

QUESTIONS FOR THE RECORD
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QUESTIONS FROM SENATOR WHITEHOUSE

1. In January 2010, DOJ attorney David Margolis issued a memorandum suggesting that attorneys in the Office of Legal Counsel may owe a duty of candor to their clients that is less than the duty owed by workaday litigators to their clients. Based on my understanding, under Attorney General Eric Holder, the Department stopped relying on that rule in the ethical guidance it provided its attorneys. What is your view with respect to the duty of candor that DOJ attorneys owe their client, particularly those attorneys in OLC who are charged with giving advice to the Administration outside of an adversarial process?

RESPONSE: All Department attorneys are bound by the applicable jurisdiction's rules of professional conduct. *See* 28 U.S.C. § 530B. Therefore, the duty of candor that OLC attorneys owe their client is the same duty that all lawyers owe to their clients. For example, District of Columbia Rule of Professional Conduct 2.1 requires attorneys to exercise independent professional judgment and render candid advice, and D.C. Rule 3.3(a)(2) prohibits an attorney from counseling a client to engage in conduct that the lawyer knows is criminal or fraudulent. Apart from ethical rules, the Department expects its attorneys to provide thorough, objective, and candid legal advice in the performance of their duties.

2. If you have not yet reviewed currently operative policies between DOJ and the White House governing contacts about ongoing investigations and prosecutions, will you commit to doing so before you are confirmed? If confirmed, will you provide the Committee any updates to those policies on timely basis?

RESPONSE: I am familiar with the Department's current policies on this subject. If there are any changes, I am willing to consult with the Committee.

3. What specific factors will you take into account when considering whether it would be appropriate to appoint a special prosecutor to investigate potential ties between the Trump Administration and Russian interference in the 2016 presidential election?

RESPONSE: In this and any other matter, I would proceed in accordance with relevant Department of Justice policies and consult with career officials regarding the most appropriate course of action.

4. Is it Department of Justice policy that waterboarding constitutes torture?

RESPONSE: Yes. It is my understanding that under federal law, it is impermissible for either the military or our intelligence agencies to subject detainees to cruel, inhuman, or degrading treatment. Further, federal law has specifically limited interrogations outside of the federal law enforcement context to the techniques contained in the Army Field Manual.

5. Is it your expectation that career DOJ prosecutors currently investigating or otherwise pursuing terrorism-related cases under federal criminal statutes will be able to pursue those cases in Article III courts? Would you recommend that they be able to do so?

RESPONSE: Numerous terrorism-related cases have progressed through Article III courts, and I expect that to continue. Determining the appropriate strategy in a particular national security investigation is a fact-based inquiry based on the individual circumstances.

6. Due to lax incorporation registration requirements, drug traffickers, terror groups, and other criminal enterprises have been able to hide assets and launder money through shell companies in the United States. In his written questions for the record, Attorney General Sessions committed to working with Congress to provide law enforcement with the tools to detangle complex network of shell companies in order to uncover criminal activity and recover assets.

a. **Based on your experience in law enforcement, are you familiar with the challenges investigators face trying to determine the beneficial owner of shell corporations?**

RESPONSE: Yes.

b. **Do you agree that making it easier law enforcement to identify the true beneficial owners of shell companies would assist them in trying to identify and investigate criminal activity?**

RESPONSE: Yes.

c. **Will you commit to working with Congress to address this issue?**

RESPONSE: Yes.