

**Nomination of William P. Barr
To be Attorney General of the United States
Questions for the Record
Submitted January 22, 2019**

QUESTIONS FROM SENATOR WHITEHOUSE

Please answer each question and sub-question individually and as specifically as possible.

Protecting the Independence of the DOJ and Mueller Investigation

1. In October 1973, during the Watergate scandal, President Nixon ordered the firing of independent special prosecutor Archibald Cox, who was investigating Nixon's role in the scandal. Then-Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus refused to fire Cox and resigned in protest, but the next in command, Robert Bork, was willing to carry out the firing. This was the infamous Saturday Night Massacre, and the American people were rightly outraged by this attack on the rule of law. In the aftermath of that event, largely in response to that public outrage, acting Attorney General Bork agreed to enter into a written delegation agreement to ensure the independence of Cox's successor, Leon Jaworski. The Bork order contained much stronger provisions to protect the independence of the special prosecutor investigation than is now found in the Department of Justice guidelines that govern the Mueller inquiry. These included (1) protections against termination without cause; (2) limitations on the day-to-day supervision of and interference with the investigation, including with respect to the scope of the investigation; (3) assurances that the special prosecutor would have access to all necessary resources; and (4) assurances that the special prosecutor be permitted to communicate to the public and submit a final report to appropriate entities of Congress and make such a report public.

At your nomination hearing, you pledged a number of protections for the special counsel. Reviewing the Bork order, please identify any areas in which you intend to provide less protection or independence to the Special Counsel than was provided therein.

2. Will you object to Special Counsel Mueller testifying publicly before Congress if invited (or subpoenaed)?
3. Under the Special Counsel regulations, "at the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel." Subject to any claims of privilege, will you commit to producing the Special Counsel's concluding report in response to a duly issued subpoena from the Judiciary Committee of either the House or Senate?
4. Referring to former FBI Director Comey's conduct in the lead-up to the 2016 election, you testified that "if you are not going to indict someone, then you do not stand up there and unload negative information about the person. That is not the way the Department

of Justice does business.” As I told you during our private meeting, when it comes to ordinary prosecutorial decisions, I wholeheartedly agree. How does that general principle apply to the required report of the Special Counsel?

- a. Is it your view that DOJ regulations, policy, and practice forbid public discussion of wrongdoing whenever the Department of Justice has declined to seek indictments related to such wrongdoing? Are there any differences in how those regulations, policies, and practice govern a Special Counsel report?
 - b. Is it your view that DOJ regulations, policy, and practice also forbid the indictment of a sitting president? If so, how can the policy obtain Article III review so that a court may “say what the law is”? Should OLC be the final arbiter of this controversial question?
 - c. What if there are grounds to indict and the sole reason for declination is the current DOJ policy against indicting a sitting president?
 - d. Should derogatory information against an uncharged president or other official subject to impeachment be provided to Congress? How is Congress to exercise its constitutional rights and carry out its constitutional obligations if such information is shielded?
 - e. Should we interpret your statements at the hearing that (1) derogatory information against an uncharged individual should not be disclosed and (2) a sitting president cannot be indicted to mean that you would not release to Congress any contents of the Mueller report that contain negative information about President Trump? If we should not, why not?
 - f. If the Mueller investigation uncovers evidence of criminality by the President, but DOJ declines to prosecute solely on the basis of the OLC memo prohibiting indictment of a sitting president, and DOJ policy meanwhile prohibits the disclosure of derogatory information about an uncharged individual, will you keep from Congress and the American people evidence that the President may have committed criminal acts?
 - g. With respect to OLC’s conclusion that the president cannot be indicted under any circumstances while in office, is there any other person in the country who similarly cannot be indicted under any circumstances?
 - h. Do the public and Congress have a significant interest in facts indicating criminal wrongdoing by the President of the United States while in office?
 - i. Do you agree that Congress has a constitutional responsibility to investigate and prosecute a President for high crimes and misdemeanors when warranted?
 - j. Do you agree that, in order to carry out its constitutional responsibilities, Congress should be made aware by the executive branch of conduct potentially constituting high crimes and misdemeanors?
5. Please describe the nature of your relationship with White House Counsel Pat Cipollone, including any shared organizational affiliations.
 6. Deputy White House Counsel John Eisenberg, a former partner at your law firm Kirkland & Ellis, received a broad ethics waiver allowing him to “participate in communications and meetings where [Kirkland] represents parties in matters affecting public policy issues which are important to the priorities of the administration.” What

discussions, if any, have you had with Deputy Counsel Eisenberg since he received that waiver? Please identify any specific matter and/or client discussed, and the details of any such discussion.

7. In your nomination hearing, you told me you would commit to complying with the existing DOJ policy limiting contacts between the White House and the DOJ regarding pending criminal matters, and would perhaps tighten those restrictions.
 - a. Will you reaffirm that commitment?
 - b. In what circumstances would it be appropriate for you, if confirmed as AG, to discuss a pending criminal matter with the White House?
 - c. What is the goal of restrictions on communications between DOJ and the White House regarding ongoing investigations and prosecutions?
8. On February 14, 2018, the Washington Post reported that then-White House counsel Donald McGahn made a call in April 2017 to Acting Deputy Attorney General Dana Boente in an effort to persuade the FBI director to announce that Trump was not personally under investigation in the probe of Russian interference in the 2016 election.

On September 13, 2017, White House Press Secretary Sarah Huckabee Sanders suggested from the Press Secretary podium that the Department of Justice prosecute Former FBI Director James Comey.

On December 2018, CNN reported that President Trump “lashed out” at Acting Attorney General Whitaker on at least two occasions because he was angry about the actions of federal prosecutors in the Southern District of New York in the Michael Cohen case, in which SDNY directly implicated the president – or “Individual 1” – in criminal wrongdoing. According to reports, Trump pressed Whitaker on why more wasn't being done to control the prosecutors who brought the charges in the first place, suggesting they were going rogue.

Assuming these reports are accurate, did each of these contacts comply with the governing policy limiting DOJ-White House contacts regarding pending criminal matters, and would you permit them under your contacts rule?

9. On January 3, 2019, CNN reported that Acting Attorney General Whitaker spoke in private with former Attorney General and Federalist Society co-founder Edwin Meese, who is now a private citizen. During that meeting, Whitaker reportedly told Meese that the U.S. Attorney in Utah is continuing to investigate allegations that the FBI abused its powers in surveilling a former Trump campaign adviser and should have done more to investigate the Clinton Foundation.
 - a. Do those communications seem proper to you?
 - b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

Executive Power and Privilege

10. Do you believe that the Presidential Communications Privilege extends to the President's communications with the Attorney General?
 - a. Are you bound by the D.C. Circuit holding that "the [Presidential Communications] privilege should not extend to staff outside the White House in executive branch agencies"? *In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997).
 - b. Under what circumstances would you fail to abide by the limitations on the Presidential Communications Privilege set forth in *In re Sealed Case (Espy)*?

11. In our one-on-one meeting, you told me you would "not support the assertion of executive privilege if [you] concluded that it was designed to cover up a crime."
 - a. To be clear, would you support the assertion of executive privilege if asserted to cover up a crime?
 - b. Would you support the assertion of executive privilege in order to cover up facts that amount to a chargeable crime but for the fact that the subject cannot under DOJ/OLC policy be indicted?
 - c. If you conclude that the president is asserting executive privilege over, for example, evidence in the Mueller report in order to cover up a crime, what specifically would you do to stop it?
 - d. If an assertion of executive privilege is invalid as asserted to cover up a crime, is there any reason Congress should not be informed to accomplish its constitutional duties of oversight and/or impeachment?
 - e. If you conclude that the president has claimed executive privilege in order to cover up evidence of a crime over your objection, would you inform Congress about your conclusion?

12. During the confirmation proceedings for Justice Kavanaugh, the Trump administration withheld tens of thousands of pages of relevant documents on the vague ground of "constitutional privilege." Because the Judiciary Committee Chairman did not challenge that assertion, the administration never had to defend it. The administration also failed to produce a privilege log, which would have allowed us to understand the nature of the documents over which the administration was asserting privilege.
 - a. If the president seeks to withhold information from Congress on grounds of privilege, will you commit to producing a privilege log that identifies, at a minimum, the participants/custodians of the document/exchange, as well as the basis for the privilege assertion (presidential communication, deliberative process, attorney-client, etc.)? If not, why not?

13. Do you believe the President or DOJ can withhold information from Congress without a formal assertion of executive privilege, beyond the time nominally necessary for review and decision as to whether the president shall assert the privilege?

Responsiveness to Congressional Oversight

14. Our committee has not received answers to questions for the record submitted to Attorney General Sessions after the DOJ Oversight hearing in October 2017. Over a year has passed since then.
 - a. Do you think it is acceptable that DOJ has failed to respond to these oversight questions?
 - b. Will you commit to providing answers to those outstanding questions by March 1, 2019? If not, why not? And by when will you commit to answering them?
15. Will you commit to providing timely answers to questions for the record submitted in connection with future DOJ oversight hearings? What specific time frame will you commit to?
16. Will you commit to responding to oversight requests submitted by the minority party?
17. Under what circumstances do you think it would be appropriate for DOJ to take longer than six months to respond to an oversight request?

June 8 Memo Regarding Special Counsel Mueller's Obstruction Theory and May 2017 Op-Ed Defending the Firing of FBI Director Comey

18. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Trump White House? With whom? When? What was the substance of the conversation?
 - a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?
19. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position on the President's personal legal team? With whom? When? What was the substance of the conversation?
 - a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?
20. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Department of Justice? With whom? When? What was the substance of the conversation?
 - a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

21. On June 8, 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel titled “Mueller’s ‘Obstruction’ Theory,” in which you wrote that Special Counsel Mueller’s “obstruction theory is fatally misconceived.” You also stated your memo was unsolicited.

Please provide a full accounting of the preparation of that memo including:

- a. Why did you submit an unsolicited memo about a pending investigation to the Department of Justice?
 - b. Why did you think your opinion was relevant if, as you acknowledged, you were “in the dark about many facts”?
 - c. How did you know what Mueller’s obstruction theory was? With whom did you discuss that before you drafted your memo?
 - d. At your confirmation hearing, you stated that you were “speculating” about Mr. Mueller’s interpretation of 18 U.S.C. § 1512. How did you know Mueller was contemplating a case under Section 1512? Did anyone tell you this? If so, who?
 - e. Please list all persons with whom you had communications related to the memo before June 8, particularly any person at the Trump White House, on President Trump’s legal team, in the Department of Justice, or among Republican House committee members or staff?
 - f. Please list all persons with whom you had communications related to the memo on or after June 8, particularly any person at the Trump White House, on President Trump’s legal team, in the Department of Justice, or among Republican House committee members or staff?
 - g. Did you discuss the memo before June 8 with any person currently or formerly associated with the Federalist Society? If so, who?
 - h. Did you receive assistance from anyone in writing or researching your memo?
 - i. Who paid you for the time it took you to write and research this memo?
 - j. How was the memo transmitted to the Department of Justice? Were there emails or other cover documents associated with its transmission? **If so, please attach these to your answer.**
 - k. Discussing your memo, Rod Rosenstein was quoted in a December 20, 2018, *Politico* article as saying: “I didn’t share any confidential information with Mr. Barr. He never requested that we provide any non-public information to him, and that memo had no impact on our investigation.” Did you request that DOJ provide you any information about the Mueller investigation? If so, what did you request, from whom did you request it, and what was provided?
22. On the first page of your June 8 memo, while criticizing Mueller’s obstruction theory, you acknowledged that “[o]bviously, the President and any other official can commit obstruction in this classic sense of sabotaging a proceeding’s truth-finding function. Thus, for example, if a President knowingly destroys or alters evidence, suborns perjury, or induces a witness to change testimony, or commits any act deliberately impairing the integrity or availability of evidence, then he, like anyone else, commits the crime of obstruction.”
- a. You’ve stated that you believe the OLC opinion that a sitting president cannot be indicted is correct. If that is the case, what would you do if the Mueller

investigation presented you with evidence that led you to conclude President Trump had committed obstruction of justice in, as you say, the “classic sense”? How about treason?

23. During your nomination hearing, as in your June 8 memo, you raised a point about the meaning of the word “corruptly” in the federal corruption statutes. You argued that “Mueller offers no definition of what ‘corruptly’ means,” and that “people do not understand what the word ‘corruptly’ means in that statute [18 U.S.C § 1512(c)]. It is an adverb, and it is not meant to mean with a state of mind. It is actually meant the way in which the influence or obstruction is committed. . . . [I]t is meant to influence in a way that changes something that is good and fit to something that is bad and unfit, namely the corruption of evidence or the corruption of a decisionmaker.” Later, you cited *United States v. Poindexter*, 951 F.2d 369, 379 (D.C. Cir. 1991) as having the “most intelligent discussion of the word ‘corruptly.’”
- a. How did Congress’s passage of the False Statements Accountability Act of 1996, as codified in 18 U.S.C § 1505, affect the *Poindexter* ruling? That Act provides that the term “‘corruptly’” means “acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.”
 - b. While the False Statements Accountability Act of 1996, on its face, applies only to Section 1505, the legislative history makes clear that the bill’s goal was to align the construction of “corruptly” in Section 1505 with interpretation of that term in the other obstruction statutes, including 18 U.S.C. § 1512. For example, Senator Levin, one of the bill’s sponsors, said that the bill would “bring [Section 1505] back into line with other obstruction statutes protecting government inquiries.” Do you believe that the meaning of the term “corruptly” in Section 1512 should be different from the meaning of that identical term in Section 1505?
 - c. It is now the consensus view among courts of appeals and the position of the Department of Justice that the term “corruptly,” including in 18 U.S.C. § 1512(c), means motivated by an “improper purpose.”¹ Will you abide by that consensus position? Given the specific definition of “corruptly” set forth in the False Statements Accountability Act of 1996, what is now “very hard to discern” about the meaning of the term “corruptly” as used in the federal obstruction statutes?

¹ *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (“Acting ‘corruptly’ within the meaning of § 1512(c)(2) means acting with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct . . .” (internal quotation marks omitted)); *United States v. Mintmire*, 507 F.3d 1273, 1289 (11th Cir. 2007) (“‘corruptly’ as used in Section 1512(c)(2) means “with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct” an official proceeding); *United States v. Arthur Andersen LLP*, 374 F.3d 281, 296 (5th Cir. 2004) (“Under the caselaw, ‘corruptly’ requires an improper purpose” (emphasis in original)), *rev’d and remanded on other grounds*, 544 U.S. 696 (2005); *United States v. Thompson*, 76 F.3d 442, 452 (2d Cir. 1996) (noting that “we have interpreted the term ‘corruptly,’ as it appears in § 1503, to mean motivated by an improper purpose,” and extending that interpretation to Section 1512); *Brown v. United States*, 89 A.3d 98, 104 (D.C. 2014) (“individuals act ‘corruptly’ when they are ‘motivated by an improper purpose’”).

- d. If confirmed, will you apply the definition of “corruptly” set forth in the False Statements Accountability Act of 1996 in enforcing the federal obstruction of justice statutes, including Section 1512(c)? If not, why not?
 - e. Your June 8 memo includes no reference to the False Statements Accountability Act of 1996 or its definition of “corruptly.” Why?
24. On May 12, 2017, you published an op-ed in the Washington Post defending President Trump’s firing of FBI Director James Comey.
- a. Did anyone ask you to write that op-ed, or suggest that you write it? If so, who?
 - b. Did you have any communications related to the op-ed with any person at the Trump White House, President Trump’s legal team, the Department of Justice, or Republican House committee members or staff?
 - c. Did you discuss the op-ed before its publication with any person currently or formerly associated with the Federalist Society?
 - d. Did you share any draft of your op-ed with any person prior to sending it to the Department of Justice? If so, with whom?

Recusal and Compliance with Ethics Guidance

25. During your nomination hearing, I outlined for you my concern with Matthew Whitaker’s (and other Trump appointees’) failure to identify the sources of funding behind payments received for partisan activities before his appointment. Since 2015, Mr. Whitaker has received more than \$1.2 million in compensation from FACT, a 501(c)(3) organization promoting “accountability” from public officials. Between 2014 and 2016, FACT received virtually all of its funding—approximately \$2.45 million—from a donor-advised fund called DonorsTrust. DonorsTrust has been described as “the dark-money ATM for the right,” which “allows wealthy contributors who want to donate millions to the most important causes on the right to do so anonymously, essentially scrubbing the identity of those underwriting conservative and libertarian organizations.” During and after his tenure at FACT, the organization has filed at least fourteen complaints and requests for investigations with the Department of Justice, the Internal Revenue Service, and the Federal Election Commission against Secretary of State Hillary Clinton, various Democratic members of Congress, Democratic Party leaders, and Democratic candidates.
- a. How can DOJ recusal and conflict of interest policies be effective if appointees fail to disclose true identities in funding, payments they have received, or political contributions or solicitations they have made, as part of their financial disclosures in the ethics review process?
 - b. Where it appears that someone has made efforts to hide their identity, should ethics review make efforts to determine who the real party in interest is behind those efforts to hide their identity?
26. In your SJQ Questionnaire, you wrote “In the event of a potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations.” Unlike many other nominees, including AG Sessions, you

did not say you would follow ethics officials' recommendations with respect to conflicts of interest. You confirmed at your confirmation hearing that you would not "surrender" your authority to make the ultimate determination.

- a. Have you already concluded whether you should be recused from the Mueller investigation if confirmed?
 - b. Given that, as a private citizen, you gave unsolicited advice directly to the President's legal team and to DOJ casting doubt on aspects of the Mueller investigation, do you understand public concern about your unwillingness either to agree to recuse from that investigation, or to follow the recusal guidance of career DOJ ethics officials, as past attorneys general have generally done?
 - c. If you determine you will not comply with the recusal guidance of DOJ ethics officials, will you publicly explain your decision?
27. This month, my Judiciary Committee colleagues and I requested that OIG investigate the circumstances surrounding Acting AG Whitaker's refusal to comply with guidance from career DOJ ethics officials. Will you interfere with OIG's procedures concerning that requested investigation?
28. Please explain the commitments you made during the hearing to Chairman Graham that you will conduct DOJ investigations on specific issues he identified. Had you agreed with him in advance that the matters he raised should be investigated?
29. What weight will you give the ethics advice of career DOJ officials regarding recusal and conflicts of interest? What explanations will you commit to provide in cases where you choose not to follow their advice?
30. During your testimony, you described conversations you have had with Deputy Attorney General Rod Rosenstein about the terms and timing of his departure from DOJ if you are confirmed. Have you had any conversations with Matthew Whitaker about his future at DOJ if you are confirmed? If so, please describe those conversations, noting specifically whether you know whether Mr. Whitaker will remain at DOJ and in what role. If not, why haven't you spoken with him as you have with Mr. Rosenstein?

DOJ & OLC Duty of Candor

31. In our one-on-one meeting, you told me you would commit to ensuring that lawyers at DOJ, and at OLC specifically, would be held to the highest legal ethical standards, including a duty of candor. Will you reaffirm that commitment? How specifically will you implement it?
32. This month, the Washington Post published an op-ed by a former OLC attorney who acknowledged that under the Trump Administration, OLC lawyers have advanced pretextual arguments to defend Trump's policies.² She identified OLC's traditional

² https://www.washingtonpost.com/opinions/i-worked-in-the-justice-department-i-hope-its-lawyers-wont-give-trump-an-alibi/2019/01/10/9b53c662-1501-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.b4a7e24ff5da

deference to White House factual findings as the biggest problem under Trump, and said that she saw “again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people.” She wrote that OLC routinely failed to look closely at claims the president makes, and that if a lawyer identified “a claim by the president that was provably false, [they] would ask the White House to supply a fig leaf of supporting evidence.”

- a. Do you have any reason to doubt the allegations and admissions made in the Post op-ed?
- b. Is the OLC conduct described in the op-ed consistent with a lawyer’s duty of candor?
- c. How will you address the issue of deference to White House “fact-finding” given a president who, according to fact checkers, has lied more than 8,100 times since he took office?³
- d. Against that backdrop, under your leadership, will the Department continue its traditional practice of deferring to factual findings by the White House?
- e. Do you agree that the Post op-ed raises serious concerns about the possibility that OLC is complicit in creating pretextual justifications for proposed administration actions?
- f. If confirmed, what will you do to address these concerns?

Campaign Finance

33. Social welfare groups, organized under Section 501(c)(4) of the Tax Code, are required to report political spending to the Federal Election Commission (FEC). Social welfare organizations are also required to file reports with the Internal Revenue Service (IRS), detailing the groups’ actual or expected political activity.
 - Question 15 on IRS Form 1024 (application for recognition of tax exemption) asks, “Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office . . . ?”
 - Question 3 on IRS Form 990 (annual return of exempt organization) asks, “Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If ‘Yes,’ complete Schedule C, Part I.”

Both IRS Forms 1024 and 990 are signed under penalty of perjury. Section 1001 of the U.S. criminal code, makes it a criminal offense to make “any materially false, fictitious or fraudulent statement or representation” in official business with the government; and Section 7206 of the Internal Revenue Code, makes it a crime to willfully make a false material statement on a tax document filed under penalty of perjury.

³ https://www.washingtonpost.com/politics/2019/01/21/president-trump-made-false-or-misleading-claims-his-first-two-years/?utm_term=.34e802aaa8b7

- a. In your view, if an organization files inconsistent statements regarding their political activity with the FEC and the IRS, can the group be liable under Section 1101 or 7206?
 - b. Should the Department concern itself with such inconsistent statements of which the Department of Justice becomes aware? Could that inconsistency provide predication for further investigation?
34. Currently no jurisdiction in the United States requires shell companies to disclose their beneficial ownership. Terror organizations, drug cartels, human traffickers, and other criminal enterprises abuse this gap in incorporation law to establish shell companies designed to hide assets and launder money. At a February 2018 Judiciary hearing, the M. Kendall Day, the then-Acting Deputy Assistant Attorney General for the Criminal Division, testified, “The pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country’s AML [anti-money laundering] regime.” The law enforcement community, including the Fraternal Order of Police, Federal Law Enforcement Officers Association; National Association of Assistant U.S. Attorneys; and National District Attorneys Association, have all called on Congress to pass legislation to help law enforcement identify the beneficial owners behind these shell companies.
 - a. Do you agree that allowing law enforcement to obtain the identities of the beneficial owners of shell companies would help law enforcement to uncover and dismantle criminal networks?
 - b. In July 2018, Treasury Secretary Mnuchin told the House Financial Services committee that “We’ve got to figure out this beneficial ownership [issue] in the next six months.” The Trump administration, however, has yet to endorse any beneficial ownership legislation introduced in Congress and has not put forth a proposal of its own. Will you commit to working with Congress and other relevant executive branch departments on legislation to give law enforcement the tools needed to more effectively untangle the complex web of shell companies criminals use to hide assets and launder money in the United States?
 - c. Under current law, banks are required to undertake due diligence to ensure that their customers are not laundering funds. No similar anti-money-laundering standards apply to the attorneys who help set up the shell companies integral to criminal enterprises. Do you support extending anti-money-laundering due diligence requirements to attorneys?

Federalist Society and Involvement in Judicial Selection

35. Please describe the nature of your involvement with the Federalist Society, including your participation in any public or private events or meetings.
36. Please describe the nature of your relationship with Leonard Leo, including any shared organizational affiliations beyond the Federalist Society.

37. Have you been involved in any way, formally or informally, with the selection, recommendation, or vetting of judicial nominees during the Trump administration, including Justice Kavanaugh? Please describe with specificity the nature of any such involvement, including the names of any judicial nominees on whose nominations you worked.

Domestic Terrorism

38. In 2017, the FBI concluded that white supremacists killed more Americans from 2000 to 2016 than “any other domestic extremist movement.” According to the FBI, law enforcement agencies reported that 7,175 hate crimes occurred in 2017, a 17 percent increase over the previous year. In a study titled “The Rise of Far-Right Extremism in the United States,” The Center for Strategic & International Studies found that terror attacks by right-wing extremists rose from around a dozen attacks a year from 2012-2016 to 31 in 2017. Meanwhile, the Trump administration has cut funding to programs, particularly the Department of Homeland Security’s Office of Community Partnership, designed to combat extremism and prevent people from joining extremist groups in the first case.
- a. You stated in your testimony that we must have a “zero tolerance policy” for people who “violently attack others because of their differences.” Please elaborate on the steps you plan to take at DOJ to combat the rise of hate crimes and right-wing extremism.
 - b. Is there value in using federal resources to prevent people from becoming radicalized?
 - c. What will you do if you feel the Trump administration is not devoting enough attention or resources to combatting domestic terrorism and right-wing extremism?
 - d. Would you support encouraging DOJ investigators and prosecutors to label all hate crimes meeting the federal definition of “domestic terrorism” so as to collect more accurate data about the number of violent hate crimes that occur around the country, particularly in states that do not have hate crimes laws?
 - e. Will you commit to treating hate crimes that meet the definition of “domestic terrorism” as a top priority given recent trends?

Criminal Justice

39. As you are aware, Congress just passed—and the President just signed—the most sweeping criminal justice reform in decades. On both the sentencing and prison side, the FIRST STEP Act incorporates reforms that would seem to go against your previously stated policy views. Will you commit to implement the law faithfully and to let us know if you hit roadblocks or challenges?
40. As you know, in May 2017 Attorney General Sessions issued a memorandum on “Department Charging and Sentencing Policy” directing federal prosecutors to “charge and pursue the most serious, readily provable offense.” During your hearing, you told

Senator Lee that you intended to continue that policy “unless someone tells me a good reason not to.”

- a. Do you believe that the core policy of charging the most serious, readily provable offense promotes public safety? What data supports your response?
- b. Do you believe that the core policy of charging the most serious, readily provable offense leads to fair outcomes? What data supports your response?
- c. In a blog post about the Sessions charging policy, the Cato Institute opined that the most serious, readily provable offenses “are so rigid that they too often lead to injustice—especially in drug cases where the quantity of drugs can be the primary factor instead of a person’s culpability. Low-level mules get severe sentences for example driving narcotics from one city to another.” Would this be a “good reason not to” continue the policy?
- d. If you do intend to continue the Sessions charging policy, is it your intent that the policy apply to white collar, financial crimes as well as to drug-related and violent crimes?

Civil Rights

41. Shortly before leaving office, Attorney General Sessions issued a memorandum sharply curtailing the use of consent decrees between the Justice Department and local governments. According to the memo, Sessions imposed three stringent requirements for the agreements: (1) Top political appointees must sign off on the deals, rather than the career lawyers who have done so in the past; (2) Department lawyers must present evidence of additional violations beyond unconstitutional behavior; and (3) the agreements must have a sunset date, rather than being in place until police or other law enforcement agencies have shown improvement.
 - a. Is it your intent to continue the Sessions policy on consent decrees? Why or why not?
 - b. If you intend to continue the Sessions policy, why is it good policy for political appointees rather than career prosecutors to sign off on these agreements?
 - c. You told Senator Hirono that the notion that the Sessions policy made it “tougher” for DOJ to enter into consent decrees was her characterization of the policy. Based on the three new requirements, do you not agree that the Sessions policy makes it tougher for DOJ to enter into consent decrees?
42. In your April 2001 interview for the George H.W. Bush Oral History Project you indicated that the DOJ will/should defend the constitutionality of congressional enactments except when a statute impinges on executive prerogative.
 - a. Do you still hold this belief? If so, what is an example of a statute that you feel “impinges on executive prerogative” that you therefore would not defend?
 - b. What is your view of the Department of Justice’s decision not to defend the Affordable Care Act against the challenge brought by several states in federal district court in Texas?
43. Do you believe that voter impersonation is a widespread problem? If so, what is the empirical basis for that belief?

44. As Attorney General, in the aftermath of the *Shelby County v. Holder* decision, how specifically would you use the Department of Justice to protect racial and language minority voters from discriminatory voting laws? Can you provide an example of a case in which you believe Section 2 of the Voting Rights Act was used effectively?
45. In October, 2017, Attorney General Sessions issued a memo reversing federal government policy clarifying that discrimination against transgender people is sex discrimination and prohibited under federal law. The memo stated, among other things, that “Title VII’s prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity per se, including transgender status.” As recently as October, 2018, DOJ filed a brief in the Supreme Court arguing that Title VII of the Civil Rights Act of 1964 does not prohibit discrimination against transgender workers.
- Do you agree with Attorney General Sessions’s interpretation of Title VII? Why or why not?
 - Should you be confirmed as Attorney General, would DOJ continue to take the position that Title VII does not prohibit discrimination against transgender employees?

Religious Liberty

48. In a 1992 speech to the “In Defense of Civilization” conference, you called for “God’s law” to be brought to the United States. Reports said that you “blamed secularism for virtually every contemporary societal problem.” You said that secularism caused the country’s “moral decline,” and said that secularism caused “soaring juvenile crime, widespread drug addiction,” and “skyrocketing rates of venereal disease.”
- About a quarter of American adults today are not religious. Do you still think that those Americans are responsible for virtually every contemporary societal problem? If not, what changed your mind?
 - Do you still believe that secularism causes juvenile crime and venereal disease? If not, what changed your mind?
49. Given your stated views on the evils of secularism, what commitments will you make to ensure that non-religious career attorneys and staff at the Department are protected against disparate treatment on the basis of their secularism?
50. In 2017, Attorney General Sessions wrote a memo on “Principles of Religious Liberty,” which primarily addressed instances like those presented by the Supreme Court’s *Masterpiece Cakeshop* case, where someone wants an exemption to anti-discrimination civil rights laws because they are discriminating for religious reasons. You co-authored an article in the Washington Post that praised Sessions’s memo on religious liberty. Last year, Sessions created a “Religious Liberty Task Force” to carry out the memo, but little is known about who is on that task force and what exactly they are doing to implement the memo.

- a. If confirmed, what will you do with the Religious Liberty Task Force? If you decide to maintain the task force, will you commit making it transparent in terms of its membership and activities?
51. At your confirmation hearing, responding to questions about our anti-discrimination laws, you spoke about the need for accommodation to religious communities. How do you believe the law should strike a balance between the right of all people to be free from discrimination and the legitimate need to accommodate religious communities, to the extent those interests are sometimes in tension?
- a. Hypothetically, if a person had a sincerely held religious objection to hiring people of a certain race or gender, do you believe the First Amendment protects their right not to hire people on the basis of race or gender? Do you believe it should?

Environmental Enforcement

52. In 2017, Attorney General Sessions issued a memorandum implementing a ban on the practice of third party settlements.⁴ All too often, marginalized and disenfranchised communities bear the brunt of environmental harms caused by violations of federal clean air and water laws. Supplemental Environmental Projects, or “SEPs” included in DOJ settlements with polluters, have proved to be valuable mechanisms to accomplish environmental justice in these communities.
- a. Will you commit to ending the policy at DOJ of banning third party settlements in environmental enforcement cases?
53. DOJ under Attorney General Sessions saw a 90% reduction in corporate penalties during the first year of the Trump Administration, from \$51.5 billion to \$4.9 billion.⁵
- b. Will you commit to investigate this dramatic drop-off in corporate fines for violations of federal law and commit to reversing these trends?

General

54. As was noted at your confirmation hearing, the DOJ under the Trump administration has flipped its prior litigation positions in a number of high profile cases, many in the civil rights and voting rights arena.
- a. Are you concerned about the effect these reversals might have on the DOJ’s institutional credibility before the courts and the American people?
 - b. Did DOJ reverse any prior litigation positions during your previous tenure as Attorney General?
 - c. If confirmed, what process will you use to determine whether the Department should reverse a prior litigation position?

⁴ <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

⁵ Public Citizen 2018 report at 13 (see <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>).

55. In March 2017, Caterpillar Inc. announced that it had retained you and the law firm Kirkland & Ellis to bring a “fresh look” to the ongoing criminal investigation into the company’s tax practices. Your work for Caterpillar began just weeks after agents with the Internal Revenue Service, U.S. Department of Commerce, and Federal Deposit Insurance Corp. executed search warrants at Caterpillar’s then headquarters and other facilities to seize documents related to Caterpillar’s tax strategy and international parts business. This criminal investigation followed a 2014 Senate Permanent Subcommittee on Investigations report criticizing Caterpillar’s tax practices, which allow the U.S.-based company to allocate significant profits to a low-tax Swiss subsidiary. The IRS has charged Caterpillar over \$2 billion in back taxes and penalties related to this matter.
- a. Will you commit to recusing yourself from any matters relating to Caterpillar?
 - b. While representing Caterpillar, did you take any formal or informal actions to challenge the basis for the search warrants executed by the government or to challenge the documents collected during the search?
56. If confirmed as Attorney General, will you commit to providing the resources necessary to pursue complex criminal tax abuse investigations and prosecutions?