

**QUESTIONS FOR THE RECORD  
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NOMINEE TO BE DEPUTY ATTORNEY GENERAL**

**QUESTIONS FROM SENATOR LEAHY**

1. The Foreign Corrupt Practices Act (FCPA), as amended by the International Anti-Bribery Act of 1998, is the cornerstone of federal efforts to prevent and prosecute bribery of foreign officials by U.S. corporations, and to maintain a fair and level playing field for small and mid-size corporations doing business overseas. Since 2008, the Federal government—the Department of Justice, the Securities and Exchange Commission, and the Federal Bureau of Investigation—have maintained about 150 active investigations at any given time, resulting in \$1.56 billion in fines in 2014. In 2015, your office secured the conviction of Vadim Mikerin, a Russian government official and uranium supplier who accepted payments in exchange for the favorable treatment of United States companies.

I am concerned that FCPA enforcement will not be a priority of this administration. President Trump has said the FCPA is “a horrible law and it should be changed.”<sup>1</sup>

**Will you commit to continue vigorous enforcement of the FCPA and the International Anti-Bribery Act of 1998?**

**RESPONSE:** If confirmed as Deputy Attorney General, I will enforce all federal laws, including the Foreign Corrupt Practices Act and the International Bribery Act of 1998, as appropriate based on the facts and circumstances of each case.

2. As United States Attorney, you made prosecution of terrorism a top priority. Since 2001, the FCPA has played a key role in counterterrorism policy, as it helps stop the flow of money to terrorist organizations and those who would fund them.

**Do you agree that vigorous FCPA enforcement is a critical piece of our nation’s counterterrorism efforts? If confirmed, will you ensure that the Department of Justice continues to use the FCPA as a tool to combat terrorism?**

**RESPONSE:** Protecting national security and prosecuting terrorism—including by stopping the flow of money to terrorist organizations and to those who would fund them, through vigorous use of enforcement tools like the FCPA—should always be top priorities of the Justice Department. If confirmed, I will ensure that the Department uses all lawful tools, including the FCPA, to combat terrorism.

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<sup>1</sup> <https://www.bna.com/trump-enforcement-foreign-n73014449002/>

3. President Trump has said of bribing foreign government officials, “There is one answer—go to your room, close the door, go to sleep, and don’t do any deals, because that’s the only way.”<sup>2</sup> His business interests around the world have been linked to corrupt foreign officials and practices. For instance, the *New Yorker* reported recently that the Trump Organization licensed its name and provided extensive oversight and advice to a holding company for the Azerbaijani Transportation Minister for a hotel project in Baku, Azerbaijan. That holding company is supported by investments from members of the Iranian Revolutionary Guard. The reported facts raise concerns that the Trump Organization has violated the FCPA or sanctions against the Revolutionary Guard.
- a. **If confirmed as the Deputy Attorney General, and the reported facts meet the Department’s standards for opening an investigation, will you ensure that the Trump Tower Baku deal is investigated?**

**RESPONSE:** All investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. The Department must follow the facts wherever they lead, and must make decisions regarding any potential charges based upon the facts and the law, consistent with the Department’s established procedures. That is what I always have done as U.S. Attorney, and it is what I will insist upon if I am confirmed as Deputy Attorney General.

- b. **Can you assure this Committee that, if no investigation is opened, it will be only because career attorneys at the Department do not recommend it, and that political pressure will in no way shape the Department’s decision-making process?**

**RESPONSE:** I am committed to ensuring that political pressure does not shape our decision-making process.

- c. **If a Department investigation reveals likely violations, will you prosecute, or refrain from stifling the prosecution, of President Trump, his family, and/or his business associates to the fullest extent of the law?**

**RESPONSE:** If I am confirmed as Deputy Attorney General, all investigations under my supervision should be initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations.

- d. **If presented with additional evidence or allegations linking President Trump, his family, or his business associates to any foreign corruption, will you ensure that the Department investigates and prosecutes them to the fullest extent of the law?**

**RESPONSE:** If I am confirmed as Deputy Attorney General, all investigations under my supervision should be initiated and conducted in a fair, professional, and impartial manner,

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<sup>2</sup> <http://www.newyorker.com/magazine/2017/03/13/donald-trumps-worst-deal>

without regard to political considerations.

4. Financial supporters of President Trump have previously admitted to violations of the FCPA. For example, Sheldon Adelson, who spent at least \$25 million in support of President Trump's election,<sup>3</sup> runs a business that was fined for violations of the FCPA committed in China.<sup>4</sup>
  - a. **If there is evidence that meets the Department's standards, will you investigate and, if warranted by Department standards, prosecute any foreign bribery by President Trump's financial supporters?**

**RESPONSE:** If I am confirmed as Deputy Attorney General, all investigations under my supervision should be initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations.

- b. **Do you commit that, if confirmed, President Trump's political supporters will not receive any special treatment?**

**RESPONSE:** If I am confirmed as Deputy Attorney General, all investigations under my supervision should be initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations.

5. At your hearing, you committed to finally reading the Intelligence Community's joint assessment on Russian interference in the 2016 presidential election.<sup>5</sup> I was surprised that you had not read this assessment, which has been publicly available since January. During Attorney General Sessions' confirmation hearing, he too testified that he had not read the Intelligence Community's publicly available report, but in his first written responses he stated: "I have no reason not to accept the intelligence community's conclusion(s) as contained in the report."<sup>6</sup> Since then, Attorney General Sessions has consistently refused to unequivocally denounce Russia's confirmed meddling in our electoral process. For instance, when recently pressed on whether the Trump campaign believed Russia favored candidate Trump over others, Attorney General Sessions said, "I have never been told that."<sup>7</sup> And when pressed if he thought Russia favored candidate Trump, Attorney General Sessions responded, "I don't have any idea," and he then refused to comment on existing evidence. If confirmed, you would be working directly under an Attorney General who does not appear to take evidence of threats from Russia as a serious threat to our national security.

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<sup>3</sup> <http://www.foxnews.com/politics/2016/10/31/adelson-pours-25-million-into-white-house-race-more-may-be-coming.html>

<sup>4</sup> <https://www.justice.gov/opa/pr/las-vegas-sands-corporation-agrees-pay-nearly-7-million-penalty-resolve-fcpa-charges-related>

<sup>5</sup> [https://www.intelligence.senate.gov/sites/default/files/documents/ICA\\_2017\\_01.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/ICA_2017_01.pdf)

<sup>6</sup> <https://www.judiciary.senate.gov/download/sessions-responses-to-leahy-questions-for-the-record-01-10-17>

<sup>7</sup> <http://www.foxnews.com/on-air/tucker-carlson-tonight/index.html#v/5346017322001>

- a. **Since your hearing, have you read the Intelligence Community's joint assessment on Russian interference in the 2016 U.S. presidential election? If you have not read the report, was it so that you could avoid directly answering questions about it during the confirmation process?**

**RESPONSE:** I have read the report. I was familiar with the assessment prior to my confirmation hearing, and I testified that I had no reason to doubt the conclusions of the intelligence community.

- b. **Do you accept the Intelligence Community's findings as contained in that assessment?**

**RESPONSE:** Having read the entire unclassified report, including the caveats in Annex B, I have no reason to doubt the assessment of our intelligence community.

- c. **If confirmed, do you commit to seriously investigating interference in U.S. elections from Russia or any other foreign government?**

**RESPONSE:** If I am confirmed as Deputy Attorney General, I will take seriously my responsibility, in coordination with the Intelligence Community, to ensure that all threats posed by foreign governments are investigated. If the evidence warrants a criminal investigation, I will pursue a federal criminal investigation and any appropriate prosecution justified by evidence that lawfully may be admitted in court.

6. At your hearing, you stated that you had read Attorney General Elliot Richardson's 1973 testimony before the Senate Judiciary Committee, and specifically his testimony regarding the appointment of Archibald Cox as an independent prosecutor to investigate the unfolding Watergate scandal.

- a. **Can you please explain what Attorney General Richardson's testimony means to you?**

**RESPONSE:** I am familiar with the Watergate era by virtue of reading about the history, watching recordings of participants, and talking personally with participants. I can speak to what his conduct means to me. Richardson is a heroic figure because during his five-month tenure as Attorney General, he took steps to ensure an independent investigation of the Watergate crimes after he took office on May 25, 1973, including reassigning the matter from the D.C. U.S. Attorney's Office and the Justice Department's Criminal Division when there was reason to question their independence from the White House and evidence of obstruction of justice by White House officials; he supervised the prosecution of Vice President Spiro Agnew by Maryland U.S. Attorney George Beall, resulting in a plea entered on October 10, 1973; and he resigned as Attorney General on October 20, 1973, when the President ordered him to fire the special counsel. Richardson believed that the Attorney General has a constitutional duty to protect the integrity of the Justice Department and to retain ultimate responsibility for all law enforcement activities undertaken pursuant to

delegated authority of the Attorney General.

**b. Do you believe that Mr. Richardson set a standard that other Department officials should uphold? If not, why not?**

**RESPONSE:** Yes. Attorney General Richardson acted with integrity and fairness by securing and defending the integrity of a federal criminal investigation. The standard he set is one that Department officials should uphold.

7. You and others supporting your nomination have said that it would be premature for you to commit to appointing an independent Special Counsel to investigate the Russian interference in the 2016 election. I disagree. The situation clearly meets the standards in 28 C.F.R. § 600.1, which state that a Special Counsel is warranted where the investigation presents a conflict of interest or “other extraordinary circumstance,” and where it would be in the public interest.

In 1973, Elliot Richardson, who like you was not yet confirmed to his position at the Department of Justice when he appeared before this Committee, promised that he would appoint a special prosecutor to investigate the “break-in at Democratic National Headquarters, [and] all alleged offenses rising out of the 1972 presidential campaign and any other allegations involving President Nixon, his White House employees or appointees.”<sup>8</sup>

**a. Do you believe Mr. Richardson’s promise to this Committee was appropriate given the facts as they were known in May 1973?**

**RESPONSE:** Yes.

**b. If so, please explain why Mr. Richardson’s promise to this Committee was appropriate, but a similar one from you would not be, given the broad similarities between the fact patterns (*i.e.* criminal breaches at the DNC, and potential connections to the President’s campaign).**

**RESPONSE:** Richardson’s decision to appoint a special counsel was appropriate given the facts and circumstances known to him in May 1973. Those facts and circumstances are included in histories of the Watergate era. The facts and circumstances known to me in March 2017 are quite different.

**c. If, after considering all available facts, you determine that appointing a Special Counsel is not necessary to investigate Russia’s meddling in the 2016 presidential election, do you commit to publicly disclosing the full process that you and the Department undertook to reach this decision, so that all Americans can understand why a Trump political appointee will remain in charge of this serious investigation?**

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<sup>8</sup> <http://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/051973-1.htm>

**RESPONSE:** If I am confirmed as Deputy Attorney General, I will defend the independence of all criminal investigations. I do not know the facts or the status of any investigation, and I have not consulted with agents, prosecutors, and intelligence community professionals who may have relevant information. I know from my personal experience handling investigations that involve classified information that when the intelligence community discloses information to the Department of Justice, it does so with the understanding and on the condition that any decision to disclose classified information is retained by the intelligence community. At this time, without having fully reviewed this matter, I am not in a position to comment further or commit to a future course of action.

8. Following several court rulings against President Trump’s first attempt to implement his proposed Muslim ban, a White House staffer declared that “that the powers of the president to protect our country are very substantial and will not be questioned.”<sup>9</sup> This attitude and disdain for constitutional checks and balances is alarming. Even more alarming is that the Department of Justice attempted to assert this position before the Ninth Circuit, arguing that any type of judicial review of the President’s national security determination “in itself imposes substantial harm on the federal government and the nation at large.”<sup>10</sup> Of course, the Ninth Circuit readily rejected that argument, as has the Supreme Court in landmark cases from *Youngstown* to *Boumedienne*.

**a. Do you agree that the President’s national security determinations are “supreme” and “unreviewable”?**

**RESPONSE:** The extent to which the President’s national security determinations are reviewable is a legal issue that may be evaluated by the courts in an appropriate case. If I am confirmed and particular questions of legal doctrine and analysis arise in any matter before me, I will consult with the Department’s experienced career professionals who specialize in this area of the law.

**b. If confirmed, will the Department continue to argue before the courts that judicial review of the President’s national security decisions is “in itself” harmful?**

**RESPONSE:** The extent to which the President’s national security determinations are reviewable is a legal issue that may be evaluated by the courts in an appropriate case. I will consult with career professionals and subject matter experts in the Department who are familiar with the facts and law of particular cases before making any independent decisions about what arguments to advance in those specific cases.

9. In a 2010 speech, you made it clear that addressing violence against women is one of the Justice Department’s highest priorities. As the co-author of the 2013 Leahy-Crapo Violence Against Women Act reauthorization, I could not agree more. That is why I was

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<sup>9</sup> <http://www.cbsnews.com/news/face-the-nation-transcript-february-12-2017-schumer-flake-miller/>

<sup>10</sup> <http://cdn.ca9.uscourts.gov/datastore/general/2017/02/04/17-35105%20motion.pdf>

so disturbed earlier this year when it was reported that the far-right Heritage Foundation's budget blueprint, which may be relied on by the new administration, called for eliminating all VAWA grants.<sup>11</sup> The Office of Violence Against Women provides 24 separate grant programs that support law enforcement, state and tribal coalitions, non-profit organizations, and institutions of higher education to serve survivors and hold offenders accountable.

- a. **If confirmed, will you commit to doing everything you can to preserve these critical grant programs and to ensure they receive the funding they need so that the Office can effectively carry out its mission?**

**RESPONSE:** I am not familiar with the specifics of the current funding levels associated with VAWA grants. If confirmed, I will review the Department's budget and priorities, and make funding recommendations only after a careful evaluation of any current practice or program.

10. Since 2013, you have been a member of the Justice Department's Marijuana Enforcement Working Group. That same year, the Department issued the Cole Memo, which outlines the Department's marijuana enforcement priorities. The memo provides that in states that have legalized medical marijuana, "enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."

- a. **If confirmed, would you maintain those priorities?**

**RESPONSE:** My office follows the policies in former Deputy Attorney General Cole's August 2013 Memorandum regarding marijuana enforcement. If I am confirmed as Deputy Attorney General, I will assist in evaluating those policies and memoranda, including consulting with federal, state and local law enforcement partners.

- b. **Would you ever use our limited federal resources to investigate and prosecute sick people who are using marijuana for medicinal purposes in accordance with their states' laws?**

**RESPONSE:** The Department's policy is to enforce the Controlled Substances Act against marijuana activities that implicate federal enforcement priorities. As the U.S. Attorney for the District of Maryland, I follow these policies. If I am confirmed as Deputy Attorney General, I will assist in evaluating those policies and memoranda, including consulting with federal, state and local law enforcement partners.

11. Congress, through appropriations, has decided the federal government should not dismantle state medical marijuana programs. Since 2014, the Justice Department cannot "prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

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<sup>11</sup><http://thf-reports.s3.amazonaws.com/2016/BlueprintforBalance.pdf>

**Would this congressional prohibition prevent the DEA from raiding medical marijuana dispensaries that are compliant with state law, or from shutting down banks or other businesses that work with dispensaries?**

**RESPONSE:** I have been informed that the referenced legislation, known as the Rohrabacher-Farr Amendment, was recently interpreted by the Ninth Circuit. The court held that the relevant legislation “prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws.” *United States v. McIntosh*, 833 F.3d 1163, 1177 (9th Cir. 2016). The court also held that “[i]ndividuals who do not strictly comply with all state-law conditions regarding the use, distribution, possession, and cultivation of medical marijuana have engaged in conduct that is unauthorized, and prosecuting such individuals does not violate [the provision].” *Id.* at 1178. Finally, it held that the private persons in that case “are entitled to evidentiary hearings to determine whether their conduct was completely authorized by state law, by which we mean that they strictly complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana.” *Id.* at 1179.

**12.** Many minorities in this country are fearful of being targeted by government surveillance due to their religion or ethnicity. These fears are not baseless. On the campaign trail, Mr. Trump called for indiscriminate surveillance of mosques and indicated that he favored creating a registry of Muslims in this country.<sup>12</sup> His campaign surrogates, some of whom are now in the White House and in senior positions across the government, have said worse.

**a. If confirmed, if requested by the President, would you direct investigators to indiscriminately surveil mosques or other religious institutions?**

**RESPONSE:** No.

**b. Do you believe the government’s surveillance laws allow for surveillance of anyone who ascribes to a particular religious faith?**

**RESPONSE:** A person’s religious faith, standing alone, cannot provide a lawful basis for the government to conduct surveillance of that individual. The Attorney General’s Guidelines for Domestic FBI Operations contain specific standards that govern investigations and surveillance.

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<sup>12</sup><https://www.nytimes.com/2015/11/22/us/politics/donald-trump-syrian-muslims-surveillance.html> r=1