[t]he FBI’s minimization procedures should be updated to more clearly reflect actual practice for conducting U.S. person queries, including the frequency with which Section 702 data may be searched when making routine queries as part of FBI assessments and investigations. Further, some additional limits should be placed on the FBI’s use and dissemination of Section 702 data in connection with non-foreign intelligence criminal matters.” There was no Board majority position with respect to any one approach for doing so. The approach that I and another Board member jointly recommended, and the reasons why we supported it, are elaborated in detail in the text of the Board’s report and in a separate concurring statement.

37. You testified before this Committee in February 2014 about the Privacy and Civil Liberties Oversight Board’s review of the Section 215 Telephone Records Program and the Foreign Intelligence Surveillance Court. In that hearing, when discussing how to balance possible privacy intrusions with national security, you stated that, “You have to look longer-term into whether the next time there is a large-scale terrorist threat against the United States, could this program prevent it . . .”

- a. Is an intelligence collection program's ability to deter a large-scale terrorist threat or – as you described in your testimony – to make a related determination that there is no terrorist threat, your sole criteria for determining when a national security program can encroach on established privacy rights?
- b. How do you balance national security interests and constitutionally prescribed privacy protections?

RESPONSE: I do not believe that a program's deterrence capacity is the only relevant consideration. Please see the response to Question 34.

- 38.** The Victims of Child Abuse Act (VOCAA) authorizes funds to directly support establishment and operation of local and regional Children's Advocacy Centers (CACs), as well as training and technical assistance related to improving the investigation and prosecution of child abuse and neglect. These centers are intended to coordinate a multidisciplinary response to child abuse (e.g., law enforcement, child protection/social services, medical services, mental health) in a manner that ensures child abuse victims receive the support services they need and do not experience the investigation of child abuse as an added trauma. Close to 312,000 children were served at CACs in 2015. Will you include full funding for the Victims of Child Abuse Act in the Department of Justice's proposed budget?

RESPONSE: I have not had occasion to study the VOCAA and am not yet familiar with any proposed budget for this program. However, if I am confirmed, I will familiarize myself with it to ensure an appropriate funding level.

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

RESPONSE: If I were directed to take an action that I concluded was unconstitutional or otherwise illegal, I would attempt to persuade the President that my view was correct. If I could not persuade him, I would resign.

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

RESPONSE: If I were directed to take an action that I concluded was unconstitutional or otherwise illegal, I would attempt to persuade the official who gave the order that my view was correct. If I were unable to persuade him or her, I would resign.

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

RESPONSE: The Department of Justice’s Office of Legal Counsel reviews legislation and Executive Orders that the Administration proposes to ensure they are consistent with applicable law and the Constitution.

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

RESPONSE: I believe the Department of Justice has an obligation to defend acts of Congress against constitutional challenges when there is a reasonable legal argument available. One limited exception concerns statutes that infringe on the constitutional power of the Executive.

44. The President issued a revised Executive Order banning the admission of travelers from six countries and halting the admission of refugees, with narrow exceptions. In your view, should the Department of Justice continue to defend this Executive Order?

RESPONSE: Because this matter involves pending litigation, it would not be appropriate for me to comment on it.

45. Do you believe it was proper for the Obama administration to decide not to continue to defend the Defense of Marriage Act (DOMA)?

RESPONSE: I am not privy to all the considerations that the Obama Administration took into account when making that decision, but as I noted in response to Question 43, in general, I believe the Department of Justice, at least when the constitutional power of the Executive is not at issue, should decline to defend acts of Congress against constitutional challenges only when there is no reasonable legal argument available.

46. When the Justice Department decided not to defend DOMA, the Department “notif[ied] the courts of [the Department’s] interest in providing Congress a full and fair opportunity to participate in the litigation in [the DOMA] cases.” If the Department of Justice decides it cannot defend a law, will you take whatever steps are necessary to ensure that Congress or others can continue to defend the law?

RESPONSE: It is my understanding that the Department has a statutory obligation to notify Congress if it declines to defend the constitutionality of a statute.

47. The Department of Justice established the Violence Reduction Network in 2014. VRN provides a comprehensive approach to reducing violent crime in communities around the country by deploying federal resources in a targeted, strategic, data-driven way to assist state and local law enforcement. Through its participation in the VRN, the Wilmington Police Department created a new homicide unit, and the homicide clearance rate rose from less than 10 percent to more than 50 percent on current-year cases.
- a. How will you support the sustainability of the Violence Reduction Network improvements in cities that have participated in the program?

- b. Will you expand the VRN to work with additional cities?

RESPONSE: I share your commitment to deploying the Justice Department's resources as effectively as possible to reduce violent crime. I have not had occasion to study the VRN or its budgetary situation and would need to study them if I am confirmed as Associate Attorney General.

48. The Justice Department has supported the Youth Mentoring Program, which provides much needed funding to organizations like Boys & Girls Clubs of America. In my state of Delaware, those mentoring funds support programming to 44,100 young people between the ages of 5-18 years old. As Associate Attorney General, will you ensure that the Youth Mentoring Program will be fully funded?

RESPONSE: I have not had occasion to study this program or its budgetary situation and would need to study them if I am confirmed as Associate Attorney General.

49. The Antitrust Division of the Department of Justice is routinely tasked with reviewing many proposed merger transactions, which often involve consideration of complex economic and legal issues. While it is critical that these reviews are thorough in the interest of maintaining competitive markets, delays can create uncertainty for potentially merging parties and have associated negative economic impacts. Under your leadership, how will you work to ensure that the Antitrust Division is able to conduct merger reviews in a timely and thorough manner?

RESPONSE: I agree both that antitrust investigations must be conducted in a thorough and impartial matter and that they should be moved forward as expeditiously as possible. If confirmed, I will work with the subject matter experts in the Department to ensure that both of these goals are achieved.