

**CONFIRMATION HEARING
ON THE NOMINATION OF
HON. WILLIAM PELHAM BARR
TO BE ATTORNEY GENERAL
OF THE UNITED STATES**

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

JANUARY 15 and 16, 2019

Serial No. J-116-1

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U.S. GOVERNMENT PUBLISHING OFFICE

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CONTENTS

JANUARY 15, 2019, 9:32 A.M., and JANUARY 16, 2019, 9:32 A.M.

STATEMENTS OF COMMITTEE MEMBERS

	Page
Feinstein, Hon. Dianne, a U.S. Senator from the State of California:	
January 15, 2019, opening statement	3
January 15, 2019, prepared statement	392
January 16, 2019, opening statement	132
Graham, Hon. Lindsey O., a U.S. Senator from the State of South Carolina:	
January 15, 2019, opening statement	1
January 16, 2019, opening statement	131

INTRODUCER

Hatch, Hon. Orrin G., a Former U.S. Senator from the State of Utah introducing Hon. William Pelham Barr, Nominee to be Attorney General of the United States	5
--	---

STATEMENT OF THE NOMINEE

Witness List	189
Barr, Hon. William Pelham, Nominee to be Attorney General of the United States	7
prepared statement	319
questionnaire and biographical information	191
appendix 12(a)	226
appendix 12(b)	230
appendix 12(c)	232
appendix 12(d)	240
appendix 12(e)	256
appendix 14(e)	313

STATEMENTS OF THE WITNESSES

Canterbury, Chuck, National President, Fraternal Order of Police, Washington, DC	146
prepared statement	323
Cary, Mary Kate, Former Speechwriter for President George H.W. Bush, and Anne C. Strickler Practitioner Senior Fellow, The Miller Center, University of Virginia, Washington, DC	139
prepared statement	329
Johnson, Derrick, President and Chief Executive Officer, National Association for the Advancement of Colored People, Baltimore, Maryland	134
prepared statement	332
Kinkopf, Neil J., Professor of Law, Georgia State University College of Law, Atlanta, Georgia	141
prepared statement	342
Morial, Hon. Marc H., President and Chief Executive Officer, National Urban League, New York, New York	137
prepared statement	351

IV

	Page
Mukasey, Hon. Michael B., Former United States Attorney General; Former U.S. District Judge for the Southern District of New York; and Of Counsel, Debevoise & Plimpton LLP, New York, New York	133
prepared statement	355
Risher, Rev. Sharon Washington, Ordained Pastor, Charlotte, North Carolina	144
prepared statement	359
Thompson, Hon. Larry D., Former United States Deputy Attorney General, and Partner, Finch McCranie LLP, Atlanta, Georgia	136
prepared statement	362
Turley, Jonathan, J.B. and Maurice C. Shapiro Professor of Public Interest Law, The George Washington University Law School, Washington, DC	142
prepared statement	366

QUESTIONS

Questions submitted to Hon. William Pelham Barr by:	
Senator Blumenthal	394
Senator Booker	402
Senator Coons	416
Senator Cornyn	422
Senator Crapo	423
Senator Durbin	424
Senator Feinstein	446
Follow-up questions submitted by Senator Feinstein	463
Senator Grassley	467
Senator Harris	472
Senator Hirono	473
Senator Kennedy	489
Senator Klobuchar	491
Senator Leahy	495
Follow-up questions submitted by Senator Leahy	506
Senator Tillis	508
Senator Whitehouse	518
Follow-up questions submitted by Senator Whitehouse	534
Questions submitted to Chuck Canterbury by Senator Hirono	571
Questions submitted to Chuck Canterbury by Senator Klobuchar	572
Questions submitted to Derrick Johnson by Senator Hirono	573
Questions submitted to Derrick Johnson by Senator Leahy	574
Questions submitted to Prof. Neil J. Kinkopf by Senator Hirono	575
Questions submitted to Prof. Neil J. Kinkopf by Senator Leahy	576
Questions submitted to Hon. Marc H. Morial by Senator Hirono	578
Questions submitted to Hon. Marc H. Morial by Senator Leahy	579
Questions submitted to Rev. Sharon Washington Risher by Senator Klobuchar ..	580
Questions submitted to Rev. Sharon Washington Risher by Senator Leahy	581

ANSWERS

Responses of Hon. William Pelham Barr to questions submitted by:	
Senator Blumenthal	750
Senator Booker	789
Senator Coons	736
Senator Cornyn	594
Senator Crapo	603
Senator Durbin	654
Senator Feinstein	607
Follow-up questions submitted by Senator Feinstein	830
Senator Grassley	582
Senator Harris	811
Senator Hirono	763
Senator Kennedy	604
Senator Klobuchar	727
Senator Leahy	636
Follow-up questions submitted by Senator Leahy	838
Senator Tillis	596
Senator Whitehouse	693
Follow-up questions submitted by Senator Whitehouse	841

	Page
Responses of Hon. William Pelham Barr to questions submitted—Continued	
attachment I	813
attachment II	818
attachment III	821
Responses of Chuck Canterbury to questions submitted by Senator Hirono	842
Responses of Chuck Canterbury to questions submitted by Senator Klobuchar	842
Responses of Derrick Johnson to questions submitted by Senator Hirono	846
Responses of Derrick Johnson to questions submitted by Senator Leahy	847
Responses of Prof. Neil J. Kinkopf to questions submitted by Senator Hirono ..	855
Responses of Prof. Neil J. Kinkopf to questions submitted by Senator Leahy ...	849
Responses of Hon. Marc H. Morial to questions submitted by Senator Hirono .	860
Responses of Hon. Marc H. Morial to questions submitted by Senator Leahy ..	856
Responses of Rev. Sharon Washington Risher to questions submitted by Senator Klobuchar	862
Responses of Rev. Sharon Washington Risher to questions submitted by Senator Leahy	862

LETTERS RECEIVED WITH REGARD TO HON. WILLIAM PELHAM BARR,
NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES

ACORN 8, New Orleans, Louisiana, et al., nonpartisan organizations and individuals for whistleblower protection	1001
Advocates for Youth, Washington, DC, et al., reproductive health, rights, and justice organizations, January 14, 2019	875
Alliance for Justice, Washington, DC, January 9, 2019	879
Anti-Defamation League (ADL), New York, New York, January 14, 2019	882
Association of State Criminal Investigative Agencies (ASCI A), Mark Keel, President, ASCI A Chief, South Carolina Law Enforcement Division, January 10, 2019	899
Center for American Progress (CAP), Washington, DC, January 10, 2019	900
Center for Reproductive Rights, New York, New York, January 14, 2019	903
Chemerinsky, Erwin, Dean and Jesse H. Choper Distinguished Professor of Law, University of California Berkeley Law, Berkeley, California, et al., constitutional law scholars who specialize in separation of powers	908
Constitutional Accountability Center, Washington, DC, January 10, 2019	906
Drug Policy Alliance, Washington, DC, January 17, 2019	912
Earthjustice, San Francisco, California, January 10, 2019	915
Electronic Privacy Information Center (EPIC), Washington, DC, January 14, 2019	918
Federal Law Enforcement Officers Association (FLEOA), Washington, DC, January 3, 2019	924
Grijalva, Raúl M., a Representative in Congress from the State of Arizona, and Co-chair, Congressional Progressive Caucus, January 14, 2019	925
Human Rights Campaign (HRC), Washington, DC, January 11, 2019	926
Human Rights Watch (HRW), New York, New York, January 14, 2019	929
International Association of Chiefs of Police (IACP), Alexandria, Virginia, January 14, 2019	932
International Union of Police Associations (IUPA), Sarasota, Florida, January 2, 2019	933
Kids in Need of Defense (KIND), Washington, DC, January 16, 2019	934
Lambda Legal, New York, New York, et al., January 14, 2019	944
Leadership Conference on Civil and Human Rights, The, Washington, DC, December 20, 2018	952
Major Cities Chiefs Association (MCCA), Art Acevedo, President, and Chief of Police, Houston Police Department, Houston, Texas, January 11, 2019	957
Major County Sheriffs of America (MCSA), Alexandria, Virginia, January 10, 2019	958
Mukasey, Hon. Michael B., Former United States Attorney General; Former U.S. District Judge for the Southern District of New York; and Of Counsel, Debevoise & Plimpton LLP, New York, New York, et al., former Federal law enforcement and national security officers, January 9, 2019	864

	Page
Mukasey, Hon. Michael B., Former United States Attorney General; Former U.S. District Judge for the Southern District of New York; and Of Counsel, Debevoise & Plimpton LLP, New York, New York, February 4, 2019, letter, transcript pages, and statement regarding the report of an investigation into the removal of nine U.S. Attorneys in 2006 in response to questions asked by Senator Whitehouse	959
NARAL Pro-Choice America, Washington, DC, January 9, 2019	971
National Alliance of Gang Investigators Associations (NAGIA), Queen Creek, Arizona, January 7, 2019	973
National Center for Transgender Equality (NCTE), Washington, DC, January 16, 2019	974
National Center on Sexual Exploitation (NCOSE), Washington, DC, January 9, 2019	977
National Council of Jewish Women (NCJW), Washington, DC, January 10, 2019	983
National Education Association, Washington, DC, January 11, 2019	985
National Fraternal Order of Police, Washington, DC, January 4, 2019	987
National Juvenile Justice and Delinquency Prevention Coalition (NJJDPC), Washington, DC, et al., January 14, 2019	989
National LGBTQ Task Force Action Fund, Washington, DC, January 14, 2019	992
National Narcotic Officers' Associations' Coalition (NNOAC), Washington, DC, January 11, 2019	994
National Urban League, New York, New York, January 10, 2019	995
National Women's Law Center, Washington, DC, January 22, 2019	997
People For the American Way, Washington, DC, January 9, 2019	1004
Planned Parenthood Federation of America, New York, New York, January 14, 2019	1009
Sexuality Information and Education Council of the United States (SIECUS), Washington, DC, January 15, 2019	1011
Taxpayers Against Fraud (TAF), Washington, DC, January 10, 2019	1013

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

Baker, Peter, The New York Times, January 15, 2019, Twitter posting	1029
NARAL Pro-Choice America, Washington, DC, January 9, 2019, summary of events regarding the nomination of Hon. William P. Barr	1040
National Association for the Advancement of Colored People (NAACP) Legal Defense and Educational Fund, Inc. (LDF), New York, New York, report on the civil rights record of Hon. William P. Barr	1030
National Coalition of Anti-Violence Programs (NCAVP), New York, New York, statement	1050

**CONFIRMATION HEARING
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OF THE UNITED STATES**

TUESDAY, JANUARY 15, 2019

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:32 a.m., in Room SH-216, Hart Senate Office Building, Hon. Lindsey O. Graham, Chairman of the Committee, presiding.

Present: Senators Graham [presiding], Grassley, Cornyn, Lee, Cruz, Sasse, Hawley, Tillis, Ernst, Crapo, Kennedy, Blackburn, Feinstein, Leahy, Durbin, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, and Harris.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Chairman GRAHAM. Thank you, all. You are not going to get a good shot of me. So, thank you, all.

So, Happy New Year, New Congress, and we will see how this goes.

I recognize Senator Grassley.

Senator GRASSLEY. Okay. I do this with a point of personal privilege, Mr. Chairman, and I appreciate that courtesy of you and the Members.

This is the first meeting of the Senate Judiciary Committee in this 116th Congress. It is also the first time that we convene while my friend Lindsey Graham holds the gavel and will proceed to be Chairman.

So I would like to congratulate the new Chairman, thank him for his leadership, and say that I look forward to working with you and the other Members of this Committee as we seek to address some of our Nation's most pressing problems. I have every confidence that you will steer our 200-year-old Committee in the right direction.

Chairman GRAHAM. Well, thank you. I really appreciate that. In my view, nobody looks over 100, so we are actually—we are aging well as a Committee.

The bottom line is, how do you get this job? Your colleagues have to vote for you. Thank you. You have to get re-elected and outlive the person to your right. So I have been able to do that.

And I look forward to working with Senator Feinstein, who is—I have a lot of affection and fondness for. She, to me, represents a seriousness that the body needs and a demeanor that I think we should all aspire to.

To the new colleagues—Senators Hawley, Blackburn, and Ernst—thank you for being part of this Committee. To Senators Blackburn and Ernst, thank you for making history, I think, on our side.

As to the hopes and dreams for this Committee, to get as much done as possible and to fight when we have to over things that matter to the public and show two different views of an issue that is important, but do it as respectfully as possible.

Sentencing reform. Criminal justice reform was a very big deal, and this Committee delivered for the country. Senator Durbin, I want to thank you very, very much for working with Senator Lee and Senator Grassley and Senator Booker. That is a big deal that is going to change lives, I think, in a positive way.

So this Committee has within it the ability to do big things long overdue. I know Senator Blackburn wants to do something on social media. Senator Klobuchar has got some ideas about how to make sure if you put an ad up on social media, you have to stand by it.

We are all worried about social media platforms being hijacked by terrorists and bad actors throughout the international world. We are worried about privacy. Do you really know what you are signing up for when you get on one of these platforms? I would like this Committee working with Commerce to see if we can find some way to tame the “wild West.”

Intellectual property. Senator Tillis and Senator Coons have some ideas that I look forward to hearing about. Senator Sasse wants to make sure that we act ethically. You have got a package of ethic reforms, and I look forward to working with you there.

On this side, I know there are a lot of ideas that I am sure that if we sat down and talked we could embrace, and I look forward to solving as many problems as we can and having a contest over ideas that really matter to the American people.

Senator Hatch, thank you for coming. In terms of my Chairmanship, if I can do what you and Senator Grassley were able to do during your time, I will have done the Committee a good service.

Senator Grassley, thank you very much. Last year was tough, but I think you and Senator Feinstein did the best you could in the environment in which we live. The times in which we live are very difficult times. I do not see them getting better overnight, but I do see them getting better if we all want them to.

So, about me, I want us to do better, and I will be as measured as possible. The Immigration Lindsey will show up, but the other guy is there, too, and I do not like him any more than you do.

So the bottom line is, we are starting off with something that would be good for the country. We have a vacancy for the Attorney General spot. We have a chance to fill that vacancy.

Mr. Barr, you cannot hold a job. When you look at what he has done in his life, it is incredible. So I want to thank the President for nominating somebody who is worthy of the job, who will under-

stand on day one what the job is about and can right the ship over there.

I think we all have concerns. I know Senator Whitehouse is passionate about cybersecurity and “Fort Cyber” and all of these other ideas that Sheldon has been pushing. It is just a matter of time before we are hit and hit hard if somebody does not step up to the plate with some solutions.

But a little bit about the nominee. He has been Attorney General before, from 1991 to 1993 by voice vote. Those were the days. Deputy Attorney General from 1990 to 1991, unanimous consent without a recorded vote. Assistant Attorney General, Office of Legal Counsel, voice vote. That is pretty amazing. I think you are going to have an actual vote this time.

Academically gifted: George Washington Law School, Columbia University undergraduate. Outside of DOJ, he was the General Counsel, Legislative Counsel for the CIA. That is how he met Bush 41. He has been a law clerk. He has worked in private practice. I am not going to bore the Committee with all the things he has done. He has been the senior vice president and general counsel of GTE.

He has lived a consequential life—general counsel of Verizon. You have lived a life that I think has been honorable and noteworthy and accomplished, and I want to thank you for being willing to take this task on. We have got a lot of problems at the Department of Justice. I think morale is low, and we need to change that.

So I will look forward to this hearing. You will be challenged. You should be challenged. The memo, there will be a lot of talk about it, as there should be. But I just want to let you know, Mr. Barr, that we appreciate you stepping up at a time when the country needs somebody of your background and your temperament to be in charge of the rule of law.

And with that, I will turn it over to my colleague, Senator Feinstein.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN,
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

And I want you to know I really look forward to working with you.

Chairman GRAHAM. Me, too.

Senator FEINSTEIN. And I think we can work productively together.

And Senator Grassley, I want to thank you for the time we worked together. It really was a pleasure, and I had an opportunity to get to know you as the fine person that you are. So thank you very much.

I want to say just one word or two or three about women. Twenty-five years ago, there were no women on this Committee. I will never forget watching the Anita Hill hearing on a television in the London airport with a lot of people gathered around. So I went over to take a look, and I saw, and I saw this all-male Judiciary Committee.

And it took all these years, but here we are. And I want to particularly welcome Senator Ernst and Senator Blackburn. I think it is extraordinarily important that this Committee be representative of our society at large and that we are growing that way, and so thank you very much for being here.

I would also like to welcome Bill Barr and his family. I know you are proud to be here, and you served as Attorney General before from 1991 to 1993, and I think we all have great respect for your commitment to public service.

When we met, your previous tenure marked a very different—we talked about a very different time for our country, and today, we find ourselves in a unique time with a different administration and different challenges. And now, perhaps more than ever before, the country needs someone who will uphold the rule of law, defend the independence of the Justice Department, and truly understand their job is to serve as the people's lawyer, not the President's lawyer.

Top of mind for all of us is the ongoing Mueller investigation. Importantly, the Attorney General must be willing to resist political pressure and be committed to protecting this investigation. I am pleased that in our private meeting, as well as in your written statement submitted to the Committee, you stated that it is vitally important—and this is a quote—that “the Special Counsel be allowed to complete his investigation” and that “the public and Congress be informed of the results of the Special Counsel's work.”

However, there are at least two aspects of Mr. Mueller's investigation: first, Russian interference in the United States election and whether any U.S. persons were involved in that interference and, second, possible obstruction of justice. It is the second component that you have written on. And just 5 months before you were nominated, I spent the weekend on your 19-page legal memo to Deputy Attorney General Rod Rosenstein criticizing Mueller's investigation, specifically the investigation into potential obstruction of justice.

In the memo, you conclude, I think, that Special Counsel Mueller is “grossly irresponsible for pursuing an obstruction case against the President and pursuing the obstruction inquiry is fatally misconceived.” So, I hope we can straighten that out in this hearing.

But your memo also shows a large, sweeping view of presidential authority and determined effort, I thought, to undermine Bob Mueller, even though you state you have been friends and are in the dark about many of the facts of the investigation. So it does raise questions about your willingness to reach conclusions before knowing the facts and whether you prejudge the Mueller investigation. And I hope you will make that clear today.

It also raises a number of serious questions about your views on Executive authority and whether the President is, in fact, above the law. For example, you wrote, “The President”—and I quote—“alone is the executive branch. As such, he is the sole repository of all Executive powers conferred by the Constitution. Thus, the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the kinds of cases subject to his control and supervision.”

This is in your memo on page 10, and I will ask you about it. This analysis included cases involving potential misconduct, where you concluded, and I quote, “The President may exercise his supervisory authority over cases dealing with his own interests, and the President transgresses no legal limitation when he does so.” That is on page 12.

In fact, you went so far as to conclude that, “The Framers’ plan contemplates that the President’s law enforcement powers extend to all matters, including those in which he has a personal stake.” You also wrote, “The Constitution itself places no limit on the President’s authority to act on matters which concern him or his own conduct.” Page 10.

Later, you conceded that certain supervisory actions, such as the firing of Director Comey, may be unlawful obstruction. However, this, too, is qualified. You argue that in such a case, obstruction of justice occurs only if, first, a prosecutor proves that the President or his aides colluded with Russia. Specifically, you conclude, and I quote, “The issue of obstruction only becomes ripe after the alleged collusion by the President or his campaign is established first.”

So that is some of the things I hope to ask you about. And in conclusion, let me just say that some of your past statements on the role of Attorney General and presidential power are concerning. For instance, you have said in the past that the Attorney General is the President’s lawyer.

In November 2017, you made comments suggesting it would be permissible for the President to direct the Justice Department to open an investigation into his political opponents, and this is notable in light of President Trump’s repeated calls for the investigation of Hillary Clinton and others who disagree with him. I believe it is important that the next Attorney General be able to strongly resist pressure, whether from the administration or Congress, to conduct investigations for political purposes.

He must have the integrity, the strength, and the fortitude to tell the President no, regardless of the consequences. In short, he must be willing to defend the independence of the Justice Department.

So my questions will be do you have that strength and commitment to be independent of the White House pressures you will undoubtedly face? Will you protect the integrity of the Justice Department above all else?

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Feinstein appears as a submission for the record.]

Chairman GRAHAM. Thank you, Senator Feinstein.

Senator Hatch, welcome back. We truly miss you. You were a great Chairman and an incredible Member of this body, and you are very welcome to share your thoughts about Mr. Barr with this Committee.

**STATEMENT OF HON. ORRIN G. HATCH
FORMER U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Well, thank you so much, Mr. Chairman, Ranking Member Feinstein as well, and Members of the Committee.

It is my distinct pleasure to be here today to introduce William Barr, the President’s nominee to be Attorney General of the United

States. I have known and worked with Bill closely over the years and am glad to call him a friend.

Bill has had a distinguished career in public service and in the private sector. He started his career at the Central Intelligence Agency. While there, he went to law school part time at George Washington University. Following graduation, he was selected for a prestigious clerkship with a Federal Judge on the D.C. Circuit before heading to private practice. Later, he served in the Reagan White House in the Office of Policy Development.

Following another stint in private practice, Bill began his distinguished career at the Department of Justice under President George H.W. Bush. Bill served as the Assistant Attorney General for the Office of Legal Counsel, then as Deputy Attorney General, and finally, as Attorney General of the United States.

As Attorney General, Bill oversaw a number of sensitive criminal investigations, including the investigation into the Pan Am Flight 103 bombing. He prioritized fighting violent crime and became known as a law and order Attorney General.

Throughout his time at the Justice Department, Bill earned a reputation as a fierce advocate for the rule of law, as a principled and independent decisionmaker, and as a lawyer's lawyer. He has shown his commitment to the Constitution time and time again while serving our country. That is why he has been confirmed by the Senate unanimously three times.

After completing his service at the DOJ, Bill returned to the private sector, working at law firms and as Counsel for some of America's largest companies. I could go on at length describing Bill's distinguished career. There is no question, none whatsoever, that Bill is well qualified to serve as Attorney General. He has held this position before and won high praise during his tenure for his fairness, his tenacity, and his work ethic.

So instead of droning on about Bill's résumé, I want to tell you about what Bill identifies as the most important achievement of his private service as Attorney General, at least, I believe this is what he believes. I believe his answer tells you much about how he will approach the job and who he is.

When asked what his most important accomplishment was as Attorney General, Bill does not point to one of his many policy successes. He does not talk about his role in setting antitrust merger guidelines. He does not say it was his role leading the DOJ's response to the savings and loan crisis. No, for him, it was something more. It was something more tangible. It was Talladega.

Three days after Bill was named Acting Attorney General by President Bush, 121 prisoners noted and seized control of the Talladega Federal Correctional Institution in Alabama. This was a very serious matter, and they took 10 hostages. Planning at the DOJ began immediately for how best to resolve the situation and secure the safe release of the hostages.

In such a situation, some would have sought political cover, not Bill. He was in charge. He knew the response was his decision to make, his responsibility. He maintained his focus on the safety of the men and women held hostage by the prisoners.

The standoff lasted 10 days. Then on Bill's order, FBI agents stormed the prison. Three minutes later, it was over. The hostages

were safe. The mission was well planned and executed. The Federal agents did not even have to fire a single shot. Bill's decision-making and judgment helped save lives.

When President Bush nominated Bill to be Attorney General in 1991, I noted why he had been selected. He was not a member of President Bush's political or personal inner circle. He was not a part of the President's brain trust. He was not a politician or former politician who brought political clout to the position from prior elections or prior elected office. Bill Barr was a lawyer's lawyer. Talent, merit, and performance—those were the reasons President Bush selected him to be the Attorney General at that time.

That statement holds true today. Bill Barr, in my opinion, is an outstanding choice for Attorney General. His vast experience, renowned judgment, and reputation as an ardent defender of the rule of law make him a nominee that the American people, the President, and the Senate should all be proud of.

So I feel very honored to be here today to speak in his favor, and I hope that his nomination will be approved expeditiously.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thanks, Senator Hatch.

I would like to note at the outset that the Rules of the Senate prohibit outbursts, clapping, or demonstrations of any kind. This includes blocking the view of people around you. Please be mindful of these rules as we conduct this hearing. I will ask the Capitol Police to remove anyone who violates the rules of this Committee.

Thank you, Senator Hatch.

Mr. Barr, would you come forward, please?

Chairman GRAHAM. Raise your right hand, please. Do you affirm that the testimony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

General BARR. I do.

Chairman GRAHAM. The floor is yours.

**STATEMENT OF HON. WILLIAM PELHAM BARR, NOMINEE
TO BE ATTORNEY GENERAL OF THE UNITED STATES**

General BARR. Before I begin, Mr. Chairman, could I introduce my family?

Chairman GRAHAM. Absolutely.

General BARR. My wife of 46 years, Christine, a retired librarian. My daughter Margaret, who we call Meg, she was an Assistant United States Attorney in the District of Columbia, but now has moved up to Capitol Hill and works for Senator Braun.

My middle daughter, Patricia, who is also an attorney, and she has been Counsel to the House Agriculture Committee for how long now, Patty, 10—11 years. And my daughter Mary, who is a long-time Federal prosecutor and is currently the coordinator for opioid enforcement in the Office of the Deputy Attorney General.

Mary's husband, Mike, who is also an attorney at the Department of Justice in the National Security Division, and their son—Mary and Mike's son—Liam, who will someday be in the Department of Justice.

[Laughter.]

General BARR. Patricia's husband, Pelham, who is a founding partner of a consulting firm. And Meg's husband, Tyler, who is also an Assistant United States Attorney in the Eastern District of Virginia.

Did I leave anyone out?

Chairman GRAHAM. Think about medical school, Liam.

[Laughter.]

Chairman GRAHAM. Somebody needs to make money in the family.

General BARR. When Meg was starting at Notre Dame, I told her I wanted a doctor in the family, and I made her take organic chem. Needless to say, she is now a lawyer. So—

Good morning, Mr. Chairman, Ranking Member Feinstein, and Members of the Committee. It is a privilege to come before you today, and I am honored that President Trump has nominated me for the position of Attorney General.

I regret that I come before this Committee at a time when much of our Government is shut down, and my thoughts are with the dedicated men and women of the Department of Justice and other Federal workers, many of whom continue to perform their critical jobs.

As you know, if the Senate confirms me, this would be my second time I would have the honor of holding this office. During the 4 years I served under President George H.W. Bush, he nominated me for three successive positions in the Department—the Assistant Attorney General for the Office of Legal Counsel, the Deputy Attorney General, and finally, the Attorney General—and this Committee unanimously approved me for each of those offices.

Twenty-seven years ago at my confirmation hearing, I explained that the office of Attorney General is not like any other Cabinet post. It is unique and has a critical role to play under our constitutional system. I said then, the Attorney General has a very special obligation, unique obligations. He holds in trust the fair and impartial administration of justice.

It is the Attorney General's responsibility to enforce the law evenhandedly and with integrity. The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics. Nothing could be more destructive of our system of Government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of the law.

I believe this as strongly today as I did 27 years ago, indeed, more strongly. We live in a time when the country is deeply divided. In the current environment, the American people have to know that there are places in the Government where the rule of law, not politics, holds sway and where they will be treated fairly based solely on the facts and the evenhanded application of the law. The Department of Justice must be that place.

I did not pursue this position, and when my name was first raised, I was reluctant to be considered and, indeed, proposed a number of alternative candidates. I am 68 years old, partially retired, and nearing the end of a long legal career. My wife and I were looking forward to a peaceful and cherished time with our daughters and grandchildren. And I have had this job before.

But ultimately, I agreed to serve because I believe strongly in public service, I revere the law, I love the Department of Justice and the dedicated professionals who serve there, and I believe that I can do a good job leading the Department in these times.

If confirmed, I will serve with the same independence I did in 1991. At that time, when President Bush chose me, he sought no promises and asked only that his Attorney General act with professionalism and integrity. Likewise, President Trump has sought no assurances, promises, or commitments from me of any kind, either express or implied, and I have not given him any, other than that I would run the Department with professionalism and integrity.

As Attorney General, my allegiance will be to the rule of law, the Constitution, and the American people. This is how it should be, this is how it must be, and if you confirm me, this is how it will be. Now let me address a few matters I know are on the minds of some of the Members of this Committee.

First, I believe it is vitally important that the Special Counsel be allowed to complete his investigation. I have known Bob Mueller for 30 years. We worked closely together throughout my previous tenure at the Department of Justice. We have been friends since, and I have the utmost respect for Bob and his distinguished record of public service. And when he was named Special Counsel, I said his selection was good news and that, knowing him, I had confidence he would handle the matter properly. And I still have that confidence today.

Given his public actions to date, I expect that the Special Counsel is well along in his investigation. At the same time, the President has been steadfast that he was not involved in any collusion with Russian attempts to interfere in the election. I believe it is in the best interest of everyone—the President, Congress, and the American people—that this matter be resolved by allowing the Special Counsel to complete his work.

The country needs a credible resolution to these issues, and if confirmed, I will not permit partisan politics, personal interests, or any other improper consideration to interfere with this or any other investigation. I will follow the Special Counsel regulations scrupulously and in good faith, and on my watch, Bob will be allowed to finish his work.

Second, I also believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can, consistent with the law. I can assure you that where judgments are to be made, I will make those judgments based solely on the law, and I will not let personal, political, or other improper interests influence my decision.

Third, I would like to briefly address the memorandum that I wrote last June. I wrote the memo as a former Attorney General who has often weighed in on legal issues of public importance, and I distributed it broadly so that other lawyers would have the benefit of my views. My memo was narrow, explaining my thinking on a specific obstruction of justice theory under a single statute that I thought, based on media reports, the Special Counsel might be considering.

The memo did not address or in any other way question the Special Counsel's core investigation into Russian efforts to interfere in the election, nor did it address other potential obstruction of justice theories or argue, that some have wrongly suggested, that a President can never obstruct justice. I wrote it myself on my initiative without any assistance and based solely on public information.

I would like to comment very briefly on my priorities, if confirmed as Attorney General.

First, we must continue the progress we have made on violent crime, while at the same time recognize the changes that have occurred since I last served as Attorney General. The recently passed First Step Act, which I intend to diligently implement if confirmed, recognizes the progress we have made over the past 3 decades in fighting violent crime. As Attorney General, I will ensure that we will continue our efforts to combat violent crime.

In the past, I was focused on predatory violence, but today I am also concerned about another kind of violence. We can only survive and thrive as a Nation if we are mutually tolerant of each other's differences, whether they be differences based on race, ethnicity, religion, sexual orientation, or political thinking. And yet we see some people violently attacking others simply because of their differences. We must have zero tolerance for such crimes, and I will make this a priority as Attorney General, if confirmed.

Next, the Department will continue to prioritize enforcing and improving our immigration laws. As a Nation, we have the most liberal and expansive immigration laws in the world. Legal immigration has historically been a huge benefit to this country. However, as we open our front door and try to admit people in an orderly way, we cannot allow others to flout our legal system by crashing in through the back doors. In order to ensure that our immigration system works properly, we must secure our Nation's borders, and we must ensure that our laws allow us to process, hold, and remove those who unlawfully enter.

Finally, in a democracy like ours, the right to vote is paramount. In a period of great political division, one of the foundations of our Nation is our enduring commitment to the peaceful transition of power through elections. If confirmed, I will ensure that the full might of our resources are brought to bear against foreign persons who unlawfully interfere in our elections. Fostering confidence in the outcomes of elections also means ensuring that the right to vote is fully protected as well as ensuring the integrity of elections.

Let me conclude by making the point that over the long run, the course of justice in this country has more to do with the character of the Department of Justice as an enduring institution than with the tenure of any particular Attorney General. Above all else, if confirmed, I will work diligently to protect the professionalism and integrity of the Department as an institution, and I will strive to leave it and the Nation a stronger and better place.

Thank you very much for your time today, and I look forward to answering your questions.

[The prepared statement of General Barr appears as a submission for the record.]

Chairman GRAHAM. Thank you, Mr. Barr. We will try to break around 11:30, I think, to get a quick bite and break up the day for you.

But one thing I want to tell you is, that I support the idea that politicians, no matter of what Party, should not interfere with criminal investigations. That makes imminent sense to me. Once you go down that road, then the rule of law collapses.

But there is another side to this equation—if I may say, a two-way street. What about those in charge of enforcing the law? What about those with the power to bring charges against American citizens, including people up here? I remember Senator Stevens' case in Alaska. So, we should always be on guard about the politician interfering in an investigation, but we should also have oversight of how the Department works, and those with this tremendous power use that power.

Are you familiar with the January 11th New York Times article about, "FBI Opened Inquiry Into Whether Trump Was Secretly Working on Behalf of Russia"?

General BARR. Yes, Mr. Chairman.

Chairman GRAHAM. Would you promise me and this Committee to look into this and tell us whether or not, in the appropriate way, a counterintelligence investigation was opened up by somebody at the FBI, Department of Justice against President Trump?

General BARR. Yes, Mr. Chairman, I think there are a number of investigations, as I understand it, going on in the Department.

Chairman GRAHAM. Have you ever heard of such a thing in all the time you have been associated with the Department of Justice?

General BARR. I have never heard of that.

Chairman GRAHAM. Are there rules about how you can do counterintelligence investigations?

General BARR. I believe there are, Mr. Chairman.

Chairman GRAHAM. So if you want to open up one against the President, are there any checks and balances?

General BARR. Not outside the FBI.

Chairman GRAHAM. Okay. Well, we need to look at that. In terms of people who are actually enforcing the law, don't we want to make sure they don't have an agenda?

General BARR. That is right, Mr. Chairman.

Chairman GRAHAM. Do you know a Lisa Page or Peter Strzok?

General BARR. I have heard their names.

Chairman GRAHAM. But do you know them personally?

General BARR. No, I do not.

Chairman GRAHAM. This is a message, August 8th, 2016, a text message: "Trump's not ever going to become President, right? Right?" Strzok responded, "No, no, he's not. We'll stop him." Strzok was in charge of the Clinton email investigation. Ms. Page worked at the Department of Justice. August 15th, 2016: "I want to believe the path you threw out for consideration in Andy's office, that there's no way he gets elected, but I'm afraid we can't take that risk. It's like an insurance policy in the unlikely event you die before 40." March 4th, 2016, Page to Strzok: "God, Trump is a loathsome human being." October the 20th, 2016: "Trump is an 'F'-ing idiot, is unable to provide a coherent answer."

To all those who enforce the law, you can have any opinion of us that you like, but you are supposed to do your job without an agenda. Do you promise me as Attorney General, if you get this job, to look in to see what happened in 2016?

General BARR. Yes, Mr. Chairman.

Chairman GRAHAM. How do these statements sit with you?

General BARR. I was shocked when I saw them.

Chairman GRAHAM. Okay. Please get to the bottom of it. I promise you we will protect the investigation, but we are relying upon you to clean this place up.

FISA warrants. Are you familiar with a FISA warrant?

General BARR. Yes, Mr. Chairman.

Chairman GRAHAM. Okay. During the process of obtaining a warrant, is there a certification made by the Department of Justice to the court that the information being provided is reliable?

General BARR. Yes, sir.

Chairman GRAHAM. Are you familiar with Bruce Ohr?

General BARR. No, I am not.

Chairman GRAHAM. Bruce Ohr was Associate Deputy Attorney General for Organized Crime and Drug Enforcement. His wife worked at Fusion GPS. Are you familiar with Fusion GPS?

General BARR. Yes, I have read about that.

Chairman GRAHAM. Fusion GPS, Mr. Barr, was hired by the Democratic National Committee and the Clinton Campaign to do opposition research against Candidate Trump and maybe other candidates, but we now know that they hired Fusion GPS, Michael Steele, who is a former British agent, to do opposition research and produce the famous dossier. Are you aware that Mr. Ohr's wife worked for that organization?

General BARR. I have read that.

Chairman GRAHAM. Does that bother you if he had anything to do with the case?

General BARR. Yes.

Chairman GRAHAM. Are you aware that on numerous occasions, he met with Mr. Steele while his wife worked with Fusion GPS?

General BARR. I have read that.

Chairman GRAHAM. Okay. The warrant certification against Carter Page on four different occasions certifies that the dossier, which was the main source of the warrant, was reliable. Would you look in to see whether or not that was an accurate statement and hold people accountable if it was not?

General BARR. Yes, Mr. Chairman.

Chairman GRAHAM. Mueller. You say you have known Mueller a long time. Would you say you have a close relationship with Mr. Mueller?

General BARR. I would say we are good friends.

Chairman GRAHAM. Would you say that you understand him to be a fair-minded person?

General BARR. Absolutely.

Chairman GRAHAM. Do you trust him to be the fair to the President and the country as a whole?

General BARR. Yes.

Chairman GRAHAM. When his report comes to you, will you share it with us as much as possible?

General BARR. Consistent with regulations and the law, yes.

Chairman GRAHAM. Do you believe Mr. Mueller would be involved in a witch hunt against anybody?

General BARR. I do not—I do not believe Mr. Mueller would be involved in a witch hunt.

Chairman GRAHAM. What are the circumstances that would allow a Special Counsel to be appointed, generally speaking?

General BARR. Well, I appointed three, Mr. Chairman, Special Counsel. And generally, when something comes up—an issue comes up that needs to be investigated and there are good reasons to have it investigated by a Special Counsel outside the normal chain at the Department, someone usually of public stature that can provide additional assurance of nonpartisanship—

Chairman GRAHAM. Do you believe that Attorney General Sessions had a conflict because he worked on the Trump Campaign?

General BARR. I am not sure of all the facts, but I think he probably did the right thing recusing himself.

Chairman GRAHAM. I agree. I think he did the right thing to recuse himself. Do you know Rod Rosenstein?

General BARR. Yes, I do.

Chairman GRAHAM. What is your opinion of him?

General BARR. I have a very high opinion of Rod Rosenstein and his service in the Department.

Chairman GRAHAM. Okay. Why did you write the memo?

General BARR. I wrote the memo because starting, I think, in June 2017, there were many news reports, and I had no facts, and none of us really outside the Department have facts. But I read a lot of news reports suggesting that there were a number of potential obstruction theories that were being contemplated or, at least, explored.

One theory in particular that appeared to be under consideration under a specific statute concerned me because I thought it would involve stretching the statute beyond what was intended, and would do it in a way that would have serious adverse consequences for all agencies that are involved in the administration of justice, especially the Department of Justice. And I thought it would have a chilling effect going forward over time. And my memo is very clear that is the concern that was driving me, the impact, not the particular case, but its impact of a rule over time.

And I wanted to make sure that before anyone went down this path, if that was, in fact, being considered, that the full implications of the theory were carefully thought out. So I wanted my views to get in front of the people who would be involved and the various lawyers who would be involved in those discussions.

So, I first raised these concerns verbally with Rod Rosenstein when I had lunch with him early in 2008, and when he did not respond and was Sphinx-like in his reaction, expounded on my concerns. And then I later attempted to provide a written analysis as follow-up. Now, I initially thought of an op-ed, and because of the material, it was not working out. And I talked to his staff, and I said, you know, I want to follow up and send something to Rod in writing, but is he a one-pager kind of guy or, you know, how much will he read? And the guy said, he is like you, he does not mind wading into a dense legal memo.

Chairman GRAHAM. Don't you think President Trump is a one-pager kind of guy?

General BARR. Excuse me?

Chairman GRAHAM. President Trump is a one-pager kind of guy.

General BARR. I suspect he is.

Chairman GRAHAM. Okay. Just remember that. Go ahead.

General BARR. Yes.

[Laughter.]

General BARR. And so I provided the memo to Rod, and I provided it—distributed it freely among the other lawyers that I thought would be interested in it, and I think it was entirely proper. It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down the road.

For example, just a few months before that, I had weighed in repeatedly to complain about the idea of prosecuting Senator Menendez. I think I made three calls. I think it was two to Sessions, to AG Sessions, and one to Rosenstein. Now, I did not know Senator Menendez. I do not represent Senator Menendez. No one was paying me to do it, and, in fact, I do not support Senator Menendez politically, but I carefully watched this case. My friend, Abbe Lowell, was his Defense Counsel, and it was very much like a line of cases that I had been concerned about when I was AG. And so I was watching it, and I thought the prosecution was based on a fallacious theory that would have had long-term consequences. And so I freely weighed in at the Department, and I did so because I care about the rule of law.

And I want to say one final thing on the rule of law because it picks up on something you said, Mr. Chairman. What is the rule of law? We all use that term. In the area of enforcement, I think the rule of law is that when you apply a rule to A, it has to be the rule and approach you apply to B, C, D, and E, and so forth. And that seems to me to suggest two corollaries for an Attorney General. The first, that is why we do not like political interference. Political interference means that the rule being applied to A is not the rule you are applying. It is special treatment because someone is in there exerting political influence.

The corollary to that, and this is what you are driving at, Mr. Chairman, is that when you apply a rule—when a prosecutor is applying a rule to A, you got to be careful that it is not torqued specially for that case in a way that could not be applied down the road, or if it is applied, will create problems down the road. And I think the Attorney General's job is both. It is both to protect against interference, but it is also to provide oversight to make sure that in each individual case, the same rule that would be applied broadly is being applied to the individual.

Chairman GRAHAM. Senator Feinstein.

Senator FEINSTEIN. Thank you, Mr. Chairman. Six quick "yes" or "no" questions. Will you commit to no interference with the scope of the Special Counsel's investigation?

General BARR. I will—the scope of the Special Counsel's investigation—

Senator FEINSTEIN. By not—

General BARR [continuing]. Is set by his charter and by the regulations, and I will ensure that those are maintained.

Senator FEINSTEIN. Will you commit to providing Mr. Mueller with the resources, funds, and time needed to complete his investigation?

General BARR. Yes.

Senator FEINSTEIN. Will you commit to ensuring that Special Counsel Mueller is not terminated without good cause consistent with Department regulations?

General BARR. Absolutely.

Senator FEINSTEIN. If the Special Counsel makes any request, for instance, about the scope of investigation or resources for his investigation, will you commit to notifying Congress if you deny that request?

General BARR. I think the regulations require notification of Congress if there is a disagreement.

Senator FEINSTEIN. Thank you. And I have two questions from the Chairman of the House Judiciary Committee. Will you commit to making any report Mueller produces at the conclusion of his investigation available to Congress and to the public?

General BARR. As I said in my statement, I am going to make as much information available as I can, consistent with the rules and regulations that are part of the Special Counsel regulations.

Senator FEINSTEIN. Will you commit to making any report on the obstruction of justice public?

General BARR. That is the same answer. Yes.

Senator FEINSTEIN. Thank you. In your June 2018 memo about obstruction of justice to the Mueller investigation, you repeatedly referred to Mr. Mueller's "sweeping and all-encompassing interpretation of Section 1512," which is the—a statute on obstruction. How do you know what Mr. Mueller's interpretation of 1512 is?

General BARR. Well, as I said, I was—I was speculating. I freely said at the beginning I was writing in the dark, and we are all in the dark. Every lawyer, every talking head, everyone who thinks about or talks about it does not have the facts.

Senator FEINSTEIN. So I spent my Saturday reading that memorandum.

General BARR. Yes.

Senator FEINSTEIN. So are you saying this is all your speculation? It is a big memo.

General BARR. Well, it was informed to the extent that I thought that that was one of the theories being considered. I do not know how seriously—whether it was being considered or how seriously it was being considered. But I—as a shorthand way in the memo of referring to what I was speculating might be the theory, I referred to it as "Mr. Mueller's theory" rather than go in every time I mention it say, well, this is speculative.

Senator FEINSTEIN. But do you know what Mueller's interpretation of 1512 is?

General BARR. No, I do not know what Mueller's interpretation.

Senator FEINSTEIN. Okay.

General BARR. And just one point, Senator. I think—you said in your opening statement I said he was grossly irresponsible. I think

I said if something happens, it would be grossly irresponsible. I was not calling Mueller grossly irresponsible.

Senator FEINSTEIN. I understand.

General BARR. Okay.

Senator FEINSTEIN. Thank you. I appreciate that. Has anyone given you non-public information about Mueller's investigation?

General BARR. I do not—I do not recall getting any confidential information about the investigation.

Senator FEINSTEIN. Your 2018 memo—in it you stated, and I quote, “The Framers’ plan contemplates that the President’s law enforcement powers extend to all matters, including those in which he had a personal stake,” end quote. Please explain what you based this conclusion on.

General BARR. Yes. Here is the Department of Justice—right here, and within the Department of Justice, enforcement decisions are being made. The President is over here, and I think of it as, there are two categories of potential communications. One would be on a case that the President wants to communicate about that he has no personal interest in, no political interest in. Let us say, the President is concerned about Chinese stealing trade secrets and says, “I want you to go after this company that is being—you know, that may be stealing trade secrets.” That is perfectly appropriate for him to do—to communicate that.

But, whether it is bona fide or not, the Department of Justice’s obligation and the Attorney General’s obligation is not to take any action unless we reach—“we,” the Department of Justice and the Attorney General—reach their own independent conclusion that it is justified under the law, and regardless of the instruction. And that is my quote that everyone is saying, you know, I am siccing the—you know, it is okay for the—for the President to direct things. All I said was, it is not per se improper for the President to call on the Department for doing something, especially if he has no personal or political interest in it.

The other category of cases—and let us pick, you know, an easy bad example—would be if a member of the President’s family or a business associate or something was under investigation, and he tries to intervene. He is the chief law enforcement officer, and you could say, well, he has the power, but that would be a breach of his obligation under the Constitution to faithfully execute the laws.

So, in my opinion, if he attempts—if a President attempts to intervene in a matter that he has a stake in to protect himself, that should first be looked at as a breach of his constitutional duties—whether it also violates a statute, depending on what statute comes into play, and what all the facts are.

Senator FEINSTEIN. Including the Emoluments Clause of the Constitution.

General BARR. Well, I think there is a dispute as to what the Emoluments Clause relates to. I have not personally researched the Emoluments Clause. I cannot even tell you what it says at this point. Off the top of my head I would have said, well, emoluments are essentially a stipend attached to some office, but I do not know if that is correct or not. But I am sure it is—

Senator FEINSTEIN. Okay. Well—

General BARR. I think it is being litigated right now.

Senator FEINSTEIN. I am going to—I do not know either, so I am going to try and find out, and we will come back another day and maybe discuss it.

General BARR. Okay. Okay.

Senator FEINSTEIN. Your memo stated, “a fatal flaw in Mueller’s interpretation of § 1512(c)(2), is that, while defining obstruction solely as acting ‘corruptly,’ Mueller offers no definition of what ‘corruptly’ means.” My understanding is that there is nothing in the public record that sheds light on his definition of “obstruction.” Do you know what his definition is?

General BARR. I do not know what his definition is. I read a book where people were asking whether someone—I think—I do not know if it is accurate, but whether someone—the President was acting with corrupt intent. And what I say in my memo is, actually the—people do not understand what the word “corruptly” means in that statute. 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. That is an adverbial function in the statute.

And what it means is, using in the 19th century sense, it 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. That is what the word “corruptly” means because once you dissociate it from that, it really means—very hard to discern what it means. It means “bad.” What does “bad” mean?

Senator FEINSTEIN. Let me go on because my time is so limited. You argue that the—and I quote, “The Constitution’s plenary grant of those powers to the President also extends to the unitary character of the executive branch itself.” Specifically you argue, and this is a quote, “While Mueller’s immediate target is the President’s exercise of his discretionary powers, his obstruction theory reaches all exercises of prosecutorial distinction by the President’s subordinates, from the Attorney General down to the most junior-line prosecutor.”

So, if the President orders the Attorney General to halt a criminal investigation for personal reasons, would that be prohibited under your theory?

General BARR. Prohibited by what?

Senator FEINSTEIN. By—

General BARR. The Constitution?

Senator FEINSTEIN [continuing]. The Constitution.

General BARR. I think it would be—I think it would be a breach of the President’s duties to faithfully execute the law. It would be an abuse of power. Whether it would violate a statute depends on all the facts and what statute I would—someone would cite me to. But I certainly think it would be an abuse of his power. And let me just say that the position—

Senator FEINSTEIN. Would that be the same thing if an Attorney General fired U.S. Attorneys for political reasons?

General BARR. No, because U.S. Attorneys are political appointments.

Senator FEINSTEIN. According to news reports, President Trump interviewed you and asked you to be part of the legal team defend-

ing him in the Mueller investigation—twice, first in the spring of 2017 when the investigation was just beginning and again earlier this year. Is that correct?

General BARR. No, he—I had one conversation with him that related to his private representation, and I can describe that for you. That was—that was in June 2017. That is the only time I met him before I talked to him about the job of Attorney General, which obviously is not the same as representing him.

Senator FEINSTEIN. Have you discussed the Mueller investigation with the President or anyone else in the White House?

General BARR. I discussed the Mueller investigation, but not in—not in any particular substance. I can go through my conversations, with you, if you want.

Senator FEINSTEIN. Well, not at that time, but I may come back to you—

General BARR. Okay.

Senator FEINSTEIN [continuing]. And ask you about that. I do not want to take any more time. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Grassley.

Senator GRASSLEY. Before I ask my first question, and I do not want you to respond to this. I just want you to know what my interest is in the transparency of the Mueller report. When we spend 35—I do not know whether it is \$25 million or \$35 million, the taxpayers—that is billions of dollars—the taxpayers ought to know what their money was spent for. So if you have got some reservations about some part of it not being public, I hope that that is related to traditional things that—of the public’s business that should not be public, like national security is an example, not being made public. But beyond that, the only way I know for the taxpayers to hold anybody that spend the taxpayers’ money responsibly is through transparency because that brings accountability.

My first question, and as you would expect from our conversation in my office, in 1986, Reagan signed the False Claims Act. I worked hard to get that passed, especially provisions empowering whistleblowers to help Government identify fraud. More than a decade ago, you said, the qui tam provisions in the False Claims Act were—your words, “an abomination and were unconstitutional.” You said, you, in your words, “wanted to attack the law, but the Supreme Court upheld the law’s constitutionality.”

Prosecutors from both sides of the aisle have praised the law as the most effective tool Government has to detect and actually recover public money lost to fraud. Since 1986, the law that was passed in 1986 brought in \$56 billion into the Federal treasury. Most of that is because patriotic whistleblowers found the fraud and brought the case to the attention of the Government.

Is the False Claims Act unconstitutional?

General BARR. No, Senator. It has been upheld by the Supreme Court.

Senator GRASSLEY. Do you consider the False Claims Act to be an abomination?

General BARR. No, I do not.

Senator GRASSLEY. Does the False Claims Act benefit the taxpayer, specifically its provisions to empower and protect whistleblowers?

General BARR. Yes, Senator.

Senator GRASSLEY. If confirmed, do you commit to not take any action to undermine the False Claims Act? Further, if confirmed, will you continue current Justice Department staff and funding levels to properly support and prosecute False Claims Act cases?

General BARR. Yes, I will diligently enforce the False Claims Act.

Senator GRASSLEY. Now, with all those positive answers, you would think I would be done, wouldn't you, with that? But let me go on.

[Laughter.]

Senator GRASSLEY. Just to show you that there are some forces out there that I am suspicious about within the Department of Justice, we have a new Department of Justice guidance document out last year, known as the "Granston Memo." It provides a long list of reasons that the Department can use to dismiss False Claims Act cases, some of them pretty darn vague, such as preserving—these are their words: "preserving Government resources." Just think of all the mischief those three words can bring.

Of course, the Government can dismiss, obviously, meritless cases. I do not argue with that. But even when the Department declines to participate in False Claims Act cases, the taxpayer can in many cases still recover financially. So it is important to allow whistleblowers to pursue cases even when the Department is not able to be involved.

Under what circumstances can or should the Justice Department move to dismiss False Claims cases?

General BARR. Senator, I have not reviewed that memorandum, so I am not familiar with the thinking of the people in the—I think it is the Civil Division that did that. But if I am confirmed, I will review it, and I would be glad to come and sit down with you and discuss it, and if there are areas you are concerned about, I would be glad to work with you on that.

Senator GRASSLEY. Unless you find that my presumption is wrong, that there are reasons to be suspicious, I hope you will take into consideration my feeling about how in various suspicious ways people that are faceless bureaucrats can undermine this effort.

In circumstances where the Government does not intervene in False Claims cases, if confirmed, will you commit to ensuring the Department does not unnecessarily dismiss False Claims Act cases?

General BARR. Yes, Senator. I will enforce the law in good faith.

Senator GRASSLEY. Okay. Now, we have got an Act that the Justice Department just took, and I cannot obviously expect you to respond specifically to the Act, but I use it as an example of their uncooperation with the Department of Congressional Oversight. This uncooperative behavior needs to change. On December the 10th, last year, the Department confirmed a briefing for your staff regarding the Asset Forfeiture Fund, and to do that last week, January the 8th. On January the 7th, the Department of Justice Office of Legislative Affairs informed our staff that they will no longer provide the briefing because they consider the matter closed as a result of the change in Chairmanship and because you released a public memo—because I released a public memo on the Marshals

Service study or investigation. It is important to gain your commitment on how you would handle this as an example.

Let me explain how ridiculous it is to get somebody in this administration saying that they do not have to answer if you are not Chairman of a Committee. We went through this in January, the first month this President was in office, when he said—or he put out a memo, “We are not going to answer any oversight except for Chairmen of Committees.” So, you are going to write off 500 Members of Congress not doing oversight.

So, we told them all about this and the constitutional cases on this. We got them up. They wrote a memo again 2 months later that said that they were going to respond to all this stuff. Now you have got people in the bowels of the bureaucracy that are still saying, If you are not a Chairman, you ain’t going to get an answer to anything. How ridiculous. It is our constitutional responsibility.

So then I laid out—I will give you an example. I sent the Justice Department a classified letter regarding information acquired from the Justice Department Inspector General report on the Clinton investigation. The Department ought to answer for what the Attorney Inspector General has found. But I have not heard a peep, not a peep on that yet.

On December the 10th, the Justice Department—well, I am repeating here. So the question is: Do you understand that, if you are confirmed, you have an obligation to ensure that the Justice Department—and particularly the FBI is a problem—respond to congressional inquiries and to do it in a timely manner?

General BARR. Absolutely, Senator.

Senator GRASSLEY. You understand that this obligation applies regardless of whether you are a Member of Congress or a Committee Chairman?

General BARR. Yes, Senator. You know, you and Senator Leahy, I think, are the only Members of the Committee now who were here 27 years ago when I was first confirmed, but I think you will recall that we were able to establish very cooperative and productive relationships with all the Members and try to respond to their questions and deal with their concerns and work with them on projects they are interested in. And that will be the same approach that I will bring to the job if you confirm me.

Senator GRASSLEY. Okay. Then let me be specific on my last question on oversight. You remember when you were in my office I gave you, as I gave Attorney General Sessions, as I gave Holder, a long list of things that the Department has not answered. And one of these was an October 17, 2018, letter, and I would like to have your response to answering that letter and respond to all outstanding and future oversight requests in a timely manner.

And then, remember, I said all you Cabinet people come up here to tell us “yes” when we ask you if you are going to answer our stuff, I said, maybe you better say, “maybe.” So if you want to say “maybe” now and be really honest, say, “maybe.” Otherwise, I hope you will answer that October 17th letter once we get you voted into office.

General BARR. Yes, Senator.

Senator GRASSLEY. Throughout your career you have expressed concern with congressional attempts to enact criminal justice re-

form and at times advocated for stricter mandatory minimum sentences. In 1992, under your direction, DOJ published a report entitled, “The Case for More Incarceration.” This report declared that the problem with our criminal justice system was that we were incarcerating too few criminals.

More recently, in 2015, you signed a letter opposing the Sentencing Reform and Corrections Act of 2015. This letter states quite clearly your opposition to sentencing reform, particularly the lessening of mandatory minimum sentences and any sort of retroactivity.

The First Step Act was signed by President Trump. As Attorney General, it will be your job to implement the legislation. Even though you have opposed criminal justice reform in the past, will you commit to fully implementing the First Step Act?

General BARR. Yes, Senator. But, you know, in 1992, when I was Attorney General, the violent crime rates were the highest in American history. The sentences were extremely short. Typically, in many States the time served for rape was 3 years; for murder, time served 5 to 7 years. The system had broken down. And I think through a series of administrations—Reagan, Bush, and Clinton—the laws were changed, and we targeted violent, chronic violent offenders, especially those using guns. And I think the reason the crime rate is much lower today is because of those policies.

So I do not think comparing the policies that were in effect in 1992 to the situation now is really fair. And I think—and I have said, that right now we have greater regularity in sentencing. There is broader recognition that chronic violent offenders should be incarcerated for significant periods of time to get them off the streets. And I think the time was right to take stock and make changes to our penal system based on current experience.

So I have no problem with the approach of reforming the sentencing structure, and I will faithfully enforce that law.

Senator GRASSLEY. Do not take it personal if I raise my voice to you. I am not mad at you.

[Laughter.]

Chairman GRAHAM. If I were you, I would answer his letters. Just a tip that may help you through your job, if you get it.

I will take the time away from my second round. I am very curious about the conversations you had about personal representation or being Attorney General. You mentioned it to Senator Feinstein. Can you just kind of give us a summary of what you were talking about?

General BARR. Yes, so in June 2017, the middle of June, Ambassador David Friedman, who is the U.S. Ambassador to Israel—who I did not know. I knew that he was a top-tier lawyer in New York and apparently a friend of the President’s. He reached out to me, and we talked one evening, and he said that he—well, my understanding was he was interested in finding lawyers that could augment the defense team, and failing that, he wanted to identify Washington lawyers who had experience, you know, broad experience whose perspective might be useful to the President’s. And he asked me a number of questions, like, you know, “What have you said about the President publicly?” “Do you have any conflicts?” and so forth. And I told him that I did not think I could take this

on, that I had just taken on a big corporate client that was very important to me and I expected a lot of work. And I said at my point in life, I really did not want to take on this burden and that I actually preferred the freedom to not have any representation of an individual, but just say what I thought about anything without having to worry about that. And I said that my wife and I were sort of looking forward to a bit of respite and I did not want to stick my head into that meat grinder.

He asked me if I would nonetheless meet—briefly go over the next day to meet with the President. And I said, “Sure, I will go and meet with the President.” And he brought me over and was squeezing me in—it looked to me like it was before the morning staff meeting because people were grouping by the door to get in, and I went in. And he was there, the Ambassador was there, sat through the meeting. It was a very brief meeting where essentially the President wanted to know—he said, “Oh, you know Bob Mueller. How well do you know Bob Mueller?” And I told him how well I knew Bob Mueller and how, you know, the Barrs and Muellers were good friends and would be good friends when this is all over and so forth. And he was interested in that, wanted to know, you know, what I thought about Mueller’s integrity and so forth and so on. And I said, “Bob is a straight shooter and should be dealt with as such.”

And he said something to the effect like, “So are you envisioning some role here?” And I said, “You know, actually, Mr. President, right now I could not do it. Just my personal and my professional obligations are such that I am unable to do it.” So he asked me for my phone number. I gave it to him, and I never heard from him again until—

Chairman GRAHAM. Well, I tried that once.
[Laughter.]

Chairman GRAHAM. You did better than—

General BARR. Well, I did not hear from him until, you know, later, but about something different, which was the Attorney General position.

Chairman GRAHAM. Senator Leahy.

Senator LEAHY. Thank you.

Mr. Barr, good to see you again. As you mentioned, Senator Grassley and I were here at your hearing a number of years ago. Let me go back even before that. Forty-six years ago, I was not in the Senate. I was State’s attorney in Vermont, and I watched with a great deal of interest the Elliot Richardson hearings. He had been nominated to be Attorney General, and it was in the midst of Watergate. He made several commitments to the Committee, including appointing a Special Prosecutor, and he promised to protect his independence. And as one who had total independence as an elected prosecutor in Vermont, I thought how important it was to have that same independence at the national level. And Mr. Richardson said it was necessary to create the maximum possible degree of public confidence in the integrity of the process. I have never forgotten that. I think the integrity of our institutions is just as much at risk today.

President Trump has made it clear he views the Justice Department as an extension of his political power. He has called on it to

target his opponents. He obsesses over the Russia investigation, which looms over his presidency, may define it. He attacks the Special Counsel almost daily. He fired both the previous FBI Director and Attorney General for not handling the investigation as he pleased. That tells me the rule of law can no longer be taken for granted.

So, if confirmed, the President is going to expect you to do his bidding. I can almost guarantee you he will cross the line at some point. That is why the commitments you make here today, just like those I watched Elliot Richardson make years ago, matter greatly. So will you commit, if confirmed, to both seeking and following the advice of the Department's career ethics officials on whether you must recuse from the Special Counsel's investigation?

General BARR. I will seek the advice of the career ethics personnel, but under the regulations, I make the decision as the head of the agency as to my own recusal. So I certainly would consult with them, and at the end of the day, I would make a decision in good faith based on the laws and the facts that are evident at that time.

Senator LEAHY. The same thing if you are talking about a conflict of interest?

General BARR. Well, no, some conflicts, as you know, are mandatory.

Senator LEAHY. I am thinking of what Attorney General Sessions said, when asked a similar question, he said he will seek and follow the advice—seek and follow the advice—of the Department of Justice's designated ethics officials. So let me ask you maybe in a different way.

I know you have promised to not interfere with the Special Counsel. Are there any circumstances that would cause you to terminate the investigation or any component of it or significantly restrict its funding?

General BARR. Under the regulations, Bob Mueller could only be terminated for good cause, and, frankly, it is unimaginable to me that Bob would ever do anything that gave rise to good cause. But, in theory, if something happened that was good cause, for me it would actually take more than that. It would have to be pretty grave and the public interest would essentially have to compel it, because I believe right now the overarching public interest is to allow him to finish.

Senator LEAHY. Well, I would agree with that, but I also think over the past 18 months you have rather harshly prejudged the investigation in some of your writings.

General BARR. Well, you know, I do not see that at all, Senator. You know, when you strip away a lot of the rhetoric, the two things that have been thrown up as me sort of being antagonistic to the investigation are two things: One, a very mild comment I made that, "Gee, I wish the team had been more balanced." I was not criticizing Mueller. I believe that prosecutors—and I think you would agree—they can handle the case professionally, whatever their politics are. You know, a good prosecutor can leave their politics at the door and go in and do the job. And I think that is what Justice Department prosecutors do in general.

Senator LEAHY. But you were also very critical of the Russian probe, and, I mean, I cannot think of anything that would—in your memo, for example, that would jump out more for this President because of his commitment to it. And I ask that because some have said, on both sides of the aisle, that it looked like a job application, and so that is what I wanted you to refer to.

General BARR. Well, you know, that is ludicrous. If I wanted the job and was going after the job, there are many more direct ways of me bringing myself to the President's attention than writing an 18-page legal memorandum, sending it to the Department of Justice and routing it to other—

Senator LEAHY. But you also publicly criticized the Russian probe. I mean—

General BARR. How have I criticized the Russian probe?

Senator LEAHY. You do not have any criticism of the Russian probe?

General BARR. Not at all. I believe the Russians interfered or attempted to interfere with the election, and I think we have to get to the bottom of it.

Senator LEAHY. So you would be in favor of releasing the investigative report when it is completed?

General BARR. As I have said, I am in favor of as much transparency as there can be consistent with the rules and the law.

Senator LEAHY. Do you see a case where the President could claim executive privilege and say that parts of the report could not be released?

General BARR. Well, I do not have a clue as to what would be in the report. The report could end up being, you know, not very big. I do not know what is going to be in the report. In theory, if there was executive privilege, material to which an executive privilege claim could be made, it might—you know, someone might raise a claim of executive privilege.

Senator LEAHY. That would be very difficult following *U.S. v. Nixon* when the Supreme Court unanimously rejected President Nixon's claims of executive privilege over the Watergate tapes. But I ask it because the President's attorney, Mr. Giuliani, said the President should be able to correct the Mueller report before any public release. So, in other words, he could take this investigative report, put his own spin on it, and correct it before it is released. Do you commit that would not happen if you are Attorney General?

General BARR. That will not happen.

Senator LEAHY. Thank you.

You had—when you were AG—I remember this well because I was here in the Senate at the time you encouraged President George H.W. Bush to pardon all six individuals who were targeted in Iran-Contra. The independent prosecutor who investigated the matter labeled that a “cover-up.”

Now, you and I talked about this in my office, and I appreciate you coming by. I found the conversation the two of us had to be well worthwhile. Do you believe a President could lawfully issue a pardon in exchange for the recipient's promise to not incriminate him?

General BARR. No. That would be a crime.

Senator LEAHY. Thank you.

In 1990, you argued that Congress' appropriation power is not an independent source of congressional power to control the allocation of Government resources. There are only three Committees in the Senate that have a Vice Chairman; Appropriations is one of them. Obviously, as Vice Chairman, I kind of looked at that. You claimed that if a President finds no appropriated funds within a given category, he may use funds from another category as long as both categories are in his constitutional purview.

Now, as Vice Chairman of the Appropriations Committee, do not be surprised I disagree. Congress' power of the purse, Article I, Section 9, I believe constitutes one of the most fundamental and foundational checks and balances on the executive branch. So do you believe the President can ignore Congress' appropriations, allocations, conditions, and restrictions in law, just ignore them and take the money and transfer—

General BARR. Not as a general proposition, but I—that was—
Senator LEAHY. A general proposition—

General BARR. I actually thought that was a good Law Review article. I gave it as a speech, and it was really a thought piece. And what I was really saying was—and I say right up front that the more I thought about the appropriations power, the more confused I got. And I was just laying out a potential template, which is this: People frequently say, you know, the power to spend money on this division or this missile system is part of the power of the purse. And what I was actually saying was—you know, actually, with the power being exercised there is the substantive power that Congress has to raise armies, and it does not come from the power of—

Senator LEAHY. It was also specific on appropriations on Agriculture or on Finance. I mean, for example, could the President just build a wall along our southern border because he wanted to and just take the money, whether appropriated or not? What about eminent domain?

General BARR. What about eminent domain?

Senator LEAHY. Well, if you are going to build a wall, you are going to take a whole lot of land away from landowners in Texas and elsewhere.

General BARR. Well, you know, you would have to show me what statute is being invoked and also what appropriation is being used. I cannot answer that in the abstract.

Senator LEAHY. So you are saying the President, though, can have the power to go into money even if the Congress has appropriated it for a different purpose?

General BARR. I did not say that, but some have—

Senator LEAHY. Do you mean that?

General BARR. No, I do not mean that. I am saying that, you know, there are moneys that the President may have power to shift because of statutory authority.

Senator LEAHY. But that would have been because Congress gave him that authority.

General BARR. Right.

Senator LEAHY. Not because he has it automatically.

General BARR. I am not taking that position. As I said, my Law Review—it was published as a Law Review article, and it was a thought piece exploring what limits there might be to the appro-

priations power and where Congress' power comes from in certain areas.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

Chairman GRAHAM. Just to follow up on that real quick, and I will not take this against Senator Cornyn. Do the Article II powers, the inherent authority of the Commander-in-Chief, give him the ability to take appropriated dollars from the Department of Defense and build a wall?

General BARR. I cannot—without looking at the statute, I really could not answer that.

Chairman GRAHAM. I am not talking about the statute. I am talking about the inherent authority of the President as Commander-in-Chief.

General BARR. That is the kind of question I would go to OLC to answer.

Chairman GRAHAM. Okay. Get back with us on that.

Senator Cornyn.

Senator CORNYN. Well, Mr. Chairman, let me congratulate you on your election as Chairman of the Judiciary Committee and tell you I look forward to working with you and supporting this Committee's efforts. And thank you for convening today's hearing.

And I want to express my profound and sincere thanks to the nominee, Mr. Barr, for agreeing to serve a second time as Attorney General. I noted in your statement you said it was 27 years ago that you sat in this chair and went through your first confirmation hearing, and to me that says a lot about your character and your commitment to the rule of law that you would be willing to go through this process again and serve once again as the chief law enforcement officer of the country. Thank you for doing that.

General BARR. Thank you, Senator.

Senator CORNYN. Thank you to your family as well.

To me, the Attorney General is one of the most challenging Cabinet offices to hold because, as you point out in your opening statement, you are committed to the rule of law and enforcing the laws of the land, but you are also a political appointee of the President. If you serve in another Cabinet position, certainly you are committed to implementing the President's agenda or the agenda of an administration, but as Attorney General, that is not an unequivocal commitment because there may be some things that the administration wants you to do that you cannot do consistent with the rule of law. Correct?

General BARR. That is right, Senator. One of the reasons I ultimately decided that I would accept this position if it was offered to me was because I was—I feel that I am in a position to be independent. You know, over the years a lot of people have—some politicians have called me up saying, you know, “I am thinking of going for the Attorney General position in this administration,” and so forth. And I would say, “You are crazy, because if you view yourself as having a political future down the road, do not take the job, because if you take this job, you have to be ready to make decisions and spend all your political capital and have no future because you have to do—you have to have that freedom of action.” And I feel I am in a position in life where I can do the right thing and not

really care about the consequences in the sense that I do not—I can truly be independent.

Senator CORNYN. Mr. Barr, thinking back about the run-up to the 2016 election where the nominee of both political parties for President of the United States ended up being investigated by the FBI, can you think of any precedent in American history where that has occurred that you know of?

General BARR. No, I cannot, Senator.

Senator CORNYN. In thinking back to James Comey's press conference of July 7, 2016, where he took the step of talking about the evidence against Mrs. Clinton, talking about the legal standard that would apply as to whether she might or might not be indicted for committing a crime under the Espionage Act, have you ever seen a situation where an FBI Director would usurp the authority of the Department of Justice to make that charging decision and hold a press conference and talk about all of the derogatory information that the investigation had gleaned against a potential defendant and then say now we are not going to—no reasonable prosecutor would indict her? Have you ever seen anything like that happen before?

General BARR. No, I have never seen that, and I thought it was a little bit—more than a little bit. It was weird at the time. But my initial reaction to it was, I think Attorney General Lynch had said something—you know, she was under pressure to recuse herself, I think, because of the so-called tarmac meeting. And I think she said something like she was going to defer to the FBI. So my initial reaction to that whole thing was, well, she must have agreed or it must have been the plan that he was going to make the decision and go out and announce his decision.

Senator CORNYN. Under the normal rules, if the—if the Attorney General has a conflict of interest—

General BARR. It would go to the Deputy.

Senator CORNYN. It would go to the Deputy.

General BARR. Correct.

Senator CORNYN. Not to the FBI Director to make that decision. Correct?

General BARR. Right. So that is why I thought it was very strange, but I think later it became clearer, to the extent there was anything clear about it, that I do not think Attorney General Lynch had essentially delegated that authority to the Director. And I think Jim Comey, as I have said, is an extremely gifted man who has served the country with distinction in many roles, but I thought that to the extent he actually announced a decision was wrong.

And the other thing is 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.

Senator CORNYN. I was shocked when Mr. Comey later wrote a letter saying that based on the discovery of Clinton emails on the Weiner laptop, that they were reopening the investigation that he had already announced closed. And then, finally, just days before the general election—November the 6th, 2016—said we did not find

anything on the laptop that would change my conclusions based on the press conference of July the 6th.

Did you likewise find that to be an extraordinary, I will use the word, “bizarre,” but certainly unprecedented event?

General BARR. Yes, the whole sequence was very herky-jerky and bizarre. But at that time, I was a little of a contrarian in that I basically took the position that once he did what he did in July and said the thing was over and then found out it was not over, he—you know, he had no choice but to correct the record.

So I said that he had no choice but to do what he did, but it sort of shows you what happens when you start disregarding the normal procedures and established practice is that you sort of dig yourself a deeper and deeper hole.

Senator CORNYN. Why is it that the Department of Justice rules, which also apply to the FBI, make it clear that our chief law enforcement agencies in this country should not get tangled up in election politics? Are there policies in place that try to insulate the investigations and the decisions of the Department of Justice and FBI from getting involved in elections?

General BARR. Yes, Senator, there are.

Senator CORNYN. And why is that?

General BARR. Well, obviously, because the incumbent party has their hands on the—among other reasons, they have their hands on the levers of the law enforcement apparatus of the country, and you do not want it used against the opposing political party.

Senator CORNYN. And that is what happened when the counterintelligence investigation of the Trump campaign began in late July and continued on through, well, presumably, to Director Comey’s firing and beyond?

General BARR. Well, I am not in a position to, you know, make a judgment about it because I do not know what the predicate was for it. I think I said, you know, it is strange to have a counterintelligence investigation of a President. But I am not—you know, I just do not know what the predicate is. And if I am confirmed, I assume I will find out.

Senator CORNYN. Rod Rosenstein’s memo recommending the termination of James Comey as FBI Director was dated May the 9th, 2017. It is entitled, “Restoring Public Confidence in the FBI.” I take it you have read the memo, and do you agree with its conclusion?

General BARR. I completely agree with Rod Rosenstein. And I thought the important point he made, from my standpoint, was not the particular usurpation that occurred, but it was, as, I think, he says, that Director Comey just did not recognize that that was a mistake. And so it was going to potentially be a continuing problem, his appreciation of his role vis-a-vis the Attorney General.

Senator CORNYN. As I have said, the title of the memo is “Restoring Public Confidence in the FBI.” Do you agree that restoration of public confidence in the FBI and Department of Justice as an apolitical or nonpolitical law enforcement organization is important?

General BARR. It is critical—

Senator CORNYN. And needed?

General BARR. It is critical. And that is one of the reasons I am sitting here. I would like to help with that process.

Senator CORNYN. Well, Mr. Barr, I think you are uniquely qualified to do that, and I wish you Godspeed.

General BARR. Thank you, Senator.

Senator CORNYN. It could not be more important.

Thank you.

Chairman GRAHAM. Senator Durbin.

Senator DURBIN. Mr. Barr, we have never had a chance to meet, but I welcome you to this Committee.

General BARR. Thank you.

Senator DURBIN. You seem like a rational person, and I would like to ask you a question. When you consider what Jeff Sessions went through as the Attorney General for President Donald Trump, where he was subjected to unrelenting criticism, primarily because, as a matter of conscience, he decided he had a conflict of interest and should remove himself from any decisions by the Special Counsel concerning the Russia investigation; when you consider that this President has lashed out on a personal basis against Federal Judges who ruled against his administration; when you consider the criticism which he has leveled at the chief law enforcement investigative agency, the Department of Justice, the FBI, as well as our intelligence agencies; when you see the exit lanes glutted of those leaving the White House at every single level, why do you want this job?

General BARR. Well, because I love the Department and all its components, including the FBI. I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I would like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity, and I had very strong and productive relationships across the aisle, which were important, I think, to trying to get some things done.

And I feel that I am in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this administration.

Senator DURBIN. A number of my colleagues on both sides have asked, and I will bet you will hear more, questions along the line of what would be your breaking point? When would you pick up and leave? When is your Jim Mattis moment, when the President has asked you to do something which you think is inconsistent with your oath? Does that not give you some pause as you embark on this journey?

General BARR. It might give me pause if I was 45 or 50 years old, but it does not give me pause right now. Because I had very good life—I have a very good life. I love it. But I also want to help in this circumstance, and I am not going to do anything that I think is wrong. And I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I am going to do what I think is right.

Senator DURBIN. You have a very nice family behind you.

General BARR. Thank you.

Senator DURBIN. I am glad you introduced them.

General BARR. Thank you, Senator.

Senator DURBIN. And I do not want to give your grandson any career advice. He has received quite a bit this morning already. But he ought to consider, at least, for some balance, being a Public Defender.

[Laughter.]

Senator DURBIN. One of the things that you alluded to as a major issue of concern is immigration, and I am glad you said it. Our Government is shut down now over the issues of border security and immigration. And the Attorney General plays a central role, which many people do not know, as they look at the Department of Homeland Security for most of the action on the issue of immigration.

I was surprised at the exit interview by General Kelly when he said, and I am paraphrasing, that Attorney General Sessions was responsible for the zero-tolerance policy that was announced in mid 2018. And that it was because of that policy, that was one of the reasons why he was being asked to leave. That is the first I had ever heard.

Are you familiar with the zero-tolerance policy?

General BARR. Generally, Senator, yes.

Senator DURBIN. I can tell you that it was an effort to take escorted children—infants, toddlers, and children—and forcibly remove them from their parents at the border. This policy by our Government separated up to 2,800 of those children and put them into the system, the same system as unaccompanied children. The results were horrible. I saw them firsthand.

And you have alluded in your opening statement to stopping people from crashing through the border, breaking and flouting the laws. Those young children, for the most part, were being brought to this country by their parents to seek asylum. You can present yourself at America's border and seek asylum legally, can you not?

General BARR. Yes, Senator, you can.

Senator DURBIN. So separating those children from their parents in an effort, as Attorney General Sessions explained, to get tough with families presenting themselves at the border, was a policy decision on his part. Do you agree with that policy decision?

General BARR. Well, I am not sure I know all the details because one of the disadvantages I have is I am not in the Department and do not really have the same backing I did in terms of information that I had last time. But my understanding is that DHS makes the decision as to who they are going to apprehend and hold.

Now you can claim asylum, but that does not mean you can waltz into the country freely.

Senator DURBIN. No, of course not.

General BARR. Okay? And you have to be processed. And my understanding is a majority of people do not qualify for asylum. But DHS makes the decision who to hold and charge with the crime of illegal entry, and then they refer it to the Department of Justice. And I believe the Department's policy, when they say—when the Department says zero tolerance, they are saying whatever DHS refers to us in the way of illegal entry prosecutions we will prosecute.

Now, now what is being done, because I think the administration has changed the policy, is DHS is not referring for prosecution fam-

ily units that would lead to the separation of children from the family unit.

Senator DURBIN. It is true that the President and the administration abandoned the policy after there was a public reaction to the separation of these children.

I am concerned—I want to go back to your University of Virginia Miller Center speech, which is—

General BARR. It is a gem, is it not?

[Laughter.]

Senator DURBIN. It is a classic. And it goes back many years. But you described your previous tenure as the Attorney General, and you said, “After being appointed, I quickly developed some initiatives on the immigration issue that would create more border patrols, change immigration rules, streamline processing. It would, furthermore, put the Bush campaign ahead of the Democrats on the immigration issue, which I saw as extremely important in 1992. I felt that a strong policy on immigration was necessary for the President to carry California, a key State in the election.”

That is a pretty revealing statement about a political agenda.

General BARR. Yes, and there is nothing wrong with that. Because as I have said, you know, the Attorney—and I have spoken on this a number of times. There are sort of three roles the Attorney General plays.

One is, the enforcer of the law. In that, the role of the Attorney General is to keep the enforcement process sacrosanct from political influence.

The second one is, as legal adviser, and that is in the Judiciary Act of 1789, legal adviser to the President and the Cabinet. And there, I say the Attorney General’s role is to provide, you know, unvarnished, straight from the shoulder legal advice as to what the Attorney General believes is the right answer under the law.

And then the third role is, the policy role, which is law enforcement policy, which includes immigration policy. And there you are a political subordinate of the President, and it is okay to propose policies that are politically advantageous.

Senator DURBIN. Well—

General BARR. But I have to say that—you know, that was casual conversation. The point was I was pursuing a strong immigration policy, even when I was Deputy, long before the election was on the horizon. And in traveling around the country, visiting the border, paying a lot of visits to California, I saw how important the issue was, and I thought the administration has to be more responsive to it. And yes, there was a political benefit to it.

Senator DURBIN. I just have a short time left. The Chairman, our new Chairman—congratulations—Graham noted 10 years of work by a number of us on this Committee on a bipartisan basis to deal with criminal sentencing and prison reform. And the First Step Act signed by the President around Christmas, I think, is a significant departure.

I learned, as many have, that the approach, the “get tough” approach that we imposed with 100-to-1 sentencing disparity between crack and powder did not work. Did not work. The number of drugs being sold on the street increased. The price of the drugs went down. The people being incarcerated went up dramatically.

And we learned the hard way that was not the way to deal with the issue, and now we are trying to clean up 10 years later, more—25 years later, from the 100-to-1 disparity. I voted the wrong way on 100-to-1. Now I know, in retrospect.

You have made some hardline statements about this issue and criminal sentencing in the past, and many of us believe on a bipartisan basis we have got to look at this anew and not repeat these mistakes again. So I would like to hear your assurance that you are—you have learned, as I have, that there is a better way, could be a more effective way. And that as Attorney General, you will help us implement the First Step Act and design the second step?

General BARR. Absolutely, Senator. From my perspective, the very draconian penalties on crack were put into place initially because when the crack epidemic first hit, it was like nuclear weapons going off in the inner city. And as I think you will recall, a lot of the community leaders at that time were saying you have got to—you know, this is killing us. You have to do something.

So the initial reaction of draconian penalties was actually, you know, trying to help those communities. And over time and now the same leaders are saying to us this has been devastating. You know, generation after generation of our people are being incarcerated—have been incarcerated and lost their lives because of this, and you have to change the policies. And I think that that is—we should listen to the same people we were listening to before.

I supported generally strong penalties on drugs because—not just crack—because I felt the money involved was so high that, you know, you needed something to counteract that. I also said repeatedly, over the years of the drug war, that I felt that the head of the snake is outside the country. And the place to fight this aggressively is at the source more than on the street corner, and I used to say we could, you know, stack up generation after generation of people in prison, and it will still keep on coming.

And so I always felt that—and I support an adjustment to these sentences and the safety valve and so forth. To me, the corollary is we have to really start thinking and using all our national forms of power in the sense of our diplomacy and our, you know, economic leverage and so forth to get better results overseas.

So, for example, now fentanyl is sort of the new crack. Fentanyl and fentanyl analogs are sort of the new crack, and they are coming in from China. So—

Senator DURBIN. Across the Mexican border.

General BARR. Correct. Correct.

Senator DURBIN. At ports of entry, 90 percent.

General BARR. So that is a long-winded answer to your question, which is I understand that things have changed since 1992. I—you know, I held on a little bit longer to keeping strong sentences maybe than others. Part of that was I was not involved in the business anymore. I was not at Justice Department looking at reports and studies, learning about different things in the country. I was, you know, arguing with the FCC about telecommunications rules.

So—

Chairman GRAHAM. Mr. Barr?

General BARR. Yes?

Chairman GRAHAM. That was a great answer, and it was long-winded.

General BARR. Okay.

[Laughter.]

Chairman GRAHAM. Senator Lee.

Senator LEE. Mr. Barr—

Chairman GRAHAM. After this, we will break until 12:15 p.m. for lunch and a comfort break.

Senator LEE. Mr. Barr, thank you very much for your willingness to spend time with us today and your willingness to be considered for this important position yet again.

General BARR. Thank you.

Senator LEE. Great to have your family here. And I cannot help but comment. A lot of people have talked about Liam today. Probably more than any of his other friends or classmates, people of his age, cohort, people are thinking about what he might do for a living.

Unless some of my colleagues who have suggested medicine, I want to just sort of suggest what I suggested to my three children, which is that I am not going to push them into any career choice, which in our family means that you could be any kind of lawyer you want.

[Laughter.]

Senator LEE. Just keep that in mind with Liam.

I would like to talk to you first about civil asset forfeiture. As you know, civil forfeiture and criminal forfeiture are two very different things, two very different species of Government taking someone's asset. With criminal forfeiture, of course, the Government's ability to take something away is predicated upon a conviction of a crime. With civil asset forfeiture, that happens even in the absence of a conviction.

There are some serious questions, of course, regarding the legality and the constitutionality of civil asset forfeiture, and Justice Thomas, for example, has questioned whether some of these practices are constitutional. I was encouraged to note that in your testimony in 1991, you identified this as an issue.

When you testified before this Committee, you criticized what you described as the "speed trap mentality of forfeiture." Your point was that, "Agencies should not feel that just because they seize money, they are going to get the money."

Now since 1991, I have seen our Government, our law enforcement agencies actually move more toward the sort of speed trap mentality rather than away from it, as many of us would have preferred. Too often, law enforcement agencies have too strong an incentive to use civil asset forfeiture in a way that lines their own coffers outside of the relevant appropriations process.

So let me just ask you the question. Do you think that the speed trap mentality is a problem? And if so, is that something that you will work to address within the Department of Justice, if you are confirmed?

General BARR. Yes, I think constant vigilance is necessary because, you know, there are incentives there that should be of concern in administering the law. And I understand that there are some, you know, people who are concerned about it, have some hor-

ror stories. The people at the Justice Department have been trying to clamp down. I think Attorney General Sessions put out some guidelines that were supposed to address that.

I have not gotten into it myself. I plan to get into it and see exactly, you know, what the horror stories are, where the problems and potential abuses are, and also how—whether Attorney General Sessions' guidelines are providing sufficient protection.

At the same time, you know, I think it is a valuable tool in law enforcement and the State and local law enforcement officer, our partners, it is very important to them. So I want to make sure we strike the right balance. And once I have a chance to review it, I would be glad to come up and talk to you about that.

Senator LEE. Thank you. I appreciate that.

I understand that it is a tool that many consider valuable and a—but a tool that can be considered valuable for some of those same reasons. Something that is considered valuable to the Government can in many instances jeopardize an individual right that is protected under the Constitution. We have got to be careful of that.

You refer to the partnership that sometimes takes place between State and Federal authorities. This is sometimes where we see it abused. In the case of a procedure known as equitable sharing where sometimes State law might prohibit the use of civil asset forfeiture under certain circumstances, and in those circumstances, those State law enforcement agencies might work with Federal law enforcement for the specific purpose of evading State law that would otherwise prohibit that. So I hope that is something you will look into as well.

Let us talk about antitrust for a minute. Along with Senator Klobuchar, I chair the Antitrust Subcommittee. And, as I am sure you are aware, there are a growing number of people who take the position, who embrace the viewpoint that we should use antitrust law to address a whole host of social and economic harms to—among other things, to ensure that companies respect the First Amendment or to prevent large companies from becoming too big or to shape labor markets or conform industries to a particular aesthetic or achieve some other broadly defined social interest.

I would like to know what your view is on this. Are you a believer in the sort of “big is bad” mentality, or do you gravitate more toward the idea that our antitrust laws are there to protect consumers and should focus on consumer welfare and prices that consumers face?

General BARR. Yes. I mean, generally, that is where I stand, which is the purpose of the antitrust laws, obviously, is to protect competition. And that competition—it is competition that ultimately redounds to consumer benefits.

At the same time, I am sort of interested in stepping back and reassessing or learning more about how the Antitrust Division has been functioning and what their priorities are. I do not think big is necessarily bad, but I think a lot of people wonder how such huge behemoths that now exist in Silicon Valley have taken shape under the nose of the antitrust enforcers.

And you know, you can win that place in the marketplace without violating the antitrust laws, but I want to find out more about that dynamic.

Senator LEE. Right. Yes, and in some circumstances, a company that becomes too big ends up behaving in a way and exerting market dominance in a way that impairs consumer welfare anti-competitively. In other circumstances, consolidation can bring about lower prices and increase competition. I assume you would not disagree with either of those statements?

General BARR. No, Senator.

Senator LEE. As you know, and as several of my colleagues have mentioned, President Trump signed into law the First Step Act about a month ago. This is legislation that I applaud and legislation that I have been working on in one way or another for 8 years and was pleased to team up with Senator Grassley, Senator Durbin, Senator Booker, and others to work on that over the course of many years.

As you know, the Attorney General has an important role under the First Step Act in appointing members to something called the Independent Review Commission. That Independent Review Commission will make recommendations concerning which offenders might be eligible for earned credits under this legislation and which programs will be approved.

When we drafted this legislation, there were some Members who were concerned that whoever was the Attorney General at the time of this law's passage and implementation might be able to undermine the effectiveness of this law by appointing members who did not agree with or believe in the objectives of the bill. So will you commit to me, Mr. Barr, that you will appoint people to that Independent Review Commission who are honest brokers to decide which offenders should be eligible and which programs should be eligible to participate?

General BARR. Yes, Senator.

Senator LEE. Thank you.

Are you familiar with the Ashcroft-Sessions policy, namely the policy requiring prosecutors to charge the most significant readily provable offense?

General BARR. Yes, Senator.

Senator LEE. Tell me how that should best be balanced out with the discretion of a prosecutor, most frequently, of course, with the discretion of a local U.S. Attorney's Office.

General BARR. Well, I was going to say I think the best way of balancing it out is to have a supervisor who is able to approve departures from that policy based on the specific circumstances. And there are countless different, you know, permutations of facts that might justify a departure from it. So I think it is best handled by supervisory people, but I also think it has to be looked at centrally.

I am not saying that each case has to be approved centrally, but there has to be some monitoring of what is going on because, as you know, one of the things that led to the sentencing guidelines was, you know, just difference—big differences in the way the laws were being applied and enforced around the country. And I think we need to try to strive for as much uniformity as we can.

Senator LEE. But you intend to continue that policy?

General BARR. Yes.

Senator LEE. And—

General BARR. Unless someone tells me a good reason not to.

Senator LEE [continuing]. If I'm understanding you correctly, you are saying that if you do follow it, you will defer to the judgment of the office in question in the case of determining when to not charge the most serious readily provable offense?

General BARR. No. I mean I will not defer to my—I mean, I am not going to say, yes, I will defer to my subordinate. I mean, usually you do defer to your subordinates. But there might be a case I disagree with, and I will assert myself on it.

Senator LEE. Okay. I see my time has expired.

Thank you, sir.

Chairman GRAHAM. Thanks, Senator Lee.

We will take a recess to 12:15 p.m. and start with Senator Whitehouse when we come back.

[Whereupon the Committee was recessed and reconvened.]

Chairman GRAHAM. The hearing will come to order, and I recognize Senator Whitehouse.

Thank you, Mr. Barr.

Senator WHITEHOUSE. Thank you, Chairman. This is my first chance at a Committee hearing to congratulate you on taking the gavel here. We worked well together when you were Chairman of the Crime and Terrorism Subcommittee, and I hope that that will continue here.

Mr. Barr, welcome.

Did you make it a condition of taking this job that Rod Rosenstein had to go? Just to be clear, so we are not bandying words here, did you request or signal or otherwise communicate in any way that you wanted Rod Rosenstein to go?

General BARR. No. The President said that the decision on the Deputy was mine. Anything I wanted to do on the Deputy was fine.

Senator WHITEHOUSE. So we will find no William Barr fingerprints on Rosenstein's departure.

General BARR. No. Rod and I have been talking, you know, about his plans. He told me that he viewed it as a 2-year stint and would like to use, if I am confirmed, my coming in as an occasion to leave. But we talked about the need for a transition, and I asked him if he would stay for a while, and he said he would. And so, as of right now, I would say there is no—he has no concrete plans, I have no concrete plans in terms of his departure.

Senator WHITEHOUSE. And you—

General BARR. We are going to sort of play it by ear and see what makes sense.

Senator WHITEHOUSE. And you have not undertaken to run him out in any way.

General BARR. Absolutely not.

Senator WHITEHOUSE. That leaves an opening at the DAG position whenever you work this out. Can you tell us, since Attorneys General are very often defined by the immediate appointments around them, at chief of staff, DAG, criminal chief, what are the characteristics and qualifications that you will seek as you fill particularly that position, but all three that I mentioned?

General BARR. I am sorry, the Deputy and what was the other one?

Senator WHITEHOUSE. Deputy, chief of staff, and criminal chief.

General BARR. There is already a criminal chief.

Senator WHITEHOUSE. I know, yes. Already a Deputy Attorney General, but he is leaving.

General BARR. Well, for a Deputy, I would like someone who is a really good manager and who has good management experience running Government programs. And I want a first-rate lawyer and someone I—whose judgment I feel comfortable in.

Senator WHITEHOUSE. Experience in the Department?

General BARR. Not necessarily, but experience in Government at a high level.

Senator WHITEHOUSE. When we met, I gave you a letter that you have seen just so none of these questions would be a surprise, so I hope it is no surprise to you that I am going through some of them. If you are confirmed, what will be the Department's rule regarding communications between White House and Department of Justice officials regarding criminal and investigative matters? Who at DOJ will be allowed to have those conversations with the White House, and who at the White House will you entertain those conversations from at DOJ?

General BARR. So, you know, I have looked through the existing regime, and my instinct is to keep it, maybe even tighten it up a little bit more. I remember when George W. Bush's administration was coming in, my advice was start tight, and then as you realize who has judgment and so forth—

Senator WHITEHOUSE. Yes.

General BARR [continuing]. You can go back to a—

Senator WHITEHOUSE. They went the other way, and it was a bad day for Attorney General Gonzales in the hearing room when that was brought to his attention. What is your understanding right now of who at the Department of Justice is authorized to have communications with the White House regarding investigations?

General BARR. Well, it depends—it depends what it is, but on criminal matters I would just have the AG and the Deputy.

Senator WHITEHOUSE. And what do you think the rule is now in the Department?

General BARR. I think that is what it is.

Senator WHITEHOUSE. Okay. So if the reports are true that as chief of staff, Mr. Whitaker was involved in conversations with the White House about bringing criminal investigations against the President's political enemies, that would not be consistent with your understanding of that policy.

General BARR. Well, it would depend upon, you know, what his understanding is with the Attorney General. I mean, the—

Senator WHITEHOUSE. Well, the Attorney General was recused, so hard to step into the shoes of a recused Attorney General matter, right?

General BARR. Well, I do not know what the communication is related to. I am not really sure what you are talking about.

Senator WHITEHOUSE. Okay. I hope you will become sure when you get there because there is a fair amount of, I think, question-

able behavior that has gone on that does not reflect well on the Department that I hope will get your attention. I also asked you about the Special Counsel investigation and to give us a clear exposition of how that memo came to be: who you talked to, when, who was involved in it. There were a number of questions in that letter that at this point you have not answered.

You have, I gather, told the Chairman the names of some dozen or so people whom you contacted, as I understand it, once the memo was written, but it is not clear. Do you have any objection to answering the questions that I wrote as questions for the record so that the Committee can understand who you worked with, who you talked with about this idea, who you worked with in preparing the memo, who helped you with things like citations that people at your level do not often do yourselves, and where it was circulated and vetted, and what edits were made, and so forth?

General BARR. No, I have no objection to that.

Senator WHITEHOUSE. Great.

[The information appears as a submission for the record.]

General BARR. But I—

Senator WHITEHOUSE. We will expect you—

General BARR. Just to—just to be clear, no one helped me write the memo, and I know how to do legal citations, which I do.

Senator WHITEHOUSE. Well, a lot of people know how, but that does not mean they always do it.

General BARR. I do it. I did.

Senator WHITEHOUSE. Okay.

General BARR. Okay.

Senator WHITEHOUSE. You might want to get out of that habit.

[Laughter.]

Senator WHITEHOUSE. You may have other things to look at.

General BARR. I'd like to have some fun in life.

Senator WHITEHOUSE. If you think citations are fun, you are going to—

[Laughter.]

Senator WHITEHOUSE. You are not going to have the problem some other nominees have had. My letter to you also asked about the Bork Order that set out a series of protections for the then-Independent Counsel operation. Do you have any objection to any of those rules or principles applying, and should we see those rules and principles, which I gave to you then, as being more or less adopted into the statement that you made earlier about your protection of the Mueller investigation from political interference?

General BARR. You know, I looked at them. I think the current regime is what I am happy with. In other words, I would not—I would not change the current rule that we are—those rules were put in place at the end of the Clinton administration, and sort of, I think, reflects the back-on-back experience of the Reagan/Bush years and then the Clinton years, and then sort of Justice Department's thinking under the Clinton administration as to how to balance all the equities. And I think it is working well. So that is—that is—

Senator WHITEHOUSE. Well, if there is anything that you would disagree with in the so-called Bork Rules, I would ask you to explain that in a—

General BARR. In a follow-up?

Senator WHITEHOUSE. In a follow-up.

General BARR. Okay. Okay.

[The information appears as a submission for the record.]

Senator WHITEHOUSE. Now, also in my letter to you, I expressed my concern that Mr. Whitaker was paid \$1.2 million through what I consider to be a front group that has very little reality to it, and that the funding that came to that front group to pay him the million dollars came through another entity that is essentially an identity-laundering operation that has no independent business operation. And the result of all of this is that somebody out there arranged to get over a million dollars to Mr. Whitaker, and we have no idea who that somebody is.

And as I mentioned to you in our conversation, I do not see how the Department can do a proper recusal and conflict analysis for somebody when the player who delivered the million dollars is still hidden behind the curtain. Is that something that you will help us fix?

General BARR. Well, first, you know, I do not think there was anything wrong done or, at least—

Senator WHITEHOUSE. Well, we do not know that yet because we do not know what the facts are.

General BARR. Yes. Well, I am just saying just the facts that you have said, you know, does not necessarily mean there was anything wrong done. What you are saying is that if the ultimate financial backers are behind some entity and the current ethics laws require only the reporting of the entity, you are not really sure where the money is coming from. And that—you know, I think that that raises a very interesting point that, I think, I would like to review with the ethics people and experts and even OGE to talk about that because I—the more I thought about it, the more I thought that the trick is going to be deciding what kind of entities and how far back you go because that can be said of a lot of different kinds of entities.

Senator WHITEHOUSE. Yes.

General BARR. And sometimes you have first—

Senator WHITEHOUSE. I would submit to you that if the Department's money laundering folks looked at this operation, they would see it as almost amateurish and simple and something quite easy to penetrate, and it would be quite easy simply to ask Mr. Whitaker what he knew, to ask whoever is still at FACT, if it even has any existence with Whitaker's departure, what they knew, and to ask Donor's Trust to cough up the identity of the donor, and then you can do your homework. And if they refuse to do that, nothing guarantees anybody a job at the highest levels of Government who is not willing to provide those disclosures.

General BARR. Well, as I said, you know, one of the—my first consideration always is, where do you—where do you draw the line, and also what are the implications for other kinds of entities because, you know, there are membership groups and First Amendment interests—

Senator WHITEHOUSE. Yes.

General BARR [continuing]. And you do not want to disclose memberships and who support—

Senator WHITEHOUSE. Yes. My point was, I think, if your money laundering folks took a look at that, they would be able to help show that this is something that looks a little bit different than that. My time has expired and see you in the second round. Thank you.

Senator GRASSLEY [presiding]. Senator Sasse.

Senator SASSE. I believe Senator Ernst is filling in for Senator Cruz next. Thank you, Mr. Chairman.

Senator GRASSLEY. Okay with me.

Senator ERNST. Thank you.

Mr. Barr, I want to commend you for stepping forward. Thank you very much. And I want to say thank you to your family as well for being so supportive in this endeavor. I am really pleased to have all of you here, so thank you for doing that.

Mr. Barr, later this month I do plan on reintroducing Sarah's Law, which is a bill that would require the detention of illegal aliens who have been charged with a crime that resulted in the death or serious injury, bodily injury, of another person. Now, that sounds pretty common sense, but I will give you a little background.

This bill is named after Sarah Root. She was a resident of Council Bluffs, Iowa, and Sarah was killed by an illegal alien who was driving drunk. And that alien had a blood alcohol content of more than 3 times the legal limit, yet he was allowed to post bond and has not been seen since. It is important to me that Congress act to close these loopholes in our immigration system and do better to enforce the laws that are already existing on the books. And I know that Attorney General Sessions, he had a real passion for this, and he had a strong record of trying to make sure that we are correcting wrongs in the system.

How do you, as Attorney General, plan on making sure that we are restoring the rule of law in our immigration system?

General BARR. Well, first, that sounds like a very commonsensical bill—

Senator ERNST. Yes, thank you.

General BARR [continuing]. And something that I would certainly be inclined to support. I think one of our major problems, as the— as the President says, is that the immigration laws just have to be changed, and to provide sensible and commonsense ways of processing immigration and claims of asylum. Right now, this goes— this goes all the way—this goes back 27 years. We were facing exactly the same kind of problem, maybe on a smaller scale.

But Congress has—where people are abusing the asylum system, coming in, they are being coached as to what to say, and then once they come in, we do not have the facilities to keep them, and they are released into the population. And this was a big abuse, as I say, 27 years ago, and it is getting—and it has gotten worse. So we need to change the laws to stop that kind of abuse and enable us to run a lawful immigration system where we process people into the country who are entitled to come into the country, and we keep out those that are flouting our laws. And it is long overdue, and the President is right that until we are able to do that, we are just not going to be able to get control over illegal immigration. And it creates a lot of unsafe conditions for many people.

Senator ERNST. Absolutely, and I appreciate your thoughts on that. This is a very important issue. I think all of us understand that immigration is so vital to our country, but it has to be done in the right manner. And for those that are causing bodily injury and death to those here in the United States, we want to make sure that they are brought to justice. And in this case, that illegal—undocumented was not brought to justice, and I feel a lot of empathy for that family.

I will move into another situation that is really important to Iowans. According to the U.S. Department of Health and Human Services, after drug dealing, human trafficking is tied with—arms dealing is the second-largest criminal industry in the world, and it generates about \$32 billion each year. The Department of Justice has said that 83 percent of sex trafficking victims identified in the United States are U.S. citizens with the average age of a victim being between 12 and 14 years. Twelve and 14 years. Since 2007, there have been over 300 cases of human trafficking in Iowa alone, and Iowa is a very rural State. Three hundred cases. That is very concerning to my constituents back home.

What do you see as the main contributor to human trafficking here in the United States, and then how can the DOJ impact and combat and prevent those heinous crimes?

General BARR. This is a—this is an area that, frankly, was not very much on the radar scope of the Department of Justice when I was last there. I know it is—and it is an abhorrent area of criminality that I know the Department and Attorney General Sessions have been focused on and have put in place various programs and entities within the Department to focus on it and work with State and local law enforcement on it. I am not sure what the—what the major contributor to it is. It is an area that I am going to have to study when I get into the Department and see what are the factors contributing to it.

Senator ERNST. Okay. I appreciate that, and as I mentioned in my question as well, drugs and drug trafficking, that is also a very, very big industry. And in Fiscal Year 2017, 65 percent of drug-related prison sentences in Iowa were related to methamphetamine. We talk a lot about the opioid crisis, but in Iowa it still is meth. In 2016, Iowa reported over 1,500 founded child abuse reports relating methamphetamine being found in the child's body. According to the DEA, most of the meth available in the United States is being produced in Mexico and smuggled across our southern border.

How do you see the situation at our southern border contributing to the prevalence of controlled substance use here in the United States?

General BARR. Well, as been pointed out earlier, it is the major avenue by which drugs come into the country. Heroin, fentanyl, all the serious drugs are coming across that border. And, again, I feel it is a critical part of border security that we—that we need to have barriers on the border. We need a barrier system on the border to get control over the border. And I think—obviously there are some places that more of the traffic comes over than others, but unless you have a system across the border, you are not going to be able

to deal with it because you will just displace it. If you build a barrier in one place, you will just displace it to another.

So we need a barrier system across the border to—part of that is illegal immigration, but a big part of it also is preventing the influx of drugs.

Senator ERNST. Absolutely. And you stated earlier that really, the head of the snake lies outside of the United States. Is there a way that DOJ can be working with additional ideas, methodology with other departments that you might think would help?

General BARR. Yes. You know, this is an area—again, because I am out of the Government, I do not know how it is functioning, how the drug war is being coordinated. But I think Justice can play a big role in pushing for partners like the State Department, Defense Department, the intelligence agencies, and so forth to help deal with this. It is not, to me, not just a law enforcement problem. It is a national security problem.

Senator ERNST. Yes. And you mentioned, as well, the situation on the border: where we do need barriers in place to control the influx of, whether it is drugs, human trafficking, gun trafficking, so forth. Do you believe that sanctuary cities play a role in harboring some of those activities?

General BARR. Yes, I do. I think there are a number of sort of—you know, of factors that have a hydraulic effect in that they pull people into the United States or induce them to make—you know, take the hazards of coming into the United States and coming up hundreds of miles through Mexico and so forth. And things like sanctuary cities, where they feel that they will be able to come up and hide and be protected is one of those factors that I think is irresponsible because it attracts the illegal aliens coming in. And obviously I think that the main problem with sanctuary cities is that they are not giving us information about criminals that they have in their custody.

This is not chasing after, you know, families or anything like that. This is going after criminals who the State and local law enforcement have in custody and not allowing us to take custody of them and get them out of the country. That is the problem with sanctuary cities.

Senator ERNST. Correct, which could be the situation with Edwin Mejia, who killed Sarah Root. So we would love to see that young man brought to justice. Thank you very much for your time.

Chairman GRAHAM [presiding]. Thank you.

Just to follow up on that with—Senator Klobuchar. Do not count this against her time.

So you are saying that you want access to people who have committed crimes or are accused of committing crimes outside of a status violation. Is that what—

General BARR. That is right, Senator.

Chairman GRAHAM. Senator Klobuchar.

Senator KLOBUCHAR. Thank you.

Thank you, Mr. Barr. I take it as a positive that your grandson has gotten out a pen and a pad of paper to take notes during my questions.

[Laughter.]

Senator KLOBUCHAR. I am also impressed by your daughters and that they all chose to go into public service. But as you know, employees of the Justice Department now are either furloughed or they are working without pay. And I have talked to a number of them at home, and it is an outrage. Very briefly, what do you have to say to them?

General BARR. I would—I would like to see a deal reached whereby Congress recognizes that it is imperative to have border security, and that part of that border security as a commonsense matter needs barriers.

Senator KLOBUCHAR. And you are aware that in the comprehensive Senate immigration bill that we passed, there was literally billions of dollars for border security back in 2013?

General BARR. I am generally aware of that.

Senator KLOBUCHAR. And that, also—we had an agreement earlier last year which would allow the DREAMers to stay legally that also had money for border security?

General BARR. The point is, we need money right now for border security—

Senator KLOBUCHAR. Yes, but we have—

General BARR [continuing]. Including a—including barriers, and walls, and slats, and other things.

Senator KLOBUCHAR. Yes.

General BARR. Anything that makes sense in different—in different areas of the border.

Senator KLOBUCHAR. Okay. In different areas. That is a good point. So President George H.W. Bush said back in 1980 that he did not want to see 6- and 8-year-old kids being made to feel that they are living outside the law, and you were his Attorney General. He also said that immigration is not just a link to America's past, but it is a bridge to America's future. Do you agree with those statements?

General BARR. Yes. I think—as I said, I think legal immigration has—we have a great system—I think it needs reforming, but legal immigration has been good for the United States. It has been great for the country.

Senator KLOBUCHAR. And that is why we were trying to work on that comprehensive reform. I want to just briefly turn to FBI leadership. The President has made statements accusing the FBI of making politically motivated decisions. Many of us up here and in the Senate have confidence in Director Wray and the leadership at the FBI and believe they can do their jobs without politics getting in the way. Do you agree with that?

General BARR. I am looking—if I am confirmed, I am looking forward to getting to know Chris Wray. From what I know, I think very highly of him.

Senator KLOBUCHAR. Okay. Thank you. In the memo from back in June—the one comment that Senator Grassley made, he talked about how much the Mueller investigation was costing. And I actually did a little Googling here, and there was a CNBC report that it actually could bring in more money than it costs because of the wealthy people being prosecuted, that Manafort's assets could be well over \$40 million. I do not know if that includes that ostrich

jacket. But do you think that is possible based on your experience with white-collar crime?

General BARR. I do not know enough about it.

Senator KLOBUCHAR. Okay. In your memo, you talked about the Comey decision, and you talked about obstruction of justice, and you already went over that, which I appreciate. You wrote on page 1 that a President persuading a person to commit perjury would be obstruction. Is that right?

General BARR. Yes.

Senator KLOBUCHAR. Okay.

General BARR. Well, you know, any person who persuades another—

Senator KLOBUCHAR. Any person.

General BARR. Yes.

Senator KLOBUCHAR. Okay. You also said that a President or any person convincing a witness to change testimony would be obstruction. Is that right?

General BARR. Yes.

Senator KLOBUCHAR. Okay. And on page 2, you said that a President deliberately impairing the integrity or availability of evidence would be an obstruction. Is that correct?

General BARR. Yes.

Senator KLOBUCHAR. Okay. And so, what if a President told a witness not to cooperate with an investigation or hinted at a pardon?

General BARR. You know, I would have to know the specific—I would have to know the specific facts.

Senator KLOBUCHAR. Okay. And you wrote on page 1 that if a President knowingly destroys or alters evidence, that would be obstruction.

General BARR. Yes.

Senator KLOBUCHAR. Okay. So, what if a President drafted a misleading statement to conceal the purpose of a meeting? Would that be obstruction?

General BARR. Again, you know, I would have to know the—I would have to know the specifics.

Senator KLOBUCHAR. You would seek the advice of career ethics officials in the Department of Justice for any recusal, and I appreciate that. And you said in the past that you commended Attorney General Sessions for following the advice of those ethics lawyers, but you did not commit today to following that advice. Is that right?

General BARR. No, I did not—I did not commend him for following the advice. As the Agency had, he makes his—he is the one responsible for making the recusal decision. I do not know why he said—locked himself into following the advice. That is an abdication of his own responsibility.

Senator KLOBUCHAR. So what did you think about what Acting Attorney General Whitaker did when he rejected the Justice Department's ethics advice to recuse himself out of an abundance of caution?

General BARR. I have not seen the advice he got, and I do not know the specific facts. But an abundance of caution suggests that it could have gone either way.

Senator KLOBUCHAR. You have committed to recuse yourself from matters involving the law firm where you currently work. Are you aware of any of your firm's clients who are in any way connected to the Special Counsel's investigation?

General BARR. I am not—I am not aware. You know, I—to tell the truth, I am Of Counsel there, and I have one client which I am representing, and I do not pay very much attention to what else is going on.

Senator KLOBUCHAR. Okay. Well, you can also supplement that.

General BARR. Yes, I will supplement my answer.

Senator KLOBUCHAR. Okay. No problem.

[The information appears as a submission for the record.]

Senator KLOBUCHAR. Will you commit to make public all of the report's conclusions—the Mueller report—even if some of the evidence supporting those conclusions cannot be made public?

General BARR. You know, that certainly is my goal and intent. It is hard for me to conceive of a conclusion that would, you know, run afoul of the regs as currently written. But that is certainly my intent.

Senator KLOBUCHAR. Secure elections. You and I had a talk about that in my office. Do you think backup paper ballots are a good idea? This is a bill that Senator Lankford and I have introduced with Senator Graham and Senator Harris.

General BARR. Yes, I do not know what is a good idea and what is a bad idea right now because I have not gotten into this area. But—

Senator KLOBUCHAR. Okay. Well, I will just tell you, backup paper ballots is a good idea.

General BARR. Okay.

Senator KLOBUCHAR. And we can talk about it later as well as—

General BARR. Yes.

Senator KLOBUCHAR. Audits, along the lines of voting, State election officials in North Carolina, as you know, contacted the Justice Department about the integrity of their elections. The Justice Department may have failed to take action in a timely manner. What steps would you take to make sure these failures do not occur again?

General BARR. Not specifically with respect to North Carolina. You are talking generally.

Senator KLOBUCHAR. Yes.

General BARR. Yes. Well, as I say, I want to make one of my priorities the integrity of elections. And so, this is not an area I have been involved with deeply before. And when I get to the Department if I am confirmed, I am going to start working with the people and making sure that those kinds of things do not happen.

Senator KLOBUCHAR. Part of this, of course, is also voting rights and our concern about some of the changes in Department policy. And I hope you will seriously look at that because the last thing we should be doing is suppressing voting, and that is what we have been seeing under this current administration. My dad was a reporter, so I grew up knowing the importance of a free press. We obviously have the tragic case of a journalist who worked right here at The Washington Post, Jamal Khashoggi, and it is a par-

ticular concern. So I want to ask you something I asked Attorney General Sessions. If you are confirmed, will the Justice Department jail reporters for doing their jobs?

General BARR. I think that—you know, I know there are guidelines in place, and I can conceive of situations where, you know, as a—as a last resort and where a news organization has run through a red flag or something like that, knows that they're putting out stuff that will hurt the country. There might be a—there could be a situation where someone would be held in contempt, but—

Senator KLOBUCHAR. Well, Attorney General Sessions had said he was going to look at potentially changing those rules at one point, so I would like you to maybe respond in writing to this because that was very concerning.

[The information appears as a submission for the record.]

Senator KLOBUCHAR. And last, when you and I were in my office, we talked about your work with Time Warner with this major merger on appeal from the Justice Department. And I just wanted you to commit today to me in the office that you would recuse yourself from any matters regarding that appeal.

General BARR. Absolutely.

Senator KLOBUCHAR. Okay. And, as you know, you were on the board of Time Warner at the time, and you signed a sworn affidavit questioning whether the Justice Department's decision to block the merger was politically motivated, "given"—and this is from the affidavit—"the President's prior public animus toward the merger." Are you talking here about his view on CNN? What did you mean by "prior public animus"?

General BARR. I am sorry. Could you repeat that?

Senator KLOBUCHAR. Sure. You were on the board of Time Warner, and you signed a sworn affidavit questioning whether the Justice Department's decision to block the merger was politically motivated, "given the President's prior public animus toward the merger." And so, what did you mean by that?

General BARR. I mean that the affidavit speaks for itself, and that at that meeting I was concerned that the Antitrust Division was not engaging with some of our arguments, and I got concerned that they were not taking the merits as seriously as I would hope they would. But I have no—I am not sure why they acted the way they did.

Senator KLOBUCHAR. Okay, very good. And I will ask you more on antitrust policy-wise in the second round, and I appreciated the discussion we had on that. It is very important. Thank you very much.

General BARR. Okay.

Chairman GRAHAM. Thank you.

Senator Hawley did a good thing by allowing Senator Ernst to go because no good deed goes unpunished around here, but you do have a credit with the Chairman, so I appreciate that.

Senator Cruz, you are next.

Senator CRUZ. Thank you, Mr. Chairman.

Thank you, Senator Hawley, as well, and welcome to the Committee.

Welcome to all the new Members of the Committee.

And congratulations, Mr. Chairman. We are looking forward to the Lindsay Graham Chairmanship of Judiciary, and I am sure if—

Chairman GRAHAM. They will make a movie about it, I am sure.

Senator CRUZ. I am certain whatever else happens, it will not be boring.

Welcome, Mr. Barr. Congratulations on your nomination yet again. And let me say, thank you. You and I have visited before about this, but the past 2 years have been a difficult time at the Department of Justice, and you and I—and many on this Committee—hold the Justice Department in very high esteem, indeed, I would even say revere the Department and its century-long tradition of enforcing the law without regard to party and without regard to partisanship, and I commend you for your willingness to go back and serve once again. I think that is a good step for the Department, and a good step for strengthening the Department.

You know, I would note, 27 years ago, when you did this previously, when you were last nominated to be Attorney General, and I think you may have been about Liam's age at the time, it was a different time. Then-Chairman of the Judiciary Committee, Joe Biden, said at the time, that he found you to be, quote, "honest," and that you, quote, "understand and are committed to the dual responsibility of the office of the Attorney General." Chairman Biden also said, that, quote, "This commitment to the public interest above all else is a critical attribute in an Attorney General, and I will vote to confirm Mr. Barr."

Senator Ted Kennedy likewise noted your dedication to public service.

Senator Fritz Hollings said, quote, "Mr. Barr has a distinguished academic background, an impressive experience in the private sector, as well as in public service. Most important, Bill Barr is a known quantity. He has done a truly outstanding job as Deputy Attorney General for the last year-and-a-half, during which time he has worked with many of us in this body, earning our respect for his professionalism and confidence."

And Senator Kohl said, that, quote, "Your willingness to discuss the issues is a refreshing change in the confirmation process, and it would be wise of future nominees to follow Mr. Barr's example."

At that hearing, you were confirmed by this Committee unanimously, as you had been twice previously for senior appointments to the Department of Justice.

Now, we all recognize that was a different time. I think, given the environment we are in now, few expect this Committee vote to be unanimous. But I would hope those voices from the past, from Democrats who were respected by Members of this Committee, will be heard today as well.

One of the questions you were asked, if I might paraphrase, was why on earth would you take this job? And your answer, if I recall correctly, concerned your commitment both to the Department and the rule of law.

Would you tell this Committee, in your judgment, why the rule of law matters? Why is that important?

General BARR. Well, you know, as our Framers said in the Federalist Papers, the art of setting up a government is to have a gov-

ernment that is strong enough to perform the functions that the government has to perform while at the same time not being so strong that it can oppress its own people, and the rule of law ensures precisely that the Government does not oppress its own people.

And when people are accused of wrongdoing, our system essentially gives them the benefit of the doubt and gives them rights to bring them up essentially to the same level as the Government, and the process we go through is there to ensure that justice is not arbitrary but it is done according to a set of rules, and the basic protection that we have is that the rule that applies to one applies to all. That, at the end of the day, is what keeps us all free. That is the protection of individual freedom.

And to me, the rule of law is exactly that, that we do not allow special rules to go into effect for a particular individual. A rule has to be universalized. Anything we do against A has to be universalized across everyone who is similarly situated. That is our basic protection, and to me that is what the rule of law is.

Senator CRUZ. So, I do not want to see a Republican Department of Justice or a Democratic Department of Justice. I do not want to see a Republican FBI or a Democratic FBI. What we should see, what the American people have a right to see and a right to expect, is a Department of Justice that is committed to and faithful to the Constitution and the laws regardless of political party, and a corollary to that is a Department that is willing to hold anyone who commits criminal conduct accountable regardless of that individual's political party or whatever partisan interest there might be. Would you agree with that characterization?

General BARR. Yes, Senator.

Senator CRUZ. I would note, as well, during the previous administration there was concern by many—including me—on this Committee, that the previous administration, and in particular the IRS, had targeted individual citizens and citizen groups for exercising their First Amendment rights and had abused its power in doing so.

In the current Justice Department, I have been dissatisfied with the degree of scrutiny they have given to that potential abuse of power, and I am going to ask you going forward, if you are confirmed, to examine that conduct and ensure that if laws were broken, that individuals are held accountable.

Let me shift to a different topic. One of the most important safeguards of our liberties is the Bill of Rights, and the Attorney General has a unique responsibility defending the Constitution. Can you share for this Committee, in your view, the importance of free speech, of the protections that the First Amendment provides to Americans to speak, and even to speak on unpopular or politically disfavored topics?

General BARR. I think free speech is at the core of our system because we believe in the democratic process and power shifting through the processes of voting by an informed electorate, and free speech is foundational to the ability to have a democratic process. The Framers, I think, believed that the dialectic, the clashing of ideas in the public marketplace, is the way to arrive at the truth, and that is one function.

Another function of free speech is that it is the substitute for other means of settling differences. In some ways it is a safety valve. People are allowed to speak their mind and persuade their neighbors of their position, and I think that performs a very important function in keeping the peace within a community. And if speech is suppressed, it can lead to the building up of pressures within society that sometimes can be explosive.

Senator CRUZ. How about your views on religious liberty, and would you share your thoughts on the importance of the religious liberty protections in the First Amendment in terms of protecting our diverse and pluralistic society?

General BARR. Yes. I think the Framers believed that our system—they said that our system only works if the people are in a position to control themselves. Our Government is an experiment in how much freedom we can allow the people without tearing ourselves apart, and they believed fewer laws, more self-control; and they believed that part of that self-control—and I know there are many people here who disagree, not here but in our society who disagree. But they believed part of that self-control ultimately came from religious values. I think it is an important underpinning of our system that we permit—I believe in the separation of church and state, but I am sometimes concerned that we not use governmental power to suppress the freedoms of traditional religious communities in our country.

Senator CRUZ. A final question. The Department of Justice is charged with defending the United States, but that does not mean that the Department of Justice always must argue for maximum Federal power. There are important restraints on Federal power, whether civil liberties protections in a criminal context, whether the Takings Clause, or whether the Tenth Amendment and federalism.

Can you briefly share your thoughts on the appropriate balance of respecting limitations on Federal power?

General BARR. Well, as you say, the Constitution has many different forms of restraint on Federal power. Part of it is, in fact, the separation of powers within the Federal Government. A part of it is the balance between the Federalist system we have and the central Government and respecting the rights of the States and local communities. And part of it is the Bill of Rights, that on certain topics it constrains the role of Federal Government, and those are all important checks on Federal power.

I am concerned about our country becoming just a unitary state that we try to govern centrally, 350 million people. I think a lot of our current tensions in society are because we are turning our back on the Federalist model. There are certain things that have to be protected by the Federal Government. There are no ifs, ands, or buts about that. But the more we can decentralize decisionmaking, the more we can allow people real diversity in the country of approaches to things, I think we will have less of an explosive situation.

Senator CRUZ. I very much agree.

Thank you, Mr. Barr.

Chairman GRAHAM. The freedom of speech has to be balanced by the freedom to question.

Senator Coons.

Senator COONS. Congratulations, Chairman Graham. I look forward to working with you in this Congress.

And thank you, Mr. Barr, to you and your family for their service to our country through Federal law enforcement and the Department of Justice.

You just faced some questioning from Senator Cruz about your own confirmation hearing back in 1991, and I would like to take us back to a previous confirmation hearing which was at a more similar time to today, 1973.

Senator Leahy asked you about the confirmation of Elliot Richardson, President Nixon's nominee to be Attorney General. That confirmation took place in the context of a similarly divided period in American history where there was great concern over the, at that point, ongoing Watergate investigation. Elliot Richardson reassured the country by making some important commitments during his confirmation hearing before this Committee. Then-Senator Strom Thurmond asked Richardson if he wanted a Special Prosecutor who would, and I quote, "shield no one and prosecute this case, regardless of who is affected in any way, shape or form." Richardson responded, "Exactly."

Do you want Special Counsel Mueller to shield no one and prosecute the case regardless of who is affected?

General BARR. I want Special Counsel Mueller to discharge his responsibilities as a Federal prosecutor and exercise the judgment that he is expected to exercise under the rules and finish his job.

Senator COONS. Senator Kennedy followed up by asking Richardson if the Special Prosecutor would have the complete authority and responsibility for determining whom he prosecuted and at what location. Richardson said, simply, "Yes." Would you give a similar answer?

General BARR. No. I would give the answer that is in the current regulations, which is that the Special Counsel has broad discretion, but the Acting Attorney General, in this case Rod Rosenstein, can ask him about major decisions, and if they disagree on a major decision, and if, after giving great weight to the Special Counsel's position, the Acting Attorney General felt that it was so unwarranted under established policies that it should not be followed, then that would be reported to this Committee.

Senator COONS. Forgive me. I have got only 7 minutes left. I have a number of other questions. Let me just make sure I understand you.

Senators asked Elliot Richardson what he would do if he disagreed with the Special Prosecutor. Richardson testified to the Committee the Special Prosecutor's judgment would prevail. That is not what you are saying. You are saying—

General BARR. That is not—that is not—

Senator COONS. You are saying if you have a difference of opinion with Special Counsel Mueller, you will not necessarily back his decision. You might overrule it.

General BARR. Under the regulations, there is the possibility of that. But this Committee would not—would be aware of it.

You know, a lot of water has gone under the dam since Elliot Richardson. A lot of different administrations of both parties have

experimented with Special Counsel arrangements, and the existing rules, I think, reflect the experience of both Republican and Democratic administrations and strike the right balance. They are put together in the Clinton administration after Ken Starr's investigation.

Senator COONS. That is right. So the current regulations on the books right now prevent the Attorney General from firing without cause the Special Counsel. They require misconduct, dereliction of duty, incapacity, conflict. Will you follow that standard?

General BARR. Of course.

Senator COONS. What if the President asked you to rescind or change those Special Counsel regulations?

General BARR. I think those Special Counsel regulations should stay in place for the duration of this investigation, and we can do a postmortem then. But I have no reason to think they are not working.

Senator COONS. So, most famously, when directed by President Nixon to fire the Special Counsel, the Prosecutor investigating Watergate, Richardson, refused and resigned instead, as we all well know.

If the President directed you to change those regulations and then fire Mueller, or simply directly fired Mueller, would you follow Richardson's example and resign instead?

General BARR. Assuming there was no good cause?

Senator COONS. Assuming no good cause.

General BARR. I would not carry out that instruction.

Senator COONS. Let me bring us forward to your 1991 hearing in front of this Committee. You explained at the time how you would handle the BCCI case; and ironically, Robert Mueller, the same individual, was at that point the head of the Criminal Division, and you testified that you had directed Mueller to spare no resources, use whatever resources are necessary and pursue the investigation as aggressively as possible, and follow the evidence anywhere and everywhere it leads.

Would you give similar direction to Robert Mueller today?

General BARR. I do not think he needs that direction. I think that is what he is doing.

Senator COONS. You also said at that hearing that Robert Mueller and that investigation had full cooperation, full support, and *carte blanche*. Could he expect a similar level of support from you as Attorney General?

General BARR. He will—as I said, I am going to carry out those regulations, and I want him to finish this investigation.

Senator COONS. I think we all do, and I am encouraged by things you have said about this and just want to make sure we have had as clear a conversation as we can.

Attorney General Richardson also testified the relationship between the President and the Justice Department should be arm's length. You have said similar things about the importance of shielding the Department from political influence.

Can you make a similar commitment to us to maintain an arm's length relationship between the Justice Department and the President regarding the Special Counsel investigation and other investigations?

General BARR. Well, remember I said that there are like three different functions generally that the Attorney General performs? I think on the enforcement side, especially where matters are of either personal or political interest to people at the White House, then there would be—there has to be an arm's length relationship. The White House Counsel can play a constructive role in that as well.

Senator COONS. Let me ask, if the President asked for information that could well be used to interfere with the Special Counsel investigation to misdirect or curtail it in some way, would you give it to him?

General BARR. There are rules on what kind of information can flow and what kind of communications can go between the White House, and I would follow those. But the basic principle is that the integrity of an investigation has to be protected. There are times where you can share information that would not threaten the integrity of an investigation, for example when I was Attorney General and we were investigating something that related to President—someone who had a relationship with President Bush. I could just orient them that there is going to be a story tomorrow that says this, but in that particular case, there was no chance that it would affect the investigation. So sometimes judgment calls are necessary.

Senator COONS. If you learn that the White House, not directly through you but through other means, was attempting to interfere with the investigation, would you report that information to the Special Counsel and to Congress?

General BARR. There are some conclusions in there about interfering. If I thought something improper was being done, then I would deal with it as Attorney General.

Senator COONS. Last, in that confirmation hearing back in 1973, then-Senator Birch Bayh of Indiana asked Richardson: "Suppose the prosecutor determines it is necessary to get the President's affidavit or to have his testimony personally. Would that be the kind of determination he, the Special Prosecutor, could make?" Richardson said, "Yes."

Will you give a similar answer today that you will not interfere with Special Counsel Mueller seeking testimony from the President?

General BARR. I think, as I say, the regulations currently provide some avenue if there is some disagreement. I think that in order to overrule Mueller, someone would have to determine—the Attorney General or the Acting Attorney General would have to determine, after giving Mueller's position great weight, that it was so unwarranted under established policies that it should not be done. So that is the standard I would apply. But I am not going to surrender the—the regulations give some responsibility to the Attorney General to have this sort of general—not day-to-day supervision, but sort of be there in case something really transcends the established policies. I am not surrendering that responsibility. I am not pledging it away.

Senator COONS. What gives me pause and sort of led me to this line of questioning, Mr. Barr, was that June 2018 memo you sent to the Deputy Attorney General in which at one point you state

Mueller should not be permitted to demand the President submit to interrogation about alleged obstruction. If the Special Counsel wants to subpoena the President's testimony to ask questions about obstruction, and you are supervising the investigation, would you rely on that theory to block the subpoena?

General BARR. Well, the question for me would be what is the predicate, you know, and I do not know what the facts are. I do not know what the facts are. If there was a factual basis for doing it and I could not say that it violated established policies, then I would not interfere. But I do not know what the facts are.

Senator COONS. Well, if I might just in closing, Mr. Chairman, we are in this unique situation where you have known Robert Mueller for 30 years. You said you respect and admire his professionalism, his conduct. He is been entrusted by you with significant, complex investigations in the past. There is no reason to imagine, since he is the person who would know the facts, that he would not be acting in an inappropriate way. So it is my hope, even my expectation, that you would trust Robert Mueller to make that decision about whether to compel the President to testify in an appropriate way, and that he would not face any interference.

Thank you for your testimony today. I look forward to the next round.

General BARR. Thank you.

Chairman GRAHAM. Senator Sasse.

Senator SASSE. Thank you, Mr. Chairman, and congratulations on your new calling here. While I might have career advice, I will not do it on camera. We want to know if you are taking notes for your cousins about career advice that we will ask you later.

General, congratulations on your nomination, and thanks for your past service. I had planned to ask you for some pledges related to the Mueller investigation in private to me. In public today, I think you have already done that.

How should the American people think about what the Mueller investigation is about?

General BARR. I think that there were allegations made of Russian attempts to interfere in the election, and there were allegations made that some Americans were in cahoots with the Russians, and the word that is now being used is collusion. As I understand it, Mueller is looking into those allegations.

Senator SASSE. You know, a lot of the media summary of the investigation starts with people's views and who they voted for in the 2016 presidential election. And for those of us who spend a lot of time reading intelligence reports—a handful of us on this Committee are about to leave to go to an intelligence briefing—what Russia is doing to the U.S. is big and broad and not constrained to the 2016 election. And increasingly, it feels like the American people reduce Russia to just how you thought about the 2016 presidential election.

So, since you will have serious supervisory responsibilities over parts of the intelligence community, is Putin a friend or a foe, and what are his long-term objectives for the U.S.?

General BARR. Well, I do not hold myself out as a foreign policy expert, but I think that he is—I think the Russians are a potent rival of our country, and his foreign policy objectives are usually di-

rectly contrary to our goals. I think he wants to weaken the American alliances in Europe, and he also wants to become a player in the Middle East, more of a player in the Middle East. A lot of his foreign policy objectives are at odds with ours.

At the same time, I think the primary rival of the United States is China. I think, you know, Russia is half the size it was when we were facing them at the peak of the cold war. Their economy is—long-term prognosis is nowhere near China's.

I also feel that part of what Russia is up to is trying to hold onto Ukraine and Belorussia in their orbit. But I am concerned that the fixation on Russia not obscure the danger from China.

Senator SASSE. I want to ask you some China questions as well. I want to ask about your role on the President's Intelligence Advisory Board.

But sticking with Russia for a minute, does Putin have any long-term ideological alignment with the U.S., or does he have other objectives, trying to sow discord broadly here?

General BARR. You know, I am not an expert on this area, but I think there are—I think there may be some potential areas where our interests could be aligned.

Senator SASSE. But when he interferes here, does he have long-term interests in the success of one or another political party, or does he have specific interests in sowing chaos and discord to make Americans distrust one another? And one of the reasons I ask is, because I would love to have you say in public some of what you said to me, about at the end of this investigation, what happens next. Are you concerned that when the Mueller report is received, quite apart—the narrowest pieces—you know where I am headed.

General BARR. So, I mean, I think that the basic vulnerability of the United States in the age in which we live, the internet age, the globalization of information and so forth, is the vulnerability that we are seeing, which is people can create doubt, undercut confidence in our election process, and also torque our public discourse in ways that we find hard to perceive, and this has long-term danger for the United States and the survival of a democratic society like ours. And so I hope that whatever the outcome of the Mueller investigation, that we view this as a bigger problem of foreign interference in our elections, which is why I said it was one of my priorities, and it is not just the Russians. It is other countries as well, and we have to focus on that. We have to ensure that we are doing all we can.

I am not sure all of that is defensive either. I mean, in terms of law enforcement, I think we have to look at all options, including sanctions and other options to deter organized efforts to interfere in our elections.

Senator SASSE. So you have no reason to doubt any aspect of the intelligence community's composite assessment about Russian efforts in the 2016 election?

General BARR. I have no reason to doubt that the Russians attempted to interfere in our election.

Senator SASSE. And Dan Coats, the National Intelligence Director, has testified in public and has said in different media contexts that Russia is already plotting for the 2020 elections in the U.S. You have no reason to doubt that?

General BARR. I have not—you know, I have not seen those reports. I had reviewed the reports about the 2016, but I have no reason to doubt it.

Senator SASSE. And can you explain what your role is on the President's Intelligence Advisory Board?

General BARR. I am actually a consultant. I am an adviser on sort of legal issues. Obviously, I am stepping down from that position if I am confirmed. But I have been just advising. I am not a member of the board. I am on the CIA's External Advisory Board and, you know, have been participating on that as well.

Senator SASSE. When you talk about the long-term Chinese efforts to also sow different kinds of discord in the U.S., obviously not crossing any classified lines here, but long-term interests that other countries have in strategic rivalry with the U.S. to use gray space and information operations warfare against us, how do you see the role of the National Security Branch, and the FBI more broadly, fitting into the larger IC, and what responsibilities do you see would be on your priority list as you arrive at the Department?

General BARR. Well, you know, I have been out of the Department for so long. You know, I am not really sure about how that is currently being handled. You know, I also think that we have had our attention focused on terrorism, which we cannot let up. And, but I want to make sure that—and I am sure Chris Wray is on top of this and, you know, looking forward to talking to him about it. But making sure that the Bureau is playing, you know, a central role in combating, you know, efforts by foreign countries to engage in those kinds of hostile intelligence activities.

Senator SASSE. You have unpacked a couple of times today the three different roles or functions of the Attorney General. Could you do that one more time in summary? And then I want to ask you a particular question. What are those three roles, as you see them?

General BARR. I see the three roles. In 1789, the first—set up the office. The first role was providing advice to the President and the Cabinet and representing the United States in cases before the Supreme Court. And I see the three roles as providing advice, being a policy adviser on legal and law enforcement policy issues, and the top law enforcement officer enforcing the laws.

Senator SASSE. And so in no way would the job of protecting the President be a subset of any of those three jobs? The language of "protecting the President" has been used occasionally in this administration to refer to the way it was conceived of how Eric Holder did his job. Is there any sense in which it is the Attorney General's job to protect the President?

General BARR. No, that was not included in my description of the role of the Attorney General. Obviously, as a policy—in the policy arena, the Attorney General is someone who should be sympathetic to the administration and its policy goals.

Senator SASSE. But there are circumstances where those three roles could come into some internal conflict, or you could be asked to do things that do not align with them. And there is probably a list that you have—I will not ask you to enumerate it here. But there is probably a list of issues where you could imagine needing

to resign because of what you were asked to do in the space of so-called protecting the President?

General BARR. If I—if I was ever asked to do something that I felt was unlawful and directed to do that, I would not do it, and I would resign rather than do it. But I think that should be true of every officer who serves anywhere in Government, whatever branch.

Senator SASSE. I am at time. But I had a series of questions related to some of what Senator Ernst said about Sarah's Law. She and I have jointly been active in that space. The tragic case of the young woman that she was talking about from Council Bluffs was actually—it occurred in Omaha.

And Edwin Mejia, her killer, is still at large, and both the last administration and this administration have not prioritized that enough in our understanding. And I imagine that Senator Ernst and I will follow up with a letter to you on that as well.

Thank you.

Chairman GRAHAM. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. I congratulate you, and I look forward to working with you and congratulate also the new Members of our Committee that have joined us.

And thank you very much, Mr. Barr, for being here today, for your past record of public service, and I hope I am perhaps the last to make reference to your grandson by saying that if he makes it through this hearing today, he can have any job he wants in this building.

[Laughter.]

Senator BLUMENTHAL. Let me say first that as a former United States Attorney, I share your allegiance and admiration for the Department of Justice and, equally so, the Federal Bureau of Investigation, and I know that you respect Mr. Wray, the current Director. But I think you would agree with me that the FBI is probably one of the best, if not the most professional, accomplished, skilled, and dedicated law enforcement agencies in the world. Would you agree?

General BARR. Yes, Senator.

Senator BLUMENTHAL. And I hope that the President agrees with you and perhaps shares that view more publicly in the future.

When the FBI begins a counterintelligence investigation, if it is of the President of the United States for working with a foreign adversary, that decision would be subject to multiple levels of review within the FBI. Correct?

General BARR. I assume. I do not know what rules were in effect at the time.

Senator BLUMENTHAL. Well, in your experience, it would be?

General BARR. Yes. Yes.

Senator BLUMENTHAL. And you have no reason to think that those rules have changed?

General BARR. I do not know what the practice was. There was—

Senator BLUMENTHAL. And almost certainly in that kind of extraordinary investigation, you would agree with me it would be extraordinary for the FBI to be investigating the President for working with a determined foreign adversary. There probably would be

information shared with the Deputy Attorney General or the Attorney General. Agree?

General BARR. I would hope so. The reason I am hesitating is because some of these texts that we have all read are so weird and beyond my experience with the FBI, I do not know what was going on.

Senator BLUMENTHAL. Well, these reports are stomach-turning in terms of the absolutely stunning and unprecedented kind of investigation that they reflect. You would agree?

General BARR. You mean the texts are stomach-turning?

Senator BLUMENTHAL. The reports of the investigation of the President.

General BARR. I am not sure what you are talking about when you say, "the reports of the investigation."

Senator BLUMENTHAL. The reports that the FBI opened an investigation of the President for working with a foreign adversary, Russia.

General BARR. And what is stomach-turning about that? Which—what is stomach-turning, the allegation against the President—

Senator BLUMENTHAL. That that kind of—

General BARR [continuing]. Or the fact that an allegation would be made and be under investigation?

Senator BLUMENTHAL. Well, let me move on. I want to talk about transparency. Would you commit—will you commit to this Committee that you will not allow the President or his attorneys to edit or change the Special Counsel report before it is submitted to Congress or the public?

General BARR. I already said that I would not permit editing of my report, whatever report I—or whoever is the Attorney General, makes.

Senator BLUMENTHAL. And will you commit that you will come to Congress and explain any deletions or changes that are made to that report before it is issued?

General BARR. Okay. So there are different reports at work here. Which report are you—there are two different reports—

Senator BLUMENTHAL. I am talking about the Special Counsel report.

General BARR. Okay. Well, under the current regulations, the Special Counsel report is confidential. The report that goes public would be a report by the Attorney General.

Senator BLUMENTHAL. Will you commit that you will explain to us any changes or deletions that you make to the Special Counsel report that is submitted to you in whatever you present to us?

General BARR. I will commit to providing as much information as I can, consistent with the regulations. Are you saying, for example, that if information is deleted that would be like, for classification purposes, I would identify that and things like that?

Senator BLUMENTHAL. Well, that you will commit to explaining to us what the reasons are for your deleting any information that the Special Counsel includes that you are preventing us—or the public—from seeing?

General BARR. That would be my intent. I have to say that the rules—I do not know what kind of report is being prepared. I have

no idea. And I have no idea what Acting Attorney General Rosenstein has discussed with Special Counsel Mueller.

If I am confirmed, I am going to go in and see what is being contemplated and what they have agreed to and what their interpretation—you know, what game plan they have in mind.

Senator BLUMENTHAL. Will you permit the Special Counsel—

General BARR. But my purpose is to get as much accurate information out as I can, consistent with the regulations.

Senator BLUMENTHAL. Well, the regulations and rules give you extraordinarily broad discretion. And I am hoping, and I am asking you to commit, that you will explain to us information that you have taken out of that Special Counsel report.

And, I also want to ask you about restrictions on the Special Counsel. Will you commit that you will allow the Special Counsel to exercise his judgment on subpoenas that are issued and indictments that he may decide should be brought?

General BARR. As I said, I will carry out my responsibilities under the regulations. Under the regulations, whoever is Attorney General can only overrule the Special Counsel if the Special Counsel does something that is so unwarranted under established practice. I am not going to surrender the responsibilities I have.

I would—you would not like it if I made some pledge to the President that I was going to exercise my responsibilities in a particular way. And I am not going to make the pledge to anyone on this Committee that I am going to exercise it in a particular way or surrender it.

Senator BLUMENTHAL. Will you allow the Special Counsel to exercise his judgment as to what resources are necessary? Will you meet those needs for resources?

General BARR. That would be my expectation. I think, you know, I mean, if you believe the media, they are sort of starting to reduce their resources. So I would not expect that would be a problem.

Senator BLUMENTHAL. Will you allow the Special Counsel to exercise his judgment as to what the scope should be? The President has talked about red line around finances. Will you allow the Special Counsel to exercise his judgment about what the scope should be, even if the President says that there should be red line?

General BARR. I think the scope of the investigation is determined by his charter from the Acting Attorney General. And if he wants to go beyond that charter, I assume he would come back and talk to whoever the Attorney General is about that.

Senator BLUMENTHAL. Will you impose any restrictions on other prosecutors who are also investigating the President? As you are well aware, in the Southern District of New York, the President has been named, in effect, as an unindicted co-conspirator. The Eastern District of Virginia has an investigation that is relevant to the President. Will you impose any restrictions on those prosecutors?

General BARR. The Office of Attorney General is in charge of the—with the exception of the Special Counsel, who has special rules applicable to him—is in charge of the work of the Department of Justice.

Senator BLUMENTHAL. But you have a responsibility to allow prosecutors to enforce the law.

General BARR. I have a responsibility to use my judgment and discretion that are inherent in the Office of Attorney General to supervise, and I am not going to go around saying, well, this U.S. Attorney, or that U.S. Attorney, I am going to defer to. And——

Senator BLUMENTHAL. Well, you referred earlier about the possibility of firing——

General BARR. Excuse me?

Senator BLUMENTHAL [continuing]. A United States Attorney. Would you allow the President to fire a United States Attorney and thereby stop an investigation?

General BARR. I would not stand by and allow a U.S. Attorney to be fired for the purpose of stopping an investigation, but the President can fire a U.S. Attorney. They are a presidential appointment.

Senator BLUMENTHAL. But the President should have a cause beyond simply stopping an investigation for firing a United States Attorney, even if he or she is a political——

General BARR. Well, as I said, I would not stand by and allow, you know, an investigation to be stopped if I thought it was a lawful investigation. I would not stand by for that. But the President is free to fire his, you know, officials that he has appointed and——

Senator BLUMENTHAL. I want to ask a different—a question on a different topic. You have said that, and I am quoting you, “I believe *Roe v. Wade* should be overruled.” You said that in 1991.

Do you still believe it?

General BARR. I said in 1991 that I thought, as an original matter, it had been wrongly decided. And that was, what—within 18 years of its decision? Now it has been 46 years, and the Department has stopped—under Republican administrations stopped as a routine matter asking that it be overruled, and I do not see that being turned—you know, I do not see that being resumed.

Senator BLUMENTHAL. Would you defend *Roe v. Wade* if it were challenged?

General BARR. Would I defend *Roe v. Wade*? I mean, usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that. I think the Justices, the recent ones, have made clear that they consider *Roe v. Wade* an established precedent, and it has been on the books 46 years.

Senator BLUMENTHAL. And you would enforce the Clinic Access Protection Act?

General BARR. Absolutely.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman.

Mr. Barr, congratulations on your nomination. Thank you for being here.

You were eminently qualified for this position when you were confirmed unanimously by this Committee 27 years ago, and you are eminently qualified today. It is a pleasure to have you here.

I wanted to start where Senator Blumenthal started as well, with the reports about the FBI counterintelligence investigation launched against the President, which I also find to be stomach-

turning, though perhaps for different reasons. The New York Times report indicates that the FBI began the probe in part because they were concerned about the President's foreign policy stances, comments he made during the 2016 campaign about foreign policy, and the Republican Party's official position on the Ukraine.

In your experience with the FBI, is it strange to have a counter-intelligence investigation begun because members of that Bureau disagree with the foreign policy stances of a candidate for President or a President of the United States?

General BARR. Yes.

Senator HAWLEY. The Supreme Court has been unequivocal that the President—in our system of Government, the President possesses, and I am going to quote now, “the plenary and exclusive power as the sole organ of the Federal Government in the field of international relations, a power which does not require as its basis—as a basis for its exercise an act of Congress.”

That is the very famous *Curtiss-Wright* case. To your knowledge, is that still good law?

General BARR. Yes.

Senator HAWLEY. And do you think that was rightly decided?

General BARR. Yes.

Senator HAWLEY. Let me ask you this: Would it concern you as Attorney General if FBI agents were making decisions about when and how to launch an investigation of an elected official if it was in order to avoid being supervised or directed by their agency leadership? Would that be concerning to you?

General BARR. Yes.

Senator HAWLEY. As is, I might just add, reported by The New York Times.

Let me switch gears and ask you about another topic that you mentioned a little bit earlier in the field when we were talking generally about antitrust. This is something, you talk about things that have changed in the 27 years since you were last here, one of the things that has changed is the extraordinary concentration of power in our economy in the hands of a few corporations, no more so than in Silicon Valley, which you referenced earlier today, and I just want to ask you a little bit about that.

Big tech companies, like, for instance, Google and Facebook, who have drawn much attention of late, pose significant challenges not just for competition, but also for the larger issues of privacy and the free flow of ideas. The Justice Department has recently deferred to the FTC across this range of issues, and while I am hopeful that Chairman Simons will right the course here, the FTC has perhaps too often allowed these companies, in my view, to violate privacy and maybe antitrust laws without meaningful consequences.

Here is my question. What role do you think the Justice Department has, working with the FTC or independently, to address anti-competitive conduct, potential bias, and privacy violations by these big tech companies?

General BARR. Well, obviously, competition is of central concern to the Antitrust Division, and you know, there are, I guess, concordats that have been reached between the FTC and the Antitrust Division as to who has primary jurisdiction in different areas. But

I would like to weigh in to some of these issues. I would like to have the Antitrust support that effort to get more involved in reviewing the situation from a competition standpoint.

I also am interested in the issue of privacy and the question of who owns this data. And you know, it is not an area that I have studied closely or become an expert in, but I think it is important for the Department to get more involved in these questions.

Senator HAWLEY. Just on the subject of ownership of data, as you know, Facebook is currently subject to a 2011 consent decree, as part of which it agreed not to release or share or sell personal user information without the knowledge and consent of its users. Facebook's CEO Mark Zuckerberg has adamantly insisted under oath, as recently as April 10th of 2018, that on Facebook, users have complete control—those are his words—over everything that they share.

However, as I am sure you are aware, recent media reports have indicated that Facebook, in fact, routinely has shared user information without users' consent or even knowledge. Now the Justice Department has the authority to enforce the terms of the 2011 consent decree and potentially to prosecute any violation. Will you consider doing so?

General BARR. Because that is something that I might have to get involved with and supervise if I am confirmed, I would rather not make any comments about it right now.

Senator HAWLEY. Let me ask you this. These same technology companies also control the flow of information, or, at least, influence it, the flow of information to consumers to an unprecedented degree. I mean, you have to go way back in American history to find any analog, back to the paper trusts, to find an analog of a group, small group of companies that control the information and influence the news and its flow to Americans to the extent that these companies do.

And there is growing evidence that these companies have leveraged their considerable market power, if not monopoly status, to disfavor certain ideological viewpoints, particularly conservative and libertarian viewpoints. Do you think the Department of Justice has authority under the antitrust laws or consumer protection laws or other laws to address bias by dominant online platforms?

General BARR. I would just say, generally, you know, I would not think it would—I would have to think long and hard before I said that it was really the stuff of an antitrust matter. On the other hand, it could involve issues of disclosure and other—and other—implicate other laws like that.

Senator HAWLEY. Is there any point, do you think, at which political bias could require response? And I am thinking, for example, Harvard law professor Jonathan Zittrain has written how Google or Facebook, for example, could manipulate their algorithms to significantly swing voter turnout to favor a candidate of their choice.

Would that sort of conduct require a response from the Department?

General BARR. I would have to think about that. I am not sure. You know, I would like to know more about the phenomena and what laws could be implicated by it.

Senator HAWLEY. Let me ask you this. The Justice Department's case against AT&T-Time Warner focused on how the merged company would control or could control the distribution of information to discriminate against rival content. And I understand that you, of course, are recusing yourself from that matter.

But generally speaking, generally speaking, do you see similar concerns regarding how dominant Silicon Valley firms could use their market power in social media or search to discriminate against rival products or services or viewpoints?

General BARR. Yes. And making clear that what I am saying now has no application to, you know, the transaction we just talked about and talking about the other companies, yes.

Senator HAWLEY. Let me ask you more broadly about the question of antitrust and mergers. And you gestured toward this earlier in your testimony. I am increasingly worried that the Department is not enforcing vigorously the antitrust statutes in many sectors of the economy, not just technology.

We see—again, as you have alluded to, we see growing concentration of power in various sectors held by just a few firms. And if you look at recent trends in the Department's scrutiny of proposed mergers, it is at record lows. Last year, for instance, the Department of Justice Antitrust Division scrutinized mergers through second requests for information in less than 1 percent of all eligible cases.

That is, I believe, the lowest level of merger scrutiny recorded since the FTC started tracking those statistics back in 1981. And just for comparison purposes, in 1981, that review was five times higher than it was in 2018.

My question is, do you think this record low level of merger scrutiny is appropriate? And if you are confirmed as Attorney General, what might you do to ensure that the Antitrust Division faithfully and vigorously enforces the law?

General BARR. Well, I am for vigorous enforcement of the anti-trust laws to preserve competition, and as I said, this is going to be an area I am going to want to get into and work with Makan Delrahim on, if I am confirmed.

I would not necessarily use, you know, the incidence of merger review as a proxy for failure of competition. At the end of the day, it is competition we are worried about in different markets. But I am interested in exploring those—you know, those statistics you were just using.

Senator HAWLEY. And do you think it is fair to say, would you agree that the historic levels of concentration that we are seeing in many parts of the economy, technology in particular, is potentially detrimental to competition? I mean, it is, again, potentially and in general, but it is something that is worth scrutinizing and being concerned about if one is concerned about free, fair, and open competition?

General BARR. You said the size?

Senator HAWLEY. Yes, historic levels of concentration.

General BARR. Yes. I think what is—the thing I am concerned about are the network effects that have now—that are now at work, where they are so powerful that particular sectors could essentially be subsumed, you know, subsumed into these—into these

networks. There are just very powerful network effects because of the size.

Senator HAWLEY. Yes. I see my time has almost expired.

Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

Mr. Chairman, I welcome the arrival of the immigration Lindsey Graham of 2013. The other Lindsey Graham, we shall see, as you, yourself, have acknowledged.

Mr. Barr, I ask these questions, these two questions, of every nominee who comes before any of the Committees on which I sit, and these are the questions: Since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

General BARR. No.

Senator HIRONO. Have you ever faced discipline or entered into a settlement related to this kind of conduct?

General BARR. No.

Senator HIRONO. I have a question relating to recusal. You have been asked a number of times. It is very clear that the President does not want an Attorney General who will recuse himself from the Mueller investigation. So when he came before us for confirmation in January 2017, Jeff Sessions wrote on his Committee questionnaire that he would “seek and follow the advice of the Department of Justice’s designated agency ethics official, if confronted with a conflict of interest.”

And in fact, he did do that, and he was basically pummeled by the President ever since. So Matthew Whitaker has not come before us for the job of Attorney General, but we know that when it came time to make the decision about recusal, he did not want to be the object of Trump’s wrath, so he proceeded to listen to and then ignore the advice of the career ethics officials at the DOJ who recommended recusal.

So your answer to Senator Klobuchar makes it clear that you are going to basically follow the Whitaker model. Can you understand why that is not terribly reassuring to us?

These are not normal times. This is not 27 years ago. Today, the President is Donald Trump, who will do anything to protect himself. He wants you—who has written a manifesto about why the President should not be prosecuted, at least, for obstruction of justice; who has met with and consulted with the President’s defense attorneys; who has written op-eds defending his firings of Sally Yates and James Comey—to be his Attorney General.

So in this context, just asking us to trust you is not enough. Why will you not simply follow Jeff Sessions’ lead and take and follow—the critical question being “follow”—the advice of the Department’s ethics officials?

General BARR. Because the regulations and the responsibilities of the Attorney General as the head of the agency vest that responsibility in the Attorney General. And—and I am not going to surrender the responsibilities of the Attorney General to get the title. I do not need the title.

If you do not—if you do not trust me to—

Senator HIRONO. Well, I—you have—excuse me.

General BARR. Yes.

Senator HIRONO. You have repeated that answer many, many times. However, I think we all acknowledge that Jeff Sessions possibly did not want to recuse himself, but he did. And so you have it within your power to follow the ethics advice of your own Department, and you are telling us you are not going to. So that is the bottom line.

General BARR. No, Senator. I think Jeff Sessions recused himself because of a different provision, which was the political conflict provision.

Senator HIRONO. I think in the context of all of the things that—

General BARR. He played a role in—he played a role in the campaign.

Senator HIRONO. In the context of all of the things that you have done, basically to get the attention of President Trump to nominate you, I would say that there is a political context to what your decision should be also.

Let me move on. You have said that you will allow Mueller to complete his work. Although I do want to ask you very specifically, because you did write that 19-page memo relating to the obstruction of justice issue, would you allow the Mueller investigation with regard to obstruction of justice to also go forward unimpeded by you?

General BARR. I do not know whether there is an investigation of obstruction of—

Senator HIRONO. Well, definitely obstruction of justice. You read the papers as well as we do, that that is an element of the Mueller investigation. I do not think you can sit here and tell us that you do not think that that is a part of the investigation.

But let us say that it is. Having written what you did, would you seek to stop that portion of the Mueller investigation, that being the obstruction of justice portion, assuming that that is, in fact, part of the investigation?

General BARR. Okay, but you have to remember, my memo was on a very specific statute and a specific theory that I was concerned about.

Senator HIRONO. I understand that.

General BARR. I have no basis for suspecting at this point that that is in play at all.

Senator HIRONO. You mean that particular provision? So Mueller—

General BARR. That provision or theory. Or theory.

Senator HIRONO. Well, I did say let us assume that, in fact, obstruction of justice is part of the Mueller investigation.

General BARR. When I say “theory,” I mean, what I was addressing was, you know, whether the removal of Comey in and of itself would be obstruction.

Senator HIRONO. Of course, it is not in and of itself—

General BARR. Under a particular statute—

Senator HIRONO. I hate to be interruptive, but, you know, I only have 4 minutes, so thank you very much.

You were asked about the investigations that are going on in the Southern District of New York, the Eastern District of Virginia, the

District of Columbia, and there are various investigations brought by various U.S. Attorneys' Offices relating to the activities of Donald Trump, his campaign, his inauguration, his foundation, his businesses, his family, his associates. Do you consider these to be lawful investigations? Because I believe that you responded to Senator Blumenthal that, if these are lawful investigations by the U.S. Attorneys' Offices, you do not see yourself interfering with them.

General BARR. I have no reason to think they are not lawful investigations, whatever they are. You seem to know more than I do about what is under investigation.

Senator HIRONO. That is reassuring, that you are wanting to have the Mueller investigation go forward extends to all of these other U.S. Attorneys' investigations.

I believe you also said that the Mueller report will be confidential? It is confidential under the Special Counsel's—whatever the criteria are. So what I am hearing you say is that, in spite of the fact that you want to be transparent, neither Congress nor the public will get the Mueller report because that is confidential. So what we will be getting is your report of the Mueller report subject to applicable laws limiting disclosure. So is that what you are telling us?

General BARR. I do not know what—at the end of the day what will be releasable. I do not know what Bob Mueller is writing.

Senator HIRONO. Well, you said that the Mueller report is confidential pursuant to whatever the regulations are that applies to him. So I am just trying to get as to what you are going to be transparent about.

General BARR. As the rules stand now, people should be aware that the rules, I think, say that the Special Counsel will prepare a summary report on any prosecutive or declination decisions, and that that shall be confidential and shall be treated as any other declination or prosecutive material within the Department. In addition, the Attorney General is responsible for notifying and reporting certain information upon the conclusion of the investigation.

Now, how these are going to fit together and what can be gotten out there, I have to wait and—I would have to wait. I would want to talk to Rod Rosenstein and see what he has discussed with Mueller and, you know, what—

Senator HIRONO. But you have testified that you would like to make as much of the original report—

General BARR. Right, and so all I can say right now is—

Senator HIRONO [continuing]. Public as possible.

General BARR. Yes. All I can say right now is my goal and intent is to get as much information out as I can consistent with the regulations.

Senator HIRONO. Thank you. So in the minute that I have, I would just like to go over some of the policies that Jeff Sessions has followed. One is a zero-tolerance policy which led to the separation of children from their parents. He refused to defend the Affordable Care Act and argued in the *Texas* lawsuit that key parts of the ACA were unconstitutional. He failed to bring a single lawsuit to enforce the Voting Rights Act to stop voter suppression efforts. And he issued a memo making it harder for the Civil Rights

Division to enter into consent decrees to address systemic police misconduct.

Do you agree with these policies? Do you intend to continue them?

General BARR. The last one, yes. I agree with that policy. The other ones, I am not—I would have to see what the basis was for those decisions.

Senator HIRONO. So do you think that as to the last one, which has to do with consent decrees, that there is a role for the Department of Justice in addressing system police misconduct?

General BARR. No, there—

Senator HIRONO. You do not see much of a role in that? Or you see a more limited—

General BARR. That is your characterization of it. That is not what I understand the policy to be. Of course, the Department has a role in pattern and practice violations.

Senator HIRONO. So Attorney General Sessions has issued a rule that makes it a lot tougher to enter into these kinds of decrees.

General BARR. Why do you say it is a lot tougher?

Senator HIRONO. Because it is not just relying on the career attorneys. Now it goes to the Deputy AG or whoever, that there are more political appointees who are going to get involved in that process, and that makes it much more limited, I would say, in utilization.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator Hirono.

We will take a 10-minute comfort break and start with Senator Tillis. If my math is right, we have got about an hour left on round one. So will 10 minutes be okay, Mr. Barr?

General BARR. Yes.

Chairman GRAHAM. Okay. Thank you. Ten minutes.

[Whereupon the Committee was recessed and reconvened.]

Chairman GRAHAM. Thank you, Mr. Barr.

I think—who we have left on our side is, Senators Kennedy, Blackburn, and Tillis, and Senators Booker and Harris. Anybody else? I think that is it in round one.

So, Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Barr, do you know of any instance in which anybody has tried to interfere in Mr. Mueller's investigation?

General BARR. No. I mean, I am not in the Department of Justice, and I have no—you know, I am not privy to that information, but I do not know of any.

Senator KENNEDY. I understand you know Mr. Mueller, do you?

General BARR. Yes, I do.

Senator KENNEDY. Is he big enough to take care of himself?

General BARR. He is a Marine.

[Laughter.]

Senator KENNEDY. If someone had tried to interfere with his investigation, based on your knowledge of Mr. Mueller, would he have something to say about it, including but not limited to in a court of law?

General BARR. Yes, Senator.

Senator KENNEDY. I want to try to cut through some of the innuendo here. Did President Trump instruct or ask you, once you become Attorney General, to fire Mr. Mueller?

General BARR. Absolutely not.

Senator KENNEDY. Did he ask you to interfere in Mr. Mueller's investigation?

General BARR. Absolutely not.

Senator KENNEDY. Has anybody in the White House made that suggestion to you?

General BARR. Absolutely not.

Senator KENNEDY. Has anybody in the Western Hemisphere made that suggestion to you.

General BARR. Absolutely not.

[Laughter.]

Senator KENNEDY. Okay. I want to associate myself with the remarks of Mr. Blumenthal about the FBI being the premier law enforcement agency in the history of the world, in my opinion, and the high esteem in which we all hold the Department of Justice. But I have a question for you. This counterintelligence investigation that was started by the FBI and Justice, allegedly about President Trump, how did The New York Times get that information?

General BARR. I do not know, Senator.

Senator KENNEDY. Well, didn't it have to come from the FBI or the Department of Justice?

General BARR. I just cannot say. I do not know how they got it, and I do not know whether that is an accurate report.

Senator KENNEDY. All right. What do you intend to do about the leaks coming out of the FBI and the Department of Justice?

General BARR. The problem of leaks is a difficult one to address. I think the first thing is to make it clear that there is an expectation that there are no leaks and punish people through internal discipline if there are leaks; also keep—you know, exercise more compartmentalization and discipline; and make the institutions that are responsible, if you are talking about the FBI, that their leadership is taking aggressive action to stop the leaks.

Senator KENNEDY. Okay. You have had some experience with the enforcement of our immigration laws. Is that correct?

General BARR. That is right, Senator.

Senator KENNEDY. Do you believe it is possible to secure a 1,900-mile border without, in part, at least, using barriers?

General BARR. No, I do not think it is possible.

Senator KENNEDY. Okay.

General BARR. When I was Attorney General, we had the INS as part of the Department, and I remember another part of my kibitzing was trying to persuade George W. Bush's administration not to break that out. But in those days, I had some studies done, and I was trying within the budget to put as much as we could on barriers as we could.

Senator KENNEDY. Okay. Do you believe that ICE should be abolished, as some of my colleagues do?

General BARR. Certainly not.

Senator KENNEDY. Okay. You are Roman Catholic, are you not?

General BARR. Yes, I am.

Senator KENNEDY. Do you think that disqualifies you from serving in the United States Government?

General BARR. I do not think so, no.

Senator KENNEDY. Okay. Why is that?

General BARR. Why doesn't it disqualify me?

Senator KENNEDY. Yes. Some of my colleagues think it might.

General BARR. Because you render under Caesar that which is Caesar's and under God that which is God's, and I believe in the separation of church and state. And I—if there was something that was against my conscience, I would not impose it on others. I would resign my office.

Senator KENNEDY. Yes, I think it is called freedom of religion, as I recall.

General BARR. Yes, that is right.

Senator KENNEDY. If the Federal Government threatens to withhold Federal money from a university if that university does not investigate, prosecute, punish sexual assault in a way prescribed by the Federal Government, does that make the State university a state actor—or the university a state actor?

General BARR. It may. You know, I would have to look at the cases. I am not up to speed on those. But I would think so.

Senator KENNEDY. Well, if the Federal Government says to a university, look, if you do not prosecute, investigate, punish allegations of sexual assault in a way that the Federal Government says you must, otherwise we are going to take away your Federal money, does the accused in one of those sexual assault allegations still have the protection of the Bill of Rights?

General BARR. I would hope so.

Senator KENNEDY. Should he, or her?

General BARR. You know, I would have to look and see exactly the State actor law right now, but what you are getting at is, you know, the rules that were forced on universities in handling sexual harassment cases—

Senator KENNEDY. Right.

General BARR [continuing]. That, you know, I felt essentially did away with due process.

Senator KENNEDY. Yes.

General BARR. And, you know, I think the victim—you know, as a father of three daughters, I take very seriously any question of sexual harassment. It is a serious problem. And the word of a victim has to be taken very seriously and it has to be pursued, but we cannot do it at the expense of the Bill of Rights or basic fairness and due process.

Senator KENNEDY. Both the accused and the accuser deserve due process, do they not?

General BARR. That is right.

Senator KENNEDY. Tell me what the legal basis is for a universal injunction.

General BARR. I think universal injunctions have no—well, let me say that they are a recent vintage. They really started arising in the 1960s, and I think that they have lost sight of the limitation on the judicial power of the United States, which is case or controversy.

Senator KENNEDY. It is all based on a D.C. Circuit case.

General BARR. Right.

Senator KENNEDY. The *Wirtz* case, is that right?

General BARR. I forgot the name of the case, but I think the D.C. Circuit case was the first one, and I think that was in the 1960s. And people have lost sight of the fact that it is really a question of who gets the relief in a case, and under the case or controversy, it should be limited to the parties. And, you know, earlier you could have a court in one jurisdiction decide it, and that would be the rule in that jurisdiction. But that did not debar the Government from continuing its policies elsewhere, and eventually you would get differences, and they would work their way up to the Supreme Court.

So I think that I would like to see these universal injunctions challenged.

Senator KENNEDY. Well, I do not know how many Federal District Court Judges we have, let us say 650. As I understand it, one can enjoin a congressional statute nationwide even if the other 624 judges disagree.

General BARR. That is right. And not just a statute, Senator. I think what is different, what we are seeing is the willingness of courts to set aside, you know, even the kinds of exercises of national security power that, you know, 20 years ago would have been unimaginable for a court to challenge, and yet a District Court Judge somewhere can enjoin some action that has a bearing on the safety of the Nation, and then the judicial process can take years and years to get that up to the Supreme Court.

Senator KENNEDY. I have just got a few seconds left. As I understand your testimony, General, Mr. Mueller will write a report, submit it to you as Attorney General, and then you will write a report based on that report and release your report. Is that right?

General BARR. That is essentially it, but I would not assume—you know, it could easily be that the report is communicated to the Department—assuming I was confirmed, that could be a month away. I do not—

Senator KENNEDY. Let me tell you what I am getting at. I have got 6 seconds—now 4. The American people deserve to know what the Department of Justice has concluded, and they are smart enough to figure it out. I have said this before. The American people do not read Aristotle every day. They are too busy earning a living. But if you give them the facts, they will figure it out, and they will draw their own conclusions. It does not matter who spins them. They will figure it out for themselves. And I would strongly encourage you to put this all to rest, to make a report, a final report public, to let everybody draw their own conclusions so we can move on.

If somebody did something wrong, they should be punished. But if they did not, let us stop the innuendo and the rumors and the leaking and let us move on.

General BARR. I agree, Senator, and let me say, you know, earlier I misspoke, because the Acting Attorney General is Matt Whitaker, and I referred to Rod as the Acting Attorney General. But, in fact, the report would go to Matt Whitaker.

Senator KENNEDY. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman, and I would like to remark, Mr. Barr, that your family is showing a prodigious level of patience, indefatigable endurance, and that should be marked for the record. You are a very lucky man.

You know that about 30-plus States have legalized medical marijuana for adult use. You are aware of that, correct?

General BARR. Yes.

Senator BOOKER. In 2018, Attorney General Jeff Sessions rescinded the Cole Memorandum, which provided guidance to U.S. Attorneys that the Federal marijuana prohibition should not be enforced in States that have legalized marijuana in one way or the other. Do you believe it was the right decision to rescind the Cole Memorandum?

General BARR. My approach to this would be not to upset settled expectations and the reliance interests that have arisen as a result of the Cole Memoranda, and investments have been made and so there has been reliance on it. So I do not think it is appropriate to upset those interests.

However, I think the current situation is untenable and really has to be addressed. It is almost like a back-door nullification of Federal law. To me it is a binary choice. Either we have a Federal law that applies to everybody—

Senator BOOKER. I am sorry to interrupt you, sir, but how would you address that? Do you think it is appropriate to use Federal resources to target marijuana businesses that are in compliance with State laws?

General BARR. No, I said that—that is what I said. I am not going to go after companies that have relied on the Cole Memoranda. However, we either should have a Federal law that prohibits marijuana everywhere—which I would support myself because I think it is a mistake to back off on marijuana. However, if we want a Federal approach, if we want States to have their own laws, then let us get there and let us get there the right way.

Senator BOOKER. And if you do not mind, I am going to just move on, but it is good to hear, at least, the first part of what you said.

During your previous tenure as Attorney General, you literally wrote the book on mass incarceration or, at least, wrote this report, “The Case for More Incarceration.” You argue that we as a Nation were “incarcerating too few criminals.”

General BARR. In those days.

Senator BOOKER. And that the solution was more incarceration for more people.

General BARR. Excuse me.

Senator BOOKER. Please, sir.

General BARR. For chronic violent offenders and gun offenders.

Senator BOOKER. Well, I mean, that is the challenge, sir, and you argued against the bipartisan legislation in 2015 quite strenuously.

General BARR. I did.

Senator BOOKER. But that is not the nature of incarceration in this country. In Fiscal Year 2016, only 7.7 percent of the Federal prison population was convicted of violent crimes. Overwhelmingly, what was initiated in those times that led to an 800-percent increase in the Federal prison population, overwhelmingly that was

nonviolent drug offenders. Right now our Federal prison population is overwhelmingly nonviolent—47.5 percent of the Federal prison population are incarcerated for drug offenses. And I guess hearing your arguments then and hearing your arguments against the bipartisan legislation that we brought out of the Committee in 2016—

General BARR. But, Senator, I think that is wrong, what you just said, okay? I think when you have violent gangs in the city killing people, murder and so forth and so on, sometimes the most readily provable charge is their drug-trafficking offenses rather than proving culpability of the whole gang for murder. So you can take out—you can take out a gang on drug offenses, and you could be taking out a lot of violent offenders. Do you think that the murders in Chicago are—they are related to gangs, and gangs involved in—

Senator BOOKER. And, sir—and, again, we can get into the data if you would like, and I would like to get some more pointed questioning. But this is the sort of—these are sort of the tropes that make people believe that in inner cities we should have such profound incarceration rates. And I would like to ask you specifically about that data because I think it is language like that that makes me kind of concerned and worried.

You said you had not reviewed—you said earlier in your testimony that you had not reviewed criminal justice data about this actual issue of incarceration versus non-incarceration. I just want to know, will you commit to commissioning a study on just the concerns that we are talking about right now about the efficacy of reducing mass incarceration and publish those results? Would you be willing to do such a study yourself?

General BARR. Well, as I understand it, I have been told that there is a lot of data to support the First Step Act.

Senator BOOKER. Yes, and that First Step Act goes directly toward addressing a lot of the problems we have had in mass incarceration. And so if you are saying that it is necessary to deal with violence in communities by overincarcerating, here is a bipartisan group of Senators that is working toward reducing mass incarceration. And that is why I think it is very important—which I appreciate you saying you did not know because you had not reviewed the data. I think it is very important that you review the data and understand the implications for the language that you are using, which brings up this language of race, which is often not said explicitly, but when you talk about Chicago in the way you just did, it brings up racial fears or racial concerns. And you stated that, “if a Black and a White”—this is quoting you directly—“are charged with the same offense, generally they will get the same treatment in the system and ultimately the same penalty.” You previously quoted, and I quote you again, “There is no statistical evidence of racism in the criminal justice system.” Do you still believe that?

General BARR. No, what I said was that—I think that is taken out of a broader quote, which is, the whole criminal justice system involves both Federal but also State and local justice systems. And I said there is no doubt that there are places where there is racism still in the system. But I said overall I thought that, as a system, it is working—it does not—it is not predicated on—

Senator BOOKER. So can I press you on that, overall the system treats Blacks and Whites fairly? From my own experience, I have lived in affluent communities; I have gone to college campuses. There are certain drug laws applied there that are very different in the inner-city community in which I live. But let us talk stats; let us not talk our personal experiences. And so I have sat with many of my colleagues and many conservatives who readily admit what the data shows. And so I have a whole bunch of reports which I will enter into the record from nonpartisan, bipartisan groups, even conservative leaders, talking about the rife nature of racial bias within the system.

For example, the Federal Government's own data, the U.S. Sentencing Commission's research shows that Federal prosecutors are more likely to charge Blacks with offenses that carry harsh mandatory minimum sentences than similarly situated for Whites. The Federal Government's own data shows that Black defendants were subject to three strikes sentencing enhancements at a statistically significant higher rate, which added on average over 10 years to their sentences.

And so with numerous researchers having found stunning racial disparities rife throughout our system and in the Federal system which you will be the chief law enforcement officer of, and primarily for drug—overwhelmingly for drug laws—for example, I do not know if you are aware or not of the Brookings study that found that Blacks are 3.6 times more likely to be arrested for selling drugs, despite the fact that Whites are actually more likely to sell drugs in the United States of America, and Blacks are 2.5 times more likely to be arrested for possession of drugs when there is no difference racially in America for the usage and possession of drugs in the United States.

I do not know if you are—are you familiar with the Brookings study?

General BARR. No, I am not.

Senator BOOKER. Okay. So, just to follow up, will you commit to commissioning a study examining racial disparities and the disparate impacts of the policies that you talked about that led to mass incarceration, the policies that you defended when you criticized the bipartisan 2015 sentencing reform legislation, will you commit to, at least, as the most important law enforcement officer in the land, to studying those well-documented racial disparities and the impacts it has?

General BARR. Of course, I will commit to studying that, and I will have the Bureau of Justice Statistics pull together everything they have. And if there is something lacking, I will get that. And I am interested in State experience. But when I looked at—I think 1992 was a different time, Senator. The crime rate had quintupled over the preceding 30 years, and it peaked in 1992. And it has been coming down since 1992.

Senator BOOKER. And, sir, I just want to say, I was a young Black guy in 1990s, I was a 20-something-year-old, and experienced a dramatically different justice system in the treatment that I received. And the data of racial disparities and what it has done to Black—because you literally said this about Black communities, and I know that your heart—I know that your heart was in the

right place. You said that, “Hey, I want to help Black communities.” This is what you were saying: “The benefits of incarceration would be enjoyed disproportionately by Black Americans living in inner cities.” You also said that, quote, “A failure to incarcerate hurts Black Americans most.”

General BARR. And I will tell you what—

Senator BOOKER. And I just want to ask a yes-or-no question because I have seconds left. Do you believe now, 30, 40 years of mass incarceration, targeted disproportionately toward African Americans, harsher sentences, disproportionately represented in the criminal justice system, with the American Bar Association talking about once you have been incarcerated for even a low-level drug crime, there are 40,000 collateral consequences that impact your life—jobs, Pell grants, loans from banks. Do you think, just “yes” or “no,” that this system of mass incarceration has disproportionately benefited African-American communities? “Yes” or “no,” sir.

General BARR. I think the reduction in crime has, since 1992, but I think that the heavy drug penalties, especially on crack and other things, have harmed the Black community, the incarceration rates have harmed the Black community.

Senator BOOKER. And I would just conclude to my Chairman and partner, thank you, sir, on this, because I am really grateful for this bipartisan group, the Heritage Foundation, I have spoken at the AEI Conference, just found such great partnership. But I worry about the highest law enforcement officer in the land and some of the language I still hear you using that goes against the data and that you are going to be expected to oversee a justice system that you and I both know needs the faith and confidence of communities that has dramatically lost that confidence because of implicit racial bias. And the DOJ—and I will give you a chance to respond. The DOJ itself has said, mandated implicit racial bias training, and I hope that is something that you will agree to do.

But this is the thing I will conclude on, that we live on a planet Earth where you can tell the most about a nation by who they incarcerate. In Turkey, they incarcerate journalists. Thank God we do not do that here, even though they have been called, “the enemy of the people.” In Russia, they incarcerate political opponents. I am glad we do not do that, even though with chants of, “Lock her up.” But you go into the American criminal prisons, sir, and you see the most vulnerable people. You see overstigmatized mentally ill people clogging our system. You see overstigmatized addicted people clogging our system. You see a system where, as Bryan Stevenson says, it treats you better if you are rich and guilty than if you are poor and innocent. And you see disproportionately, overwhelmingly for drug crimes, African Americans and Latinos being incarcerated.

The importance of your job—and I will ask you this last question, because you have not met with me yet. You have given that courtesy to others. Would you please meet with me in my office so you and I can have a heart-to-heart on the urgency, the cancer on the soul of our country’s criminal justice system, is the disproportionate impact of that system on those vulnerable communities, including women over 80 percent of whom, the women we incarcerate, are survivors of sexual trauma? Can you and I sit down to have a longer conversation than these 10 minutes will allow on this issue?

General BARR. I would very much welcome that, Senator. You know, my experience back in 1992, when sort of blood was running on the streets all over the United States, my ideas were actually first formed when I went to Trenton, and the African-American community there essentially surrounded me and was saying, "Look, we are in our golden years. We are trying to enjoy our golden years, and we cannot even go outside our house. We have bars on our house and so forth. Please, these gangs are running roughshod."

So I developed this idea called "weed and seed," and my attitude was, look, let us stop arguing past each other, let us attack root causes and let us get tough on crime. And I felt that for programs to work, like after-school programs and so forth, for housing projects to be safe, we needed strong enforcement in those communities, and we needed those other programs to be brought to bear community by community. And it had to be done with the leadership of the community, and that was this idea of the partnership. And it caught on. It was very popular. And, in fact, it was continued by a lot of the U.S. Attorneys in the Clinton administration after the Bush administration was out. And it actually, under a number of different names, has continued.

So I am very conscious of the issues you raise, but my goal is to provide safe—was, and my motivation was to provide safety in these neighborhoods for the people trying to raise their children and for the older people and so forth. The neighborhoods are—you know, the crime rate has gone down. I make a distinction between the way we treat these chronic violent offenders and the drug penalties. The drug penalties, as I said, very high and Draconian, and in some cases that might have been necessary. But I supported revisiting the penalty structure.

Senator BOOKER. And, sir, I am the only United States Senator that lives in an inner-city, low-income community. I have had shootings in my neighborhood, a young man killed last year on my block with an assault weapon. I know this urgent need for safety and security, and actually, I am not saying I am necessarily going to vote for you one way or the other, but I believe your intentions are well, but I think that some of the things you have said in the past lead me to believe that your policies might be misguided. In the way that Mike Lee and Cornyn and Graham and Grassley have been incredible partners in changing the American reality, I hope that you can be that kind of partner, too, and I hope that you and I can have a good heart-to-heart conversation, trusting that we both want the same end for all communities, safety and security, but a justice system that is fair to all American citizens.

General BARR. I would welcome that, Senator.

Senator BOOKER. Thank you, sir.

Chairman GRAHAM. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman.

And we appreciate your time today, Mr. Barr, and that of your family. I told Liam that Grandpa ought to give him whatever he wants to eat for dinner tonight.

[Laughter.]

Senator BLACKBURN. He has behaved very well and done a great job.

Going back to something that Senator Kennedy mentioned on leaks and you said you would address that by compartmentalization, talk for just a little bit about your vision for the Department of Justice as you look at implementing first steps: addressing violent crime, dealing with opioids, dealing with online sex trafficking, the antitrust issues, the Mueller investigation, all the things we have talked about. How do you intend to lead that Department that is very different from the DOJ that you led previously?

General BARR. In some ways it is different; in some ways it is not so different. But my basic approach to things is to get good lieutenants, good subordinates who are running different parts of the agenda, and give them, you know, their marching orders and watch them perform and get involved to the extent I can to make sure that we are pushing the priority things ahead.

One of the interesting things about the Department of Justice that is a little different than many agencies is one of our—our first priority has to be to enforce all the laws. It is not like we can just come into work and say, “Well, we are going to just pay attention to this, so we are not going to enforce all these other laws.” We have to cover the waterfront. That is number one.

But beyond that, what I tried to do last time and what I would try to do if you confirm me this time would be, you know, to make sure that even though we are enforcing things across the board, we have an understood set of priorities and we put the effort behind those priorities, and we define clearly what we are trying to achieve.

So, for example, in the area of civil rights, when I was Attorney General last time—and I had discussed this with Senator Kennedy—I said, you know, we are not doing enough on housing discrimination. Housing is very important. It determines where you go to school, you know, the safety and so forth. And I set up a program. We hired testers and stuff like that. And we had a very clear goal and priority for that, and we launched it. And that is what—you know, that is what I plan to bring in area after area, defining what we are trying to accomplish and give the people the tools to get it done and give them the direction and motivation to get it done.

Senator BLACKBURN. You have mentioned the Mueller investigation, your relationship with Mr. Mueller, having him finish the investigation. If we were to ask him about you, do you think his assessment would be that you are a fair and impartial leader that he can trust, that we can trust to lead the DOJ?

General BARR. I hope he would say that, but I am not going to put—I am not going to put words in his mouth.

Senator BLACKBURN. Words in his mouth, yes. We talked about technology and my interest in that area. And you have had—Mr. Lee and Mr. Hawley have also talked about antitrust and some of the enforcement there, big tech and Silicon Valley, and the power that is harbored there. They are gobbling a lot of their competitors. You have got Facebook and Google that are claiming to only be platforms for their users, but they are also getting into the content business. And that is why Facebook bought Instagram and WhatsApp, and Google bought YouTube and DeepMind for AI tech-

nology. So their tentacles are spreading, and they are moving away from a platform into that content into artificial intelligence, and their market dominance is causing some problems.

And as we discussed, these companies are violating users' privacy. They are recklessly sharing their users' personal data with third parties. This is done without explicit permission. We cannot let these companies collude to drive out competitors, or to ignore vital data privacy protections, and big tech operated really without regard to the law.

And you and I talked a little bit about one of the edge provider CEOs who, last spring, when he came before a House Committee—he was also here before this Committee—there was even reference to how—I discussed how he subjectively manipulated—or asked if he subjectively manipulated algorithms, and how there was concern that some of these platforms referencing a statement he had made functioned more like a government than a platform or an information service. So how—do you intend to begin this conversation and begin this work addressing the antitrust provisions with big tech?

General BARR. Yes. You know, as I mentioned, I am interested in these issues and would like to have them fully ventilated at the Department with the Antitrust Division and also with, you know, outside experts so I can have a better understanding. I do want to say, however, that I am going to be recusing myself from AT&T because—

Senator BLACKBURN. Time Warner, yes.

General BARR. Yes, because now Time Warner is part of AT&T—

Senator BLACKBURN. Right.

General BARR [continuing]. And I was told that under the rules, that will carry over to AT&T. So until I talk to the ethics advisors at the Department, I do not want to get too far ahead of my skis and sort of talking about the tech area. But as a general policy matter, I want to get into this area because I think it is on a lot of people's minds—

Senator BLACKBURN. Absolutely.

General BARR [continuing]. And how the law relates to these—you know, to these developments that we see with these large companies. And I do not mean to cast aspersions on any particular company or executive.

Senator BLACKBURN. Well, and I think for many of us, if you are looking at a merger and they cannot prove the efficiencies and they cannot prove that there will be increased competition, then it does raise some questions as to how those would be evaluated. And let me go to one other issue that is developing on this privacy front. It is a data privacy problem that I do not think a lot of people realize, and it is the embedding of hardware and then the geolocation, and sometimes that information is sold.

Now, it folds into the encryption issue because law enforcement has a very difficult time getting the information from devices and from the services on encryption. But we are now aware that many times bounty hunters will be paid a few hundred dollars, and then they can go in and find the location of that phone. And some of these Android operating systems are specific enough that they do

the barometric pressure readings, and they can tell you exactly where in a building that this phone is located.

So I would hope that you are going to look at the legal procedures that surround this kind of data and this kind of tracking and the privacy provisions that are going to pertain to consumers as they use these devices.

General BARR. Yes.

Senator BLACKBURN. Good. Thank you. Let me move on. Senator Ernst talked a little bit about the online sex trafficking. In Tennessee, we have followed this issue so closely because our TBI carried out an operation where they apprehended 22 traffickers. Twenty-two men were arrested for sex trafficking, and much of that work—and the work I have done in the House in the online sex trafficking, working to shut down BackPage.com, and to keep our children and keep women safe from these online traffickers.

And, you know, we were so pleased that last April the Justice Department seized BackPage and charged seven defendants for facilitating prostitution and sex trafficking crimes. And what we know is that when you shut down a site like BackPage, the big one, then you have a lot of small sites that proliferate. And we know that it is going to really take a lot of effort to arrest this situation so that you are not constantly playing whack-a-mole with these. So I would hope that you will be committed to putting an end to this kind of violence and online trafficking.

General BARR. Yes, and I—you know, and I know how focused you are on it and the leadership you have provided over the years on it. I do not know that much about the problem and also about what resources are currently being devoted to it in the Department, but I would like to come by—

Senator BLACKBURN. Great.

General BARR [continuing]. And talk to you further about it once I get exposed to it, if I am confirmed. Okay.

Senator BLACKBURN. Thank you.

My time has expired. Mr. Chairman, I yield back. Thank you, Mr. Barr.

Chairman GRAHAM. Senator Harris.

Senator HARRIS. Thank you, Mr. Chairman, and congratulations. And to you, congratulations on your nomination, and thank you for your lifetime of dedication to public service.

General BARR. Thank you.

Senator HARRIS. In response to a question that Senator Ernst asked, you mentioned that we need barriers across the border to deal with drug trafficking. Are you advocating a wall?

General BARR. Well, I think I am advocating a system, a barrier system in some places, and I would have to find out more about the situation since I last visited the border.

Senator HARRIS. From what you know, do you believe that a wall would address the concern that you have about drug trafficking?

General BARR. Well, a wall certainly would, but I—in some places it may not be necessary to have, you know, what most people imagine as a wall.

Senator HARRIS. Are you aware that most of the drugs coming into the United States, and particularly through Mexico, are entering through ports of entry?

General BARR. Yes, but they also come elsewhere, and so do illegal immigrants cross the border and—

Senator HARRIS. But in particular on the subject of drug trafficking, are you aware that most of the drugs that are trafficked into the United States enter through points of entry?

General BARR. Yes.

Senator HARRIS. Have you recently or ever visited a point of entry—a port of entry in the United States?

General BARR. Not recently.

Senator HARRIS. When was the last time?

General BARR. I used to spend a lot of—well, when I was Attorney General.

Senator HARRIS. So a couple of decades ago.

General BARR. Almost 30 years.

Senator HARRIS. Okay. I would urge you to visit again if and when you are confirmed. I think you will see that a lot has changed over the years. Given the status quo on marijuana and the fact that 10 States, including the District of Columbia, have legalized marijuana, and given that the status quo is what it is, and, as you rightly described, we have Federal laws, and then there are various States that have different laws, if confirmed, are you intending to use the limited Federal resources at your disposal to enforce Federal marijuana laws in the States that have legalized marijuana?

General BARR. No. I thought I answered that by saying that, you know, to the extent people are complying with the State laws, you know, and distribution and production and so forth, we are not going to go after that.

Senator HARRIS. Okay.

General BARR. But I do feel we cannot stay in the current situation because, I mean, if—you can imagine any kind of situation. Can an existing administration and an Attorney General start cutting deals with States to say, well, we are not going to apply the Federal law, you know—some gun law or some other thing, say, well, we are not going to apply it in your State—

Senator HARRIS. I appreciate your point, but specifically, and I appreciate you answering the question, you do not intend to use the limited Federal resources at your disposal to enforce Federal marijuana laws in those States or in the District of Columbia that have legalized marijuana.

General BARR. That is right.

Senator HARRIS. Thank you.

General BARR. But I think the Congress of the United States—it is incumbent on the Congress to regular—you know, make a decision as to whether we are going to have a Federal system or whether it is going to be, you know, a central Federal law—

Senator HARRIS. I agree with you—

General BARR [continuing]. Because this is breeding disrespect for the Federal law.

Senator HARRIS [continuing]. I agree with you. I believe Congress should act. I agree. Earlier today, Senator Leahy asked whether you would follow the recommendation of career Department of Justice ethics officials on whether you should recuse yourself from the Mueller investigation. You said, “I will seek advice of the career ethics personnel, but under the regulations, I make the decisions

as the head of the Agency as to my own recusal.” You also said to Senator Klobuchar that you do not want to “abdicate your duty since a recusal decision would be yours.” So my question is, would it be appropriate to go against the advice of career ethics officials that have recommended recusal, and can you give an example of under what situation or scenario you would go against their recommendation that you recuse yourself?

General BARR. Well, there are different—there are different kinds of recusals. Some are mandated, for example, if you have a financial interest, but there are others that are judgment calls.

Senator HARRIS. Let us imagine it is a judgment call, and the judgment by the career ethics officials in the Agency are that you recuse yourself.

General BARR. Then it—

Senator HARRIS. Under what scenario would you not follow their recommendation?

General BARR. If I disagreed with it.

Senator HARRIS. And what would the basis of that disagreement be?

General BARR. I came to a different judgment.

Senator HARRIS. On what basis?

General BARR. The facts.

Senator HARRIS. Such as?

General BARR. Such as whatever facts are relevant to the recusal.

Senator HARRIS. What do you imagine the facts would be that are relevant to the recusal?

General BARR. They could be innumerable. I mean, there are a lot of—you know, for example, there is a rule of necessity, like who else would be handling it. It could be—

Senator HARRIS. Do you believe that would be a concern in this situation if you are—if the recommendation is that you recuse yourself from the Mueller investigation, do you believe that would be a concern, that there would be no one left to do the job?

General BARR. No, I am just—well, in some—in some contexts, there very well might be because of, you know, the—who is confirmed for what and who is in what position. But apart from that, it is a judgment call, and the Attorney General is the person who makes the judgment, and that is what the job entails.

Senator HARRIS. As a general matter that is true, but specifically on this issue, what—under what scenario would you imagine that you would not follow the recommendation of the career ethics officials in the Department of Justice to recuse yourself from the Mueller investigation?

General BARR. If I disagreed with them.

Senator HARRIS. Okay. We will move on. Senator Feinstein previously asked you whether you would put your June 2018 memo—whether you put together that memo based on non-public information. Your response was that you “did not rely on confidential information.” Are you creating a distinction between non-public information and confidential information?

General BARR. No.

Senator HARRIS. Okay. In response to a question from Senator Durbin about harsh sentencing laws, you stated in response to the

crack epidemic that community leaders back when you were Attorney General previously asked for these type of sentencing laws. Now, my understanding is that many of these community leaders at that time, and I was a young prosecutor during those days, knew and said even then that the crack epidemic was a public health crisis, and that that was really the chorus coming from community leaders, not that they wanted drug-addicted people to be locked up. And similarly, now we can find that in most of the communities afflicted by the opioid crisis, they are similarly, these community leaders, asking that it be addressed for the public health crisis that it is.

So my question is, if and when you are confirmed in this position, would you agree that when we talk about the opioid crisis, the crisis in terms of methamphetamine addiction, or any other controlled substance, that we should also acknowledge the public health ramifications and causes, and that there is a role for the chief law enforcement officer of the United States to play in advocating for a public health response and not only a lock them up response?

General BARR. Well, I think the commission that was chaired by Governor Chris Christie came up with a three-pronged strategy, and I think that recognized that part of it was treatment and education, recovery, and prevention, but the third prong of it was enforcement and interdiction, and that is the job of the Department of Justice. The Department of Justice cannot be all things to all people and—

Senator HARRIS. Sir, but I would suggest to you that in the intervening almost 30 years since you were last Attorney General that there is consensus in the United States that when we look at the drug epidemic, whatever the narcotic may be, that there is now an understanding that the war on drugs was an abject failure, that America, frankly, has a crisis of addiction, and that putting the limited resources of our Federal Government into locking up people who suffer from a public health crisis is probably not the smartest use of taxpayer dollars. So, if confirmed, I would ask that you take a look at the more recent perspective on the drug crisis that is afflicting our country, and then I will move on.

Today there is a billion dollar—

General BARR. Excuse me. May I just say something in response to that—

Senator HARRIS. Sure.

General BARR. Which is, I was just making the observation that the job of the Department of Justice is enforcement. I recognize there are a lot of dimensions to the problem, and that is why you have places like HHS. The Department cannot be—you know, cannot do the job of everybody.

Senator HARRIS. Sir, but I would remind you what you said because I agree with it. You said earlier the role of the Attorney General, one, is to enforce the rule of law; two, is a legal advisor to the President and the Cabinet; and three, is policy. This is a policy issue, so I would urge you to emphasize that role and power that you will have if confirmed and think of it that way.

General BARR. I see. I see.

Senator HARRIS. I would like to talk with you about private prisons. There is a billion-dollar private prison industry that profits off of incarcerating people, and, frankly, as many as possible. By one estimate, the two largest private prison companies in the United States make a total combined profit of \$3.3 billion—that is with a “B”—dollars a year. In August 2016, the Justice Department issued a report on the Bureau of Prisons’ use of private prisons that concluded, “Contract prisons incurred more safety and security incidents per capita than comparable Bureau of Prisons institutions.”

Given this conclusion that prisons run by for-profit companies have been found to be less safe than Government-run prisons, if confirmed, will you commit to no longer renew private prison contracts?

General BARR. Whose report was this, BOP?

Senator HARRIS. This was—yes, from the Justice Department.

General BARR. BOP? Yes, I would like to—you know, I would obviously look at that report, yes.

Senator HARRIS. Okay. And then—

General BARR. But I am not committing—I mean, I would want to see what the report says, yes.

Senator HARRIS. Sure. And then I would appreciate a follow-up when you have a chance to read it.

Senator HARRIS. Thank you. My time is up.

Chairman GRAHAM. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chair.

Mr. Barr, thank you for being here, and, Liam, your granddaddy is doing good. Mr. Barr, I want to go back because it is a long time. I think I am the last person in the first round, so I think we have to go back and maybe have you restate some things that you said earlier before I get to a few other things that I hope I have time to cover on intellectual property, Americans with Disabilities Act, and a GAO report back from 2014.

I do have to ask a question while Senator Kennedy is here because I do not think he covered the full landscape. He asked about anybody in Government, anyone in the Western Hemisphere, but did you, in fact, talk to anybody in the Eastern Hemisphere with respect to the Mueller probe?

[Laughter.]

General BARR. No, I did not.

Senator TILLIS. Okay. Thank you. We got that—we got that—

Senator KENNEDY. Ask him about the Milky Way.

[Laughter.]

Senator TILLIS. We got that closed out. You know, would you go back again and please describe for me the—first off, I think we have all—you have made it very clear in spite of the fact some people thought that you had coaching and some of the citations in the memo that you wrote, that this is a memo you wrote on your own. Can you explain to me, again, the motivation behind the memo, what precisely you were trying to communicate, just for the record?

General BARR. Yes, Senator. So the public commentary and media commentary was sort of dominated by discussion of obstruction of justice, and everyone was throwing out obstruction theories and so forth. And the statute that relates to obstructing a proceeding that is not yet in being—that is, some future proceeding—

is 1512. And my view was—of the particular provision, 1512(c), was, that it requires—what it covers is obstruction by means of impairing evidence that, you know, some evidence is going to be needed in a future proceeding, and you impair it either by making it not available or by corrupting it in some way, altering it, destroying it. That is what I thought the scope of that statute dealt with, and to my knowledge, the only cases ever brought under it involved the destruction of evidence.

Based on public reports, which may be completely wrong, I thought that the—it was being—that the Special Counsel may be trying to interpret the statute to say that any act, not destruction of evidence or anything like that, but any act that influences a proceeding is a crime if it is done with a bad intent. My concern there is, that, unlike something like bribery statute or document destruction where you prohibit it, that is a bad act. You do not need to be performing that bad act if you are a Government official.

But if you say that any act that influences a proceeding is a crime if you have a bad state of mind, that is what the people at Justice Department do every day of the week is influence proceedings. That is what they are there for. And what I was worried about is, the impact on the Department and other agencies if you say to someone, if you, in supervising a case or handling a case, make a decision with a—for a bad intent, it can be a crime. And I thought that that would essentially paralyze the Government.

So just to give an example, you know, Eric Holder made some pardon recommendations during the Clinton administration which were controversial. Incidentally, I supported Eric Holder for his position. But could someone come along then later and say, well, if you did that for a political reason to help Hillary Clinton run in New York, that is a crime and when he—when he is exercising his prerogatives, you know, in that situation? And you can just see how that could paralyze Government, and that was my concern.

Senator TILLIS. You also referred to your concerns with the prosecution of Senator Menendez.

General BARR. Yes.

Senator TILLIS. Did that weave into that same thought process?

General BARR. Yes, because in that case my concern was that they were basically taking activities that were not, you know, wrongful acts in themselves. You know, the political contributions were lawful political contributions, and the things with—you know, the travel on his friend—that was his friend for 25 years. They were taking a trip together. And you take those kinds of things and then you couple it with official action, and then the prosecutor comes along and says, well, we are going to look into your mind and see what your subjective intent was for performing these two sets of lawful acts, and we are going to say, you know, that you are corrupt.

Senator TILLIS. Good.

General BARR. So I just think that gives too much power to the prosecutor, and I think if that kind of—and by the way, you know, they have had cases like this for, you know—I mean, they have been pursuing things like this, and they have had to be slapped down a few times by the Supreme Court on these kinds of aggres-

sive things involving, you know, quid pro quos on the Hill. So, I—

Senator TILLIS. Let me—

General BARR. Yes.

Senator TILLIS [continuing]. If I can. Thank you. I just thought it was helpful because I think you tried to explain a lot of that and you were cut off, so I thought I would use some of my time in the first round to ask you that. Also I think somebody tried to characterize you as having somehow been opposed to any sort of Russia probe or Russia investigations. Have you ever gone on record as opposing any of the things that we are trying to do to figure out where Russia may have been involved in election tampering?

General BARR. No, and, in fact, in the op-ed piece where I said I thought the President was right in firing Comey, I said that the investigation was going forward under the supervision of Rod Rosenstein.

Senator TILLIS. Yes. Did you also say more than one time that you felt like the Special Counsel investigation should reach a conclusion, that Special Counsel Mueller should not be—that he should be allowed to draw this to a conclusion, then he will submit his report, and you are going to do everything that you can to present as much of that information as you can—as you can to the extent that confidential information is not being compromised?

General BARR. Yes. To the extent that regulations permit it, yes.

Senator TILLIS. Did you also say that there is—even a scenario—you could not imagine a scenario for cause, but even a scenario for cause for you to have to—you would have to take under serious consideration before you removed Special Counsel?

General BARR. That is right.

Senator TILLIS. Yes. Okay.

General BARR. There has not been a Special Counsel removed since Archibald Cox, and that did not work out very well.

Senator TILLIS. Did not work out too well, right. And so, and, again, did you also say that under—in no circumstances have you had a discussion with the President with respect to—I think you said you had a discussion about you had a relationship with Mr. Mueller, but no discussion about the Special Counsel investigation and your opinions on it with respect to any discussions you have had with the President?

General BARR. Right. That was the first meeting I had with the President, and then in November I met with him about the Attorney General job. And there was no discussion of the substance of the—of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

Senator TILLIS. With respect to the line of the questioning about the States that have legalized marijuana either for medicinal purposes or recreational purposes, I think what you were trying to say in a very, very respectful way is, it is not your job to do our job. Is that right? That if we ultimately want to provide certainty for these businesses—you have done a good job in saying that you disagree with the policy of the States, but we are where we are, and you would not want to undermine that given that investments have been made, States have moved forward.

But at the end of the day, we should stop talking about it here and making it your job. And those Members—I do not happen to be one of them—who think that we should take these Federal laws off the books, should probably file a bill and try and get it done. Is that a fair assessment of your opinion?

General BARR. That is—that is generally fair, yes.

Senator TILLIS. Okay.

General BARR. Yes.

Senator TILLIS. Just a few minor things so that we can get to the next round. There was a report by the Inspector General, in 2014, that had to do with accountability in the Department of Justice. I do not expect you to be familiar with this report, but there were some very interesting observations there about a lack of follow-through on disciplinary action for a number of—I think the subtitle of the report was that DOJ could strengthen procedures for disciplining attorneys.

It is something I would commend to you and maybe dust off and see if there have been any actions since this report. I did not get a satisfactory answer when it was contemporary with the nominee from the Obama administration for the position you are seeking, which is one of the reasons why I opposed the nomination.

General BARR. Actually, I—you know, I think very highly of Inspector General Horowitz, and I have not seen that report. But that issue is one that I plan to take up with him.

Senator TILLIS. Yes. And then, just so that I do finish on time versus pretend I am going to and go 2 minutes early—over, one, I want to get your recommendation on intellectual property. I think we have more work to do to give the Department of Justice tools to go after bad actors, which are China, Russia, India, a number of other countries, Brazil, that are stealing our intellectual property. I also want to talk about what I think is the exploitation of the Americans with Disabilities Act, particularly around website access. The web did not exist, and now we have attorneys filing a number of frivolous lawsuits. I would like to get some feedback on that after you get confirmed.

[The information appears as a submission for the record.]

Senator TILLIS. And finally, I want to make sure that you recognize in the First Step Act that faith-based organizations that have proven to help reduce recidivism are absolutely in play for the First Step Act, and hopefully we can make sure the Department of Justice moves forward with that. Thank you, Mr. Chair.

Chairman GRAHAM. Thank you.

General BARR. Thank you, Senator.

Chairman GRAHAM. I believe that is the end of the first round. Mr. Barr, are you able to go for a little bit longer?

General BARR. Sure.

Chairman GRAHAM. Okay. So we will start—we will do 5 minutes. As you can tell, I have been pretty liberal with the time, but let us try to honor it the best we can.

Senator Grassley.

Senator GRASSLEY. Where he left off on working with faith-based institutions, you were very positive about that?

General BARR. Absolutely, Senator.

Senator GRASSLEY. That takes care of my first question.

Enforcement of the antitrust laws is extremely important to ensure that markets are fair and participants do not engage in abusive activity harming consumers. I have been particularly active in making sure that the Justice Department and the Federal Trade Commission carefully scrutinize mergers, as well as looking out for anticompetitive behaviors and predatory practices in certain sectors of the economy, and particularly in my State of Iowa, the agricultural industry. But I am also pursuing things in healthcare. In particular, because I will be Chairman of the Senate Finance Committee, I am interested in making sure that companies in the drug and healthcare industries are playing by the rules. Everyone is concerned about the high cost of healthcare, and especially the skyrocketing price of prescription drugs.

Do you agree that the Justice Department has a very important role in this area?

General BARR. Yes, Senator.

Senator GRASSLEY. And would you commit to making antitrust enforcement a priority?

General BARR. Yes, it has to be a priority.

Senator GRASSLEY. Okay. Thank you.

Now, to a favorite issue of mine, whistleblower protection. Whistleblowers, as I told you in my office, are very critical to exposing waste, fraud, and abuse. There are our eyes and ears on the ground. Their courage, when they have it, and most of them do have great courage or they would not come forward to expose Government malfeasance, that is how important they are. So, I hope I can have you have a favorable view toward the opportunity to listen to the whistleblowers, protect them from retaliation, and promote a culture that values the important contribution from those patriotic people.

General BARR. Absolutely, Senator.

Senator GRASSLEY. And now to the Foreign Agents Registration Act. I hope you understand there have been very few prosecutions under the Foreign Agents Registration Act since 1938, and so that lack of enforcement, I think, is getting, obviously, even since the Mueller investigation, getting a lot more attention now. But we had a hearing on it before the Committee, and I think it proves that we should see more transparency and more enforcement against bad actors, not less.

Do you agree that the Foreign Agent Registration Act is a critical national security and public accountability tool? And if confirmed, will you commit to make sure that that act is a top priority?

General BARR. Yes, Senator.

Senator GRASSLEY. Okay. So then getting back to the legislation that I think will improve that 1938 Act, I introduced the Disclosing Foreign Influence Act to improve transparency, accountability, and enforcement. You have not probably read that Act, but I would like to work with you even though it is not in this Committee. It is in the Foreign Relations Committee. I would like to have you work with us so it is something that we can pass and make sure that this law is more useful than it has been over the last 80 years.

I support the Freedom of Information Act and the public disclosure of Government records. Transparency yields accountability. You hear me say that all the time, and that is true no matter who

is in the White House. When I was Chairman of the Committee, I helped steer the FOIA Improvement Act into law, which creates a presumption of openness, and that presumption of openness is a very important standard. The Justice Department oversees the Federal Government's compliance with FOIA, so I hope you would agree that FOIA is an important tool for holding Government accountable. And if confirmed, then, would you make sure it is a top priority to make FOIA and the faithful and timely implementation of the 2016 amendments a top priority?

General BARR. Yes, we will work hard on that.

Senator GRASSLEY. Because you know what really happens within the bowels of the bureaucracy. It just takes them forever because maybe something is going to embarrass someone, so they do not want it out in the public and you get all sorts of excuses. We have got to do away with those excuses.

One way to make FOIA work better is by reducing the number of requests. This will be my last question. One way to make FOIA work better is by reducing the number of requests that have to be made in the first place. That is why I am a strong advocate for improved proactive disclosure. If confirmed, will you commit to help advocate for more proactive disclosure of Government records? Now, that is not just by the Justice Department, but because you are the Department's top dog in this particular area in the Federal Government overall?

General BARR. Yes, Senator.

Senator GRASSLEY. Thank you.

Chairman GRAHAM. Senator Feinstein.

Senator FEINSTEIN. Mr. Barr, I see you have staying power, and I see it runs in the family, and particularly your grandson. I would like to send a little care package to him.

General BARR. Thank you, Senator.

Senator FEINSTEIN. You are welcome.

Senator LEAHY. He does not have to share it with the rest of the family.

[Laughter.]

Senator FEINSTEIN. In 1994, you said that gun control is a dead end. It will not reduce the level of violent crime in our society. The year you made this comment, I introduced a Federal assault weapons ban, and the President signed it into law. A 2016 study shows that compared with the 10-year period before the ban was enacted, the number of gun massacres between 1994 and 2004 fell by 37 percent, and the number of people dying from gun massacres fell by 43 percent. In addition, between 2004 and 2014, there has been a 183 percent increase in massacres and a 239 percent increase in massacre deaths.

Do you still believe that prudent controls on weapons will not reduce violent crime? And if so, what is your basis for this conclusion?

General BARR. I think that the problem of our time is to get an effective system in place that can keep dangerous firearms out of the hands of mentally ill people. That should be priority number one, and it is going to take some hard work, and we need to get on top of the problem. We need to come up with—agree to standards that are prohibitors of people who are mentally ill. We have

to put the resources in to get the system built up the way we did many years ago on the felon records and so forth. We have to get the system working. And as I say, it is sort of piecemeal a little bit right now. We need to really get some energy behind it and get it done, and I also think we need to push along the ERPOs so that we have these red flag laws to supplement the use of the background check to find out if someone has some mental disturbance. This is the single most important thing I think we can do in the gun control area to stop these massacres from happening in the first place.

Senator FEINSTEIN. Well, thank you. I would like to work with you in that regard.

In August 2002, the Justice Department's Office of Legal Counsel issued opinions authorizing enhanced interrogation methods that included waterboarding and extended sleep deprivation. These opinions were later withdrawn and the Justice Department's Office of Professional Responsibility found that they reflected a lack of—this is a quote—“a lack of thoroughness, objectivity, and candor,” end quote.

In 2015, I worked with Senator McCain to pass legislation making clear that enhanced interrogation techniques are unlawful and limiting authorized interrogation techniques to those listed in the Army Field Manual, and that is the law today.

If confirmed, will you ensure that the Justice Department upholds the law?

General BARR. Yes, Senator. I think that that was an important change because I think it gave clarity to the law, and I will support that law.

Senator FEINSTEIN. Thank you. I am delighted to hear that.

Now, a lot of us have asked about the Mueller report and whether you would commit to providing it to Congress. When asked, I thought you said yes, but when I tried to clarify it—I meant the full report, including obstruction of justice—you again said yes. Then when Senator Blumenthal asked you about the Mueller report, you seemed to make a distinction and said you were going to provide your own report based on Mueller's report, but not the report—this is the way we understood it—but not the report he submits at the end of the investigation.

This is concerning as there is nothing in the regulations that prevent you from providing Mueller's report to Congress. While the regs refer to a confidential report to be provided to the Attorney General, the regs do not say that confidentiality means the report cannot be provided to Congress.

So here is the question. Will you provide Mueller's report to Congress, not your rewrite or a summary?

General BARR. Well, the regs do say that Mueller is supposed to do a summary report of his prosecutive and his declination decisions and that they will be handled as a confidential document, as are internal documents relating to any Federal criminal investigation. Now, I am not sure—and then the AG has some flexibility and discretion in terms of the AG's report.

What I am saying is my objective and goal is to get as much as I can of the information to Congress and the public. These are departmental regulations, and I will be talking to Rod Rosenstein and

Bob Mueller. I am sure they have had discussions about this. There is probably existing thinking in the Department as to how to handle this. But all I can say at this stage, because I have no clue as to what is being planned, is that I am going to try to get the information out there consistent with these regulations, and to the extent I have discretion, I will exercise that discretion to do that.

Senator FEINSTEIN. Well, I can only speak for this side, and maybe not all this side, but we really appreciate that, and the degree to which you can get us a prompt report in the fullest possible form would be really appreciated. I think there has to be a realization, too, among the administration, that this is an issue of real concern to people and to the Congress, and we should be able to see the information that comes out.

General BARR. I understand.

Senator FEINSTEIN. So, I am very hopeful. Thank you.

Let me ask this question on “enhanced”—did my time run out?

Chairman GRAHAM. Yes, but go ahead.

Senator FEINSTEIN. On “enhanced interrogation”: During a 2005 panel discussion, you said the following about interrogating suspected terrorists, and I quote, “Under the laws of war, absent a treaty, there is nothing wrong with coercive interrogation, applying pain, discomfort, and other things to make people talk, so long as it does not cross the line and involve the gratuitous barbarity involved in torture,” end quote. This is a panel discussion on civil liberties and security, on July 18, 2005.

Do you believe that torture is ever lawful?

General BARR. No.

Senator FEINSTEIN. Is waterboarding torture?

General BARR. I would have to look at the legal definition. You are talking about under the—right now it is prohibited. So the law has definitively dealt with that. I cannot even remember what the old law was that defined torture. I would have to look at that and then, you know, figure out what is involved in it. But it—sorry.

Senator FEINSTEIN. Keep going. I did not mean to interrupt you.

General BARR. No, it is okay.

Senator FEINSTEIN. At what point does interrogation cross the line to the “gratuitous barbarity involved in torture”? That is your quote.

General BARR. Well, I was not using that, the gratuitous barbarity—that is what I was saying, that torture is gratuitous barbarity. So I was not saying that gratuitous—

Senator FEINSTEIN. Oh. Well, that is helpful, then.

General BARR. Yes.

Senator FEINSTEIN. That is helpful.

General BARR. Yes.

Senator FEINSTEIN. And you define waterboarding. You know, one would think these questions would never be necessary. I thought that all my life. And then I found I was wrong and they really are. I was Chairman of Intelligence when we did the big Torture Report, and what I found and what I saw was really indicative of reform.

So I think for the Attorney General, knowing the position is really very important, maybe you could concisely state your position on torture.

General BARR. I do not think we should ever use torture, and I think that the clarification that—was it your legislation of putting in the Army—

Senator FEINSTEIN. It was Senator McCain—

General BARR. The Army Field Manual—

Senator FEINSTEIN. That is right.

General BARR [continuing]. Was important to clarifying where the line is.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Cornyn.

Senator CORNYN. Mr. Barr, I want to talk about guns, and I want to talk about China in the 5 minutes we have together.

Back in 1992, there was some discussion about your position on the Congress' role when it comes to banning certain types of semi-automatic weapons. Sometimes people call those assault weapons, but in the intervening years, the Supreme Court has now spoken in both the *Heller* and *McDonald* cases and recognized that the Second Amendment confers an individual and fundamental right to bear arms.

Could you bring us up to date from your views in 1992 and how they were affected by *Heller* and *McDonald*, and what your views now are on the Second Amendment?

General BARR. Sure. I think I opposed an assault weapons ban because I felt that that was really sort of the aesthetics of the gun. But since that time, *Heller* has been decided. Actually, before *Heller*, I did work at OLC on this issue, and I personally concluded that the Second Amendment creates a personal right under the Constitution. It is based on the Lockean notion of the right of self-preservation. It is tied to that, and I was glad to see *Heller* come out and vindicate that initial view that I had.

And so there is no question under *Heller* that the right to have weapons, firearms is protected under the Second Amendment and is a personal right. At the same time, there is room for reasonable regulation, and from my standpoint, what I would look for in assessing a regulation is, what is the burden on law-abiding people, and is it proportionate to whatever benefit in terms of safety and effectiveness will be conferred.

As I said just a moment ago, let us get down to the real problem we are confronting, which is, keeping these weapons out of the hands of people who are mentally ill, and I think all the rest of this stuff is really essentially rhetoric until we really get that problem dealt with in terms of the regulatory approaches.

Senator CORNYN. As our colleague, the Senator for Louisiana, Senator Kennedy, likes to say, the Bill of Rights is not an a la carte menu. I agree with that, and I also agree that there are many facets to these mass violence incidents. After the shooting at Sutherland Springs, we found out that the background check system, the National Instant Criminal Background Check System, was not being used appropriately by the U.S. Government, in that case, the Air Force. And if it had been, this individual who killed 20 people and injured 26 more at a Baptist church right outside of San Antonio, would not have been able to legally get his hands on the fire-

arm by lying. But certainly the mental health issue that you mentioned, we have done work there with—

General BARR. Fix NICS.

Senator CORNYN [continuing]. In the Fix NICS area. We have also done the expanded pilot programs and assisted outpatient treatment for people suffering from mental illness, recognizing that it is difficult for any family member to control, particularly an adult, but that providing an opportunity to go to court and get basically a civil order that would require them to comply with their doctor's orders, take their medication, and the like. I am thinking of Adam Lanza at the Sandy Hook shooting whose mother did not know how to control him as he was getting more and more ill, only to have him take her very weapon and then kill her and then go murder the innocent children.

On China, do you agree with me that China represents probably one of the preeminent economic challenges to America, particularly because of their theft of intellectual property and their exploitation of gaps in foreign investment that we have tried to address through improvement of the CFIUS process, the Committee on Foreign Investment in the United States? But talk to me a little bit about what you see as the challenge of China, both economically and from a national security standpoint.

General BARR. Well, I think they are the paramount economic and military rival in the world. I think that they are very formidable because they take the long view. They have been stealing our technology, and they have been gradually building up their military power and investing in new technologies. I think from a military standpoint it is very disturbing how much progress they are making, largely based on U.S. technology.

I really thought that Attorney General Sessions was right on target in setting up his China initiative in the Department to start going after the pirating of American technology and other kinds of illegal activities that Chinese nationals are involved in here in the United States, and even abroad.

Senator CORNYN. Would you share my skepticism that Chinese telecommunications companies like Huawei and ZTE, in terms of how that once in the hands or in the networks of unsuspecting countries, that that could be used for espionage purposes and theft of intellectual property?

General BARR. Yes. In fact, even in my old Verizon days, we understood the danger and would not use that kind of equipment, even though it would be economically attractive.

Chairman GRAHAM. Before Senator Leahy, I would like to, on behalf of Senator Feinstein, introduce into the record letters that express opposition and concern from groups like the Leadership Conference on Civil and Human Rights, Planned Parenthood, People for the American Way, National Education Association, Alliance for Justice, NARAL, the National Urban League, the National Council of Jewish Women, the Center for American Progress, the Human Rights Campaign, and a letter from Representative Raúl Grijalva—I hope I got his name right—from Arizona.

In support, we have letters from the International Association of Chiefs of Police, a letter from the National Fraternal Order of Police, numerous letters signed from 100 former Federal law enforce-

ment national security officials, including three former Attorneys General and a lot of U.S. Attorneys, and heads of the CIA, FBI, and Department of Homeland Security, a letter from the National Narcotics Officers Association, a letter from the International Union of Police Associations, a letter from Major Cities Chiefs Association, a letter from the Association of State Criminal Investigative Agencies.

Without objection, I would like to enter all that into the record. [The information appears as submissions for the record.]

Chairman GRAHAM. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

You just mentioned being at Verizon during the NSA's metadata program known as PRISM and Upstream. It required telecom internet providers to hand over huge amounts of data to the Government, and you testified in 2003 that the law is clear that a person has no Fourth Amendment rights in these records left in the hands of third parties, the Third-Party Doctrine.

I actually disagreed with you at that time, and I hope you would now, especially as the *Carpenter* decision just came down, written by Chief Justice Roberts, that this is generally requiring the Government to get a warrant to obtain geolocation information through the cell site location information. Does that change the opinion you had back then?

General BARR. It sounds like—I have not read that decision, Senator. It may modify my views. I would have to read the decision. I was going on the *Miller* decision relating to bank records.

But also you mentioned that you were tying this to the NSA collection, and then tying it to my testimony, because—

Senator LEAHY. You had said that a person has no Fourth Amendment rights in these records left in the hands of third parties, the Third-Party Doctrine.

General BARR. Yes. That was the—

Senator LEAHY. That seems to be undercut by *Carpenter*.

General BARR. I will take a look at that. But I do not want people to have the impression that Verizon was involved in responding—

Senator LEAHY. Then would you respond for the record?

General BARR. Yes, sure. Certainly.

Senator LEAHY. And you said back in November 2017 that you saw more basis for investigating the Uranium One deal than supposed collusion between President Trump and Russia, and by not pursuing these matters the Department is abdicating its responsibility. Just about everybody has debunked the Uranium One controversy. I think probably the nail in the coffin was President Trump's biggest supporter, Fox News, who debunked it. Did I miss something in there?

General BARR. No. Actually, that—you will notice that there were no quotes around that, and then the next sentence is plural, "matters." My recollection of that is, what I think it was relating to, the letter and the appointment of Huber in Utah to look at a number of things. The point I was trying to make there was that whatever the standard is for launching an investigation, it should be dealt with evenhandedly, whatever that trigger is, should be applied to all.

I have no knowledge of the Uranium One. I did not particularly think that was necessarily something that should be pursued aggressively. I was trying to make the point that there was a lot out there. I think all that stuff at the time was being looked at by Huber. That is my recollection. I may be wrong on that.

Senator LEAHY. I think the fact that the investigation has been pretty well debunked, we do not have to worry about it in the future. But we do have one thing that is happening right now.

The Trump shutdown is in its 25th day. The Justice Department has 13,000 FBI agents, 16,000 prison guards, 3,600 U.S. marshals, 4,300 Drug Enforcement agents—all working without pay. The FBI Agents Association I realize is not part of the Government, but the Association described the effect of this shutdown as a potential national security issue.

So let me just ask you, in your years of experience in the Department, what impact do you believe a long-term shutdown has on law enforcement?

General BARR. Well, I think most people involved in law enforcement are—I do not know if the lingo is still the same. They used to be called essential. I think it has been changed to something else, but I think they are on the job. But obviously people would like to see the shutdown ended, and that is why people want to see some kind of compromise. You call it the Trump shutdown, but it takes two to tango.

Senator LEAHY. Only because he called it that.

General BARR. Okay.

Senator LEAHY. And I said finally I have got something I could agree with him on.

Senator Shelby and I put together appropriations bills that passed almost unanimously in the Senate at a time when we could have kept the Government open, at a time when it is hard to get something unanimous saying the sun would rise in the East. So I was just agreeing with the President.

But no matter what you call it, is it not a fact that this does have an effect on law enforcement?

General BARR. Well, not having a wall also has an effect on law enforcement.

Senator LEAHY. And not paying our law enforcement people. We have both had experience in law enforcement, you at the national level, me at the State level. If you do not pay our law enforcement people, I think there is an effect. We have some very dedicated people, but you have some very distracted people.

Do you believe that voter ID laws and similar restrictions actually promote democracy by discouraging voters who are not really paying attention to what is going on? I am going back to a panel discussion you had a few years ago.

General BARR. What I said there was that in that panel discussion there was a lot of people complaining about the lack of—that many Americans are not educating themselves about the issues and they are passive, and that it was important, and also that the voting participation was dropping.

My position was that the underlying problem is the citizen who is not paying attention to public events, not educating themselves about the issues and so forth, and that the non-voting is a symp-

tom, and I did not see driving up participation as addressing the primary underlying problem. That was my point, and I pointed out that when the Constitution was adopted, the turnout was about 33 percent, my understanding. So then I said low participation has been a problem from the very beginning.

But my view is that voter turnout should not be artificially driven up without also addressing the issue of an informed citizenry, which I think is a problem.

Senator LEAHY. Well, we do have voting laws guarding against discrimination, the arbitrary closing of the voting booths in predominantly African-American areas, for example. Would you have any problem in vigorously enforcing our voting rights laws that are on the books?

General BARR. Of what? Vigorously? No, not at all. I said one of my priorities would be that. I think we have to enforce the voting rights, and I was not suggesting that voting should be suppressed. I was just saying that the low turnout is ultimately attributable to sort of the—I do not know what the word to use is, but that the citizenry does not seem to be that engaged in the public affairs of the country.

Senator LEAHY. Well, they are in Vermont. We have one of the highest turnouts in the country.

General BARR. That is good. Excellent.

Senator LEAHY. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you.

We are going to have two votes at 4:10. Can you go for a bit longer?

Senator Sasse.

Senator SASSE. Thank you, Chairman.

General, I would like to return to the disturbing topics of human trafficking and sex trafficking. You have answered a few questions here today. I would like to look at the November 28th Miami Herald investigative series that I know that you followed into the crimes of Jeffrey Epstein, and I want to quote from that.

Epstein, a wealthy hedge fund manager, quote, “assembled a large cultlike network of underaged girls with the help of young female recruiters to coerce into having sex acts behind the walls of his opulent waterfront mansion as often as three times a day,” closed quote. The report continues, “He was also suspected of tracking minor girls, often from overseas, for sex parties at his other homes in Manhattan, New Mexico, and the Caribbean.”

The Herald series continues, quote, “in 2007, despite ample physical evidence and multiple witnesses corroborating the girls’ stories, Federal prosecutors and Epstein’s lawyers quietly put together a remarkable deal for Epstein, then age 54. He agreed to plead guilty to two felony prostitution charges in State Court, and, in exchange, he and his accomplices received immunity from Federal sex trafficking charges that could have sent him to prison for the rest of his life. He served 13 months in a private wing of the Palm Beach County stockade. His alleged co-conspirators, who helped schedule his sex sessions, were never prosecuted. And the deal called”—again this is the Miami Herald—“a Federal nonprosecution agreement was sealed so that no one, not even his victims, could know

the full scope of Epstein's crimes and who else was involved," closed quote.

The fact that Federal prosecutors appear to have crafted this secret sweetheart deal for a child rapist obviously enrages moms and dads everywhere. On this particular case, will you commit to making sure that there is a full and thorough investigation into the way DOJ handled the Epstein case?

General BARR. So, Senator, I have to recuse myself from Kirkland & Ellis matters, I am told. And I think Kirkland & Ellis was, maybe, involved in that case. So I need to sort out exactly what—what my role can be. But, you know, I will say that if—if I am confirmed, I will make sure your questions are answered on this case.

Senator SASSE. Thank you. The Deputy Attorney General, obviously there have been media reports about the timing of his potential departure post your confirmation, and the DAG, as you well know from your prior history, has a key responsibility in deconflicting different parts of the Department. Those of us who have been pressing on this matter have found in different parts of the Department a lot of anxiety about the way this was handled, and yet kind of a hot potato, have a bunch of people thinking they are not responsible. Right now, Rod Rosenstein has been helping, trying to deconflict some of that, but I am worried, with your potential recusal, if the DAG also departs, it is not clear who is actually going to deconflict this. So I am grateful for your pledge that the Department will be responsive even if not you personally.

General BARR. Yes, that is right.

Senator SASSE. More broadly than the miscarriage of justice in this particular Florida case, would you agree that justice has nothing to do with the size of your bank account or the number of attorneys you can hire?

General BARR. Yes.

Senator SASSE. I agree. And I think that a whole bunch of Americans wonder about the Department of Justice and how we are trying to prioritize or how we should be prioritizing our responsibility to the victims of sex trafficking who are left defrayed and voiceless. In this particular case, many of the women who were clearly victims, trafficked rape victims, had no awareness of the fact, and I think in violation of Federal statutes of victim notification, that this nonprosecution agreement had been agreed to, and not just that Epstein and his co-conspirators were not indicted, but the rest of the investigatory matters of the Department were also suspended. It seems truly bizarre.

General BARR. Yes.

Senator SASSE. I think moms and dads watching this hearing would like to know that you will pledge broadly to attack sex trafficking as a scourge in our society on both the supply side and the demand side as these dirtbags demand this, but on the supply side, as organizations clearly perpetrate these crimes. Can you pledge to us that this will be one of your priorities at the Department?

General BARR. They can count on it.

Senator SASSE. Thank you, sir.

Chairman GRAHAM. I want to associate myself with what Senator Sasse said about the Epstein case and the problem in general, to the extent you can help us figure this out, please.

General BARR. Yes.

Chairman GRAHAM. Senator Durbin.

Senator DURBIN. Thanks, Mr. Chairman.

Mr. Barr, thank you for being with us.

Mr. Barr, my colleague Senator Ernst asked a question earlier which I am sure will be asked in virtually every State we represent: What we are doing to stop the flow of narcotics into the United States. She asked about meth, I believe, in particular, but about narcotics coming in from Mexico, and your reply was, and I quote, "It is the major avenue of how drugs come into the country. They come across that border. I feel it is a critical part of border security, and we need barriers on the border." That was your quote.

I am troubled by that answer. And I would like to clarify it because if we are ever going to have a rational conversation about border security, there ought to be some basics that we agree on.

The DEA, which you will supervise if confirmed, in its 2018 report, said, quote, "The most common method employed by the Mexican drug cartels involves transporting illicit drugs through U.S. ports of entry in passenger vehicles, which concealed compartments are commingled with legitimate goods on tractor trailers."

The Customs and Border Protection's own data shows that Customs officers at legal ports of entry seize the vast majority of lethal narcotics coming into this country. In Fiscal Year 2017, the last year we have data, 87 percent of the fentanyl—which has been identified by the CDC as the most deadly narcotic in America—87 percent seized in our country coming in through ports of entry, 13 percent seized outside of ports of entry.

So, overwhelmingly, when we talk about building new walls and barriers to stop narcotics, we are ignoring the obvious: 80 to 90 percent of the drugs are coming in through ports of entry. I met with the head of Customs and Border Protection. He said the number one thing we can do is to put technology in the ports of entry to scan the vehicles coming through. Currently, only 17 percent of trucks and cars coming through those ports of entry are being scanned, 17 percent. That means 83 percent of them are just flowing right on through there bringing narcotics to Iowa and to Illinois. Building a new concrete wall from sea to shining sea does not even address this issue; technology does. I want to reach a point where we open the Government and have this honest conversation. Would you reconsider your earlier answer as to the fact that we need to build more barriers to stop narcotics from coming into the United States?

General BARR. Well, it was not tied just to narcotics, it was tied to overall border security.

Senator DURBIN. You said, a major avenue for how drugs come into this country. It is not.

General BARR. I said it was across the—

Senator DURBIN. Border.

General BARR. Wait a minute. I—I—I—

Senator DURBIN. The border is the major avenue, but your answer was, we need barriers on the border.

General BARR. Right, because drug—you know, we need barriers on the border for border security. Part of what we are trying to do is cut down on drugs. It is also illegal aliens. It is also other—people from other countries who may wish to do harm in the United States that are coming in. And barriers are part of the answer. And from my experience, the threat is always dynamic. You put technology at the ports of entry, they will shift somewhere else. It is a moving target, it always has been, and I think we need a system that covers all the bases.

Senator DURBIN. I think the reason we cannot reach an agreement with the Trump administration is fundamental to our exchange, and it is this, I do not disagree with you, with the notion that barriers from sea to shining sea will, at least, slow people down, but when it comes to the next marginal dollar to protect kids in Illinois and children in your home State, it is ports of entry, it is technology, to keep these narcotics out of the United States. And if we cannot really start at the same premise based on reports from the President's own administration, we are never going to reach a point of bipartisan agreement on border security.

So, I hope—I think we are close to agreeing, maybe it is semantics, I hope not, but I hope that we can agree that if we are going to stop narcotics, it is technology and personnel. The experts tell us that. It is not a wall. And I hope that we can move from there.

The last question I will ask you, and limited time, they asked me about your—your statements this morning, your testimony, and I thought they were good, responsive in the most part. The one thing I am stuck on, and many are, is this report that you gave to this administration in June of last year about the investigation of the President.

General BARR. You mean my memo?

Senator DURBIN. Yes.

General BARR. The memo, yes.

Senator DURBIN. And you said in there, “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.” You volunteered that. I am trying to get around this. It sounds like it was an effort on your part to ingratiate yourself with an administration which is now nominating you for Attorney General. I will give you one last chance. My time is up. Please respond.

General BARR. Okay. Well, first, what I was saying there was, again, based on speculation on my part, was that there has to be an adequate predicate, and if he was relying on just the firing of Mueller or the statement about Flynn in this specific statute, those two things, I did not think it was an adequate predicate. I was not saying—he may have other facts, he may have other theories, that would support it. I was just pinpointing that. Number two—

Senator DURBIN. You meant the firing of Comey.

General BARR [continuing]. I can assure you I was not trying to ingratiate myself with anybody. The furthest thing from my mind was coming back into Government, I can assure you that. And if I wanted to ingratiate myself or signal things, there are a lot more direct ways of doing it than that.

Senator DURBIN. Just for the record, I think you meant the firing of Mr. Comey. I think you said “Mueller” earlier.

General BARR. Oh, okay, yes. What did I say? Oh, yes, the firing of Comey. Yes, yes.

Senator DURBIN. Thank you very much.

Senator LEAHY. Just trying to help.

[Laughter.]

Chairman GRAHAM. Thank you.

I will just take a couple of seconds to see if I can help clarify this because I think it has been a very interesting hearing. So if there was some reason to believe that the President tried to coach somebody not to testify or testify falsely, that could be obstruction of justice.

General BARR. Yes, under that—yes, under an obstruction statute, yes.

Chairman GRAHAM. So if there is some evidence that the President tried to conceal evidence, that would be obstruction of justice potentially, right?

General BARR. Right.

Chairman GRAHAM. Your point is just simply firing somebody, which is a personnel decision, is problematic for the system.

General BARR. Right, especially if you—what I am saying is that does not fit under that statute.

Chairman GRAHAM. No, I got you.

General BARR. Show me some other statute, but that statute, no.

Chairman GRAHAM. Yes, okay.

Who is next?

[Voice off microphone.] Senator Hawley.

Chairman GRAHAM. Senator Hawley. Thank you.

Senator HAWLEY. Thank you, Mr. Chairman.

Mr. Barr, switching gears a little bit, yesterday, a District—Federal District Court Judge in Pennsylvania struck down the Trump administration's religious and moral exemptions to the contraceptive mandate under the Affordable Care Act. As part of this ruling, the District Court Judge issued a nationwide injunction to any enforcement application of these—of these rules. This is a growing trend. We have seen a lot of this in the last 2 years. We have seen lots and lots of District Courts all across the country in various contexts, in the immigration context and others, issue nationwide injunctions. And now, of course, for those listening at home, the—the court—the entire Nation is not within the jurisdiction of these courts. These courts are District Courts, they reach specific geographic areas delineated by law, and yet they are issuing, increasingly—increasingly commonly, these injunctions that reach the entire country. This is a fairly unusual and fairly recent practice.

In distinction of this, the District Court Judge in Texas who recently heard a challenge to the Affordable Care Act case did not issue a nationwide injunction, and therefore allowing the appeals process to take its normal course, and, of course, the ACA remains in full effect throughout that appeals process because he did not issue a nationwide injunction.

So, my question is to you, are you concerned about this growing practice of nationwide injunctions by Federal District Courts? And what do you think ought to be done about it?

General BARR. Yes, I am very concerned by it. Earlier I was talking about this and saying that I think it mistakes the limitation

on judicial power, which is a case or controversy limitation and tries to grant relief to people who are not part of the case or controversy that is being decided. And as you said, it really started in the 1960s, and it has been picking up steam, and the fact of the matter is, there are a lot of District Court Judges, and you can usually find one who somewhere in the country will agree with you, and so major democratic decisions can be held up by one judge nationwide.

I am also concerned that there is another trend, which is the willingness of some District Court Judges to wade into matters of national security where, in the past, courts would not have presumed to be enjoining those kinds of things. And then the appeals process takes a long time. And so a lot of damage can be done before it gets to the Supreme Court and you get a definitive decision, and meanwhile, everything is stuck.

Senator HAWLEY. Can you just say more? You are concerned about courts that wade into national security issues where traditionally they have—they have hesitated to do so. Can you just say more about that? What do you have in mind?

General BARR. Like the travel ban.

Senator HAWLEY. And the concern there is that—

General BARR. I mean, the President takes something based on national security, and one—and—and the Constitution vests that kind of judgment for that kind of emergency act or acts that he has the authority to perform to protect the country, he—he is politically accountable for that, and yet a judge with a lifetime appointment sitting somewhere in the country who does not have the access to the information and has no political accountability can stop a national security measure, you know, globally essentially, and it takes a long time to get that sorted out. That—that is really troublesome to me.

Senator HAWLEY. Yes, I completely agree with you. Let me ask you about another recent case, this one from the Southern District of New York, today, in which the District Courts ruled that the attempt to include—the attempt by the Commerce Department to include a citizenship question on the census is not permissible and has stopped the Commerce Department from including that on the 2020 census.

The Department has already, of course—and the Department of Justice is defending this decision, that including a citizenship question, as was done for approximately 100 years on the census, actually helps identify with greater accuracy the residents of the country, who is and who is not a citizen, and, of course, helps more accurately apportion and draw congressional districts and make sure that representation is fair and the Voting Rights Act is fairly enforced. Do you agree with that position?

General BARR. Well, it is being litigated now, so I really would prefer not to comment on it.

Senator HAWLEY. Do you anticipate that the Department of Justice will continue its—its vigorous defense of the position that the administration has taken?

General BARR. I think generally I have no reason to change that position.

Senator HAWLEY. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Whitehouse.

Senator WHITEHOUSE. Thank you.

Mr. Barr, in order to perform its counterintelligence function effectively, what should the Department of Justice and the FBI know about the business relationships and entanglements of senior officials with foreign interests and governments?

General BARR. Well, usually, you know, I guess usually investigations are started because there is some act that comes to the attention of the law enforcement agency that suggests someone is being disloyal to the United States.

Senator WHITEHOUSE. Except where working for a foreign—

General BARR. Excuse me?

Senator WHITEHOUSE. Except where we require disclosures in order to give the law enforcement folks that advantage of knowing in advance when a senior official has a business entanglement with a foreign interest or power.

General BARR. Yes.

Senator WHITEHOUSE. So what should we know?

General BARR. What official are we talking about?

Senator WHITEHOUSE. Well, let us start with the President.

General BARR. Are you suggesting that the President go through a background investigation by the FBI?

Senator WHITEHOUSE. No. I am suggesting that when there is evidence that he has business relationships with foreign interests, then that may be a factual determination that would be of some note to our counterintelligence folks.

General BARR. Well, the financial disclosures that I think are filed by other—I—I do not even know if Members of Congress file financial disclosures. Do they? They do?

Senator WHITEHOUSE. So do many officials in the executive branch. So—

General BARR. Yes. You know, that is for—that is for financial conflict. I do not think that is for counterintelligence purposes.

Senator WHITEHOUSE. Probably, because very few people have business relationships with foreign interests, so it turns up much more often in a conflict—

General BARR. Well, a business relationship with a foreign interest is not ordinarily a counterintelligence concern.

Senator WHITEHOUSE. Unless, of course, you are—

General BARR. Unless the person is a traitor.

Senator WHITEHOUSE. Or in a position to make decisions that are biased or influenced by those business relationships.

General BARR. Well—

Senator WHITEHOUSE. Counterintelligence and treason are not the same thing, are they?

General BARR. Counterintelligence, you are usually trying to counter the intelligence activities of another country.

Senator WHITEHOUSE. Correct. And you may want to head off things, you may want to be aware of things, you may want to—there are a whole lot of things short of treason that are the counterintelligence function.

General BARR. Right, including, you know—counterintelligence focuses usually on foreign intelligence services and their activities. I think what we are—

Senator WHITEHOUSE. With American officials—

General BARR. I think we are mixing, you know, apples and grapes—or whatever here, because financial disclosure—

Senator WHITEHOUSE. Well, maybe, or maybe you are just having a hard time answering what ought to be a really easy question, which is that when a senior Government official has business relationships with foreign interests and powers, we ought to know about it. That ought to be an easy proposition, and in any other administration, it would be.

General BARR. Well, do Congressmen go through background investigations to get access—access to classified information?

Senator WHITEHOUSE. We—that is a whole separate question.

General BARR. No, it is exactly the same question.

Senator WHITEHOUSE. We do a lot of—we do a lot more reporting than we do—

General BARR. Well, your financial reporting, with all due respect, is not the same as a background investigation. You are elected by the people to hold an office, and, you know, you do not get a background investigation to get on the Intelligence Committee.

Senator WHITEHOUSE. But we do have to do a lot of reporting. Okay, if you do not want to answer it, I will move on.

Let us talk about “corruptly” in obstruction cases. I am not sure I heard you correctly, so I want to make sure you have the chance to explain, but it sounded like you were saying that the word “corruptly” used, as you said, adverbially, was a requirement that there be some form of destruction or interference with evidence. I have always read that term “corruptly” in obstruction of justice to impose an intent requirement, which is also what the criminal resources manual at the Department of Justice says, and what I think virtually every Appellate Court has said. So it worries me if what you are trying to do here is to redefine the obstruction statute by narrowing the intent requirement and using the term “corruptly” to refer to something very different, which is the actual physical corruption changing or—

General BARR. I think I can allay your concerns.

Senator WHITEHOUSE. Can you—yes, could you do that? Because—

General BARR. Yes. Because if you read—if you look at the memo, you will see that my discussion of “corruptly” is not up in the plain meaning section where I am talking about how you interpret the statute. And my basic argument as to why the statute covers destruction of evidence and hiding evidence and stuff like that is based on the word, “otherwise.” Supreme Court decisions in *Yates* and *Begay*, also the fact that if you actually read it “otherwise,” it swallows up all—it becomes a one-clause—

Senator WHITEHOUSE. So—

General BARR. It wipes out everything else.

Senator WHITEHOUSE. If I can cut to the—

General BARR. No, so then later on I point out in my memo, I later point out that that reading is also supported by the understanding of the word “corruptly,” which the *Poindexter* case, D.C. Circuit case, I think had the most intelligent discussion of the word “corruptly,” which is, it does refer to the kind of activity that is necessary, which is perverting a proceeding by corrupting it.

Senator WHITEHOUSE. So in the event that the Mueller investigation has turned up evidence of obstruction of justice by the President or people close to him, you would follow the Department of Justice's existing legal guidance with respect to what that word "corruptly" means.

General BARR. My—my interpretation of the statute was not predicated entirely on the word, "corruptly." I was just pointing out.

Senator WHITEHOUSE. And it is not your intention to change—
General BARR. No, it is not my intention.

Senator WHITEHOUSE [continuing]. Department policy or Department standards or Department definitions, particularly as they may bear on obstruction by the President or people around him.

General BARR. That is right.

Senator WHITEHOUSE. Thank you.

Chairman GRAHAM. We are about to vote. Let us do one more. You deserve a break. You are doing great. When—Senator Ernst—then we will take a break, go vote. I am going to vote and come back, give you about 15 minutes, then we will just plow through till we are done.

Senator TILLIS.

Senator TILLIS. I will be brief. One question, because people have asked. They have gone to the wall, it almost sounds like they are trying to suggest that you believe that the fix for border security is a 2,300-mile physical barrier from the Pacific to the Gulf. Do you believe that is the best way to secure the border?

General BARR. I am not sure what the current thinking is on this, but when I was—

Senator TILLIS. Have you ever advocated for a wall or some sort of monolithic structure as the plan for—to secure the border?

General BARR. No. But I do believe we need to have a system all the way across. When I was looking at this, you know, there were certain areas where, you know, a wall did not make any sense—

Senator TILLIS. You used the word, "barrier." I do not think a 30-foot wall makes sense on a, for example, 1,000-foot cliff—

General BARR. Right.

Senator TILLIS [continuing]. Or one that is out in the middle of nowhere. Would you agree that, you know, when we get away from this childish, everybody saying it is a wall or not, that we are probably—the President has repeatedly said that we need wall structures, we may need steel-slat structures, we may need to reinforce chain-link fences with all-weather roads, we need aerostats so that we can identify people crossing the border that are otherwise desolate and not very frequently crossed.

General BARR. Yes.

Senator TILLIS. We need border patrol agents. And we need technology that interdicts all the illicit drugs at the legal ports of entry, that those are all elements of a barrier that actually will better prepare us to secure the border, eliminate the poison coming across the border, and perhaps reduce the amount of human trafficking that is coming through the legal ports of entry. Is that a better way to characterize your position on barriers—

General BARR. Yes.

Senator TILLIS [continuing]. That neither are physical, technological or otherwise?

General BARR. Yes.

Senator TILLIS. Thank you. Also, the—I cannot leave without going back to—you were talking about a time when I was in my early thirties. I remember vividly just how dangerous things were getting back in the early 1990s. I was 30 years old in 1990. I remember vividly the news reports and everything that we were trying to do to get ahead of the murderous environment that we were in. I think some people are trying to project, or, at least, maybe I have inferred, maybe incorrectly, but project what you were trying to do or what you were advocating for in the midst of a crisis, which was not mass incarceration of low-level nonviolent criminals—

General BARR. Right.

Senator TILLIS [continuing]. Onto your view of, let us say, the First Step Act than what we are trying to do today. If you—hypothetical—maybe you cannot answer it—but let us say you were Attorney General when we were moving First Step, which I supported. I supported criminal justice reforms in North Carolina when I was Speaker of the House. Are you fundamentally opposed to what we are trying to do with the First Step Act?

General BARR. No. I think some of those things make sense. If I was—if I had been at the table, I probably would have urged a few changes to it, but, you know, overall, I do not have a problem with it.

Senator TILLIS. And you are fully aware the President and folks in the White House are supportive of the Act and—

General BARR. Yes.

Senator TILLIS. So you will do everything you can to help us state that intent, the statutory intent, of the things that you will need to do is, implement in your role as Attorney General—I do believe you are going to be confirmed—

General BARR. Right.

Senator TILLIS [continuing]. To make sure that we get the full positive effect that we will get out of the First Step Act.

General BARR. That is right, Senator. And, you know, there were a number of things being lumped together. What I espoused in the 1990s, when we had the highest crime rates in our history, was taking the violent, chronic violent, offenders with long criminal history records of predatory violence, and especially the ones that use guns in multiple offenses, and getting them off the streets and into prison.

Senator TILLIS. And I think you made the point that in some cases there—there—you were able to more clearly present evidence where they were involved in drug trafficking, but you knew damn well that they were a part of what was murdering these communities and making them very dangerous.

General BARR. Right.

Senator TILLIS. And the point there was, you were using every device possible to get them behind bars and off the streets so that you could make those communities safe.

General BARR. Right.

Senator TILLIS. And including the communities in Trenton, New Jersey.

General BARR. Right. So the other thing, then there were drug penalties. And some of the drug penalties, yes, were draconian, and there were rational reasons for doing that at the time. And sometimes people got—and we were not going after people who needed treatment who were—you know, just because they were addicts, we were going after the people who were distributing the drugs. And, you know, in the current circumstance, I understand there is data to support what was done in First Step. I understand those changes on the drug front, but I would not let up on chronic violent offenders because they commit a disproportionate amount of the predation in society.

Senator TILLIS. I hope you do not—because they need to go behind bars for a very, very long time.

Thank you.

Chairman GRAHAM. All right. Thank you, Mr. Barr.

What we will do, we will come back with Senator Klobuchar. We are going to take a 15-minute break, and hopefully by then both of us can vote and come back and continue and we are just going to plow through till we get done today. So we will be in recess for 15 minutes.

[Whereupon the Committee was recessed and reconvened.]

Senator ERNST [presiding]. We will go ahead and reconvene the hearing.

I will recognize Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much.

Thank you, Mr. Barr.

Thanks to your grandson for the mint. That was very nice.

In your previous confirmation hearing for Attorney General, you stated that the Attorney General is the President's lawyer. You have also said that the Attorney General's ultimate allegiance must be to the rule of law. So I am going to characterize that as the people's lawyer. And there have been times throughout our history, including during Watergate, when the personal interests of the President do not align with the interests of the country. In those critical moments, is the Attorney General the people's lawyer or the President's lawyer?

General BARR. Well, as—the reason these—I referred to the Attorney General as the President's lawyer is because in 1789, they said that the Attorney General is to provide legal advice to the President and the Cabinet.

Senator KLOBUCHAR. Yes.

General BARR. And that is in their official capacity. And my view on that is that, like any lawyer, you give the best advice as to your view of the law, but if the President determined that he wanted to do something that you thought was still a reasonable construction of law, even though you might not have decided that way as an Article III judge, just as you support congressional enactments that are—

Senator KLOBUCHAR. Okay.

General BARR [continuing]. Reasonable, you do the same for the President.

Senator KLOBUCHAR. But how about in a situation like Watergate?

General BARR. So I—if the President directs an Attorney General to do something that is contrary to law, then I think the Attorney General has to step down.

Senator KLOBUCHAR. Okay.

General BARR. It is that simple.

Senator KLOBUCHAR. Thank you.

Under the Special Counsel regs, the Special Counsel must send a second report to Congress documenting any instances where the AG prohibited the Special Counsel from taking an action. Will you follow those regulations and send the report to Congress?

General BARR. Yes.

Senator KLOBUCHAR. Thank you.

And then a few just things that I care a lot about. You had a great discussion with Senator Booker about the First Step Act and nonviolent drug crimes. Will you support the use of drug courts, something my county when I was prosecutor was one of the first to do that in a big way? And now we have Federal drug courts. Will you support them for nonviolent offenders?

General BARR. Yes. I think they are generally a good idea.

Senator KLOBUCHAR. Okay. And there is a bill that I have that we are reintroducing on guns and stalking. And it is a pretty narrow bill. It fills a loophole that is called sometimes the boyfriend loophole. I do not know if you know what that is, but it is when someone is not married, but they are living together. And then the question is, would the gun laws apply? And we actually had a hearing. And a number of the Republican witnesses agreed that they should. So that is part of it. And then the other involves stalking and whether or not that could also fall under the prohibitions on guns. So we had the meeting on guns at the White House, and the President said he thought the bill was terrific. I am just going to give you—

General BARR. Okay.

Senator KLOBUCHAR [continuing]. Lead you into that, but—

General BARR. It is—

Senator KLOBUCHAR [continuing]. And it has not passed yet, but I am just asking you to review it.

General BARR. Absolutely.

Senator KLOBUCHAR. Okay. And I hope we would have your support. It would be nice to get that done.

And then I also have a second bill with Senator Cornyn, the Abby Honold Act. And the bill would expand the use of evidence-paced practices in responding to sex assault crimes. And I hope you would look at that as well. And, it is part, right now, of the Senate package on the Violence Against Women Act. And, my bill aside, I hope that you would support the reauthorization of that bill.

General BARR. Uh-huh.

Senator KLOBUCHAR. You would? Of the Violence Against Women Act?

General BARR. Well, I have not seen it, but if it is reauthorizing what is in effect now, yes.

Senator KLOBUCHAR. Okay. And, then, I just want to end here with a second chance, second go-around on a question. I decided to leave my antitrust questions for the record—

General BARR. Okay.

Senator KLOBUCHAR [continuing]. So I can ask this. I asked earlier today this question because I really meant it as an opportunity for you to kind of address your troops—and not a “gotcha” question. So, immigration debates aside, putting aside the differences in this House and in the White House—and we have now thousands and thousands of extraordinary people devoting themselves to a good cause, and that is justice at the Department of Justice and the FBI, including a few of them right behind you in the front row. And they, many of them, right now are either furloughed or they are doing their jobs every single day without pay. And if you get confirmed, you will be their leader. And do you want to say anything to them or about them? And I appreciate it if you would.

General BARR. Well, thank you, Senator, for giving me the opportunity because one of the reasons I want to do this, serve as Attorney General, is because of the opportunity to work with the outstanding people at the Department of Justice. And I think the country can be very proud of them as their—of their dedication as they stand their post and continue to perform their mission. It is a great sacrifice for many of them with the paychecks not coming in. So I hope this ends soon. But one of the reasons the Department is such an important institution to me and a big part of my life is, the quality of the people there. And I am looking forward, hopefully, if I am confirmed, to joining them again.

Senator KLOBUCHAR. Okay. Thank you very much.

General BARR. Thank you.

Senator ERNST. Thank you, Senator Klobuchar.

I love the upward mobility on this Committee. This is my first Committee hearing.

[Laughter.]

Senator ERNST. And I get to chair. So thank you. I appreciate it very much.

I will go ahead with my second round of questioning. And there has been a lot of discussion so far about the Mueller investigation, which I do think is very appropriate, and as I understand it, the underlying premise of that investigation was to determine if there was collusion by an American entity or person with the Russians during the 2016 election cycle. Is that accurate?

General BARR. That is my understanding.

Senator ERNST. Okay. And we do know that there was Russian meddling in our 2016 election cycle. We do know that. And what can the DOJ do in the future to prevent—whether it is Russia or other—foreign entities from interfering with our elections process?

General BARR. Yes. Well, I adverted to in my opening statement is, obviously, the Department is a law enforcement agency. And so we can use our law enforcement tools. And the Special Counsel has already brought cases against Russian nationals for their activities. And the current leadership of the Department is following suit. And I would like to build on that experience to sharpen our legal tools to go after Russian nationals, but nationals of any country that are interfering in our elections. I also think that the FBI as

part of the intelligence community can perform, you know—can use all of their intelligence tools to counteract the threat. And, as I said in my opening statement, I think we have to look at all our national resources, such as diplomacy, economic sanctions, other kinds of countermeasures, to deter and punish foreign countries that seek to meddle in our elections.

Senator ERNST. Absolutely. So a whole-of-government approach—

General BARR. Uh-huh, yes.

Senator ERNST [continuing]. As we look at those entities. Thank you very much.

I was really pleased to hear Senator Klobuchar mention the Violence Against Women Act. We had a discussion about that in my office.

General BARR. Yes.

Senator ERNST. So thank you. I did serve as a volunteer at an assault care center while I was at Iowa State University—just a few years ago.

[Laughter.]

Senator ERNST. But the Violence Against Women Act is in desperate need of reauthorization, as Senator Klobuchar said. In 2016 alone, over 1 million services were provided to victims and their families through programs. And the Office on Violence Against Women is actually housed within the DOJ, as you are aware. In Fiscal Year 2017, my home State of Iowa was awarded \$8.7 million from 13 different OVW grant programs. And these dollars do go toward programs that are in dire need, especially in rural areas like mine. So what I would like to know from you, sir, is how you will work to further this engagement and to address violence against women and families through VAWA or through the Office that is located within DOJ.

General BARR. Right. And that Office is not familiar to me because it did not exist, obviously, when I was there before. So, first, I am going to familiarize myself with the Office; its work; its programs; and, you know, strongly support that.

Senator ERNST. Thank you very much.

Domestic violence is largely a State crime. How can we better assist between the DOJ and State officials in this area?

General BARR. Again, this is not an area of expertise that I have right now, but I would imagine that technical support and grants are probably the most effective means for the Federal Government to assist.

Senator ERNST. Okay. Very good. Well, I appreciate that so much.

I have just got a little bit of time left. I do want to go back to the issue that has been brought up many times over about our border security. I, as well, agree that there are many ways that we can use to secure our border, whether it is through technology, whether it is through a physical barrier, understanding, as has been rightly pointed out, that a number of the interdictions of drugs crossing the border are actually done at those ports of entry. However, I think there are a lot of families that are very concerned about the fentanyl that might be coming across those areas that are not watched—

General BARR. Right.

Senator ERNST [continuing]. So families that have lost their loved ones, I think it does not matter what percentage is coming through a port of entry or elsewhere. We want to stop it. So your comment?

General BARR. That is right, Senator. And the other thing is, that the statistics on the port of entry were the interdictions. That is the stuff we catch.

Senator ERNST. Right.

General BARR. It does not necessarily reflect the stuff that is getting across elsewhere that we are not catching.

Senator ERNST. Absolutely. Thank you very much, Mr. Barr.

Chairman GRAHAM [presiding]. Thank you.

Senator HIRONO.

Senator HIRONO. Thank you very much.

Mr. Barr, you have written and spoken about morality and your worries about the destruction of—and I am quoting you—“any kind of moral consensus in society,” and you wrote quite extensively on this when you were Attorney General. And you have been described as an institutionalist: someone who cares about the Department of Justice and the Government. That is a good thing. But you have agreed to work for someone who relentlessly attacks the press, calling them “fake news” and “the enemy of the people.” The President criticizes the FBI nonstop. He belittles generals. He calls the Mueller investigation a “witch hunt.” He believes the claims of Putin over the judgment of our intelligence community. And it has been objectively verified that he lies every single day and changes his mind on a regular basis. So, are you concerned, having written about morality and consensus in our society, are you concerned about the way Donald Trump undermines the institutions in our society that help us to maintain a moral consensus?

General BARR. No, Senator. And I would like to make a point about the “witch hunt,” which is, we have to remember that the President is the one that, you know, has denied that there was any collusion and has been steadfast in that. So presumably he knows facts. I do not know facts. I do not think anyone here knows facts. But I think it is understandable that if someone felt they were falsely accused, they would view an investigation as something like a witch hunt, where someone like you or me who does not know the facts, you know, might not use that term.

Senator HIRONO. Well you are certainly coming to his defense. As I said, it has been objectively verified that he lies on a regular basis.

I have a question about immigration. In your written statement, you wrote that, “We must secure our Nation’s borders. And we must ensure that our laws allow us to process, hold, and remove those who unlawfully enter.” And this kind of sounds like a Jeff Sessions zero-tolerance policy. I did ask you that before, whether you would continue to go after people who are not coming through our regular checkpoints. Would you go after them for deportation?

General BARR. I thought I said that our zero-tolerance policy is to prosecute people who are referred to the Department by DHS for illegal entry.

Senator HIRONO. Well, under a no-tolerance policy, everybody who comes in not through the checkpoints would be deemed, I would say, subject to prosecution. So—

General BARR. No.

Senator HIRONO. No?

General BARR. Anyone who comes in illegally and is going to be referred to us for a violation of the legal-entry statute will be prosecuted.

Senator HIRONO. Yes.

General BARR. But DHS is not referring—as I understand it, is not referring families so that there is no more separation.

Senator HIRONO. Yes. Instead, we have a lot of them in family detention facilities. I have visited them. What about the 11 million or so undocumented immigrants in our country because you say that we have to process, hold, and remove those who unlawfully enter? Now, the 11 million or so undocumented people have unlawfully entered, I mean, a number of them because they are visa overstayers. So what do you propose to do with these people who have been here in our country for a long time, many of whom work and who pay taxes?

General BARR. Well, I think it just highlights the need for some—for Congress to address the whole issue of our immigration laws.

Senator HIRONO. So do you support comprehensive immigration reform, an effort that we undertook in the Senate in 2013?

General BARR. I support addressing some of the problems that are creating the influx of illegal aliens at this point and also addressing the question of border security.

Senator HIRONO. Well, what about the 11 million undocumented people who are already here?

General BARR. Well, at—Congress is the—is able to determine that policy as part of immigration legislation.

Senator HIRONO. So, that is the largest group of undocumented people. They are the largest group of people who are here illegally, as you say you would like to—

General BARR. The zero-tolerance policy, as I understand it, has to do with people who are coming in illegally.

Senator HIRONO. Yes, I know that, but you know that when I talk about the 11 million people, that they are undocumented. They live in the shadows. Many of them do pay taxes. And so that is the largest group that is here. This is why we worked really hard for comprehensive immigration reform. I hope that you support that kind of effort. Do you believe birthright citizenship is guaranteed by the Fourteenth Amendment?

General BARR. I have not looked at that issue.

Senator HIRONO. It says right there in the Fourteenth Amendment that anyone born basically—born in this country, is a U.S. citizen. And there are those who think that that should be done away with. Are you one of them?

Senator KENNEDY [presiding]. Could you give us a brief answer, Mr.—

General BARR. Yes. As I say, I have not looked at that issue legally. That is the kind of issue I would ask OLC to advise me on,

as to whether it is something that is appropriate for legislation. I do not even know the answer to that.

Senator HIRONO. Well, it has certainly been interpreted for a long time as saying that people who are born in this country are citizens.

Shall I continue or should I ask for a third round?

Senator KENNEDY. I think the Chairman would like to finish today, and I think your time has expired.

Senator HIRONO. So I cannot ask for a third round?

Senator KENNEDY. I am fine. You can have a third, fourth, fifth round.

Senator HIRONO. Thank you.

Senator KENNEDY. But I am not Chairman.

Senator HIRONO. I just have a few more—or I can wait.

Senator KENNEDY. Okay. Why do we not do that?

Senator HIRONO. Okay. Thank you.

Senator KENNEDY. Thank you, Senator.

I think I am next, Mr. Barr. This—we talked about this earlier. I think we can agree, can we not, that hundreds of thousands, millions of words have been written speculating about what happened at the Department of Justice and the FBI in the 2016 election with respect to the two-party nominees? Can we agree on that?

General BARR. Yes.

Senator KENNEDY. Can we agree that the American people have a right to know what happened at Justice and the FBI?

General BARR. Yes.

Senator KENNEDY. Okay. Why do we just not declassify all of the documents and show them to the American people and let the American people draw their own conclusions here?

General BARR. Well, I am not in a position to say because I do not have access to the documents, and I do not know what it entails.

Senator KENNEDY. Well, it entails the truth, does it not?

General BARR. Yes, but presumably if they are classified, you know, there could be collateral consequences. And I am not in a position to make that judgment.

Senator KENNEDY. Well, I mean, is your mind open on that, Mr. Barr, or—

General BARR. I think, generally—

Senator KENNEDY. I do not understand why, properly redacted, those documents have not been shown to the American people. They are smart enough to figure it out.

General BARR. I think, ultimately, the best policy is to let the light shine—if there have been mistakes made, the best policy is to allow light to shine in and for people to understand what happened, but sometimes, you know, you have to determine when the right time to do that is.

Senator KENNEDY. I understand. I am asking that you seriously consider that. And I am talking about the investigations with respect to Secretary Clinton and President Trump. Clearly, the FBI and the Department of Justice, I am not saying that they—either was imprudent to do so, but we have seen bits and pieces. And there has been a lot of speculation and innuendo. And people have drawn conclusions based on incomplete facts. And it would seem to

me that, if for no other reason but the integrity of the FBI and Justice Department, both of which I hold in great esteem, we should redact the portions that would endanger somebody and show the American people the documents. And I wish you would seriously consider that.

General BARR. I will, Senator.

Senator KENNEDY. And I—having watched you here today, I think you will. I think you will give it serious consideration.

General BARR. Yes.

Senator KENNEDY. Let me ask your opinion on something else. About 10 years ago, we had a problem with our banking system in America. And we had a lot of bankers who made loans to borrowers when the bankers and the borrowers knew the money was not going to be paid back. That is called fraud, and it is illegal. And then some of those same bankers and other bankers took those garbage loans, and they packaged them together, packaged them together into security. And they sold them to investors without telling the investors that the underlying loans were toxic. That is called securities fraud. And I do not know how many billions of dollars of this bad paper was sold, but I know a lot of people in the banking industry got rich doing it. And then—and, as a result, the American economy and almost the world economy almost melted down.

Now, the Department of Justice prosecuted virtually no one, no banking executives over this. Why? I realize they made the banks pay some money, but I saw banking fraud, and I saw securities fraud. And nobody was prosecuted.

General BARR. I cannot answer that, Senator, but I can say that I was in charge of the S&L cleanup. After it was over, it was put under me in the Deputy's Office. And—

Senator KENNEDY. You folks prosecuted people.

General BARR. We prosecuted a lot of people and very quickly, and we cleaned it up very quickly. My—how many did we get?

Mr. RAPHAELSON. Over 900 convictions.

General BARR. Over 900 convictions in very short order.

Senator KENNEDY. I do not think we had nine this time. I mean, what message does that send to the American people?

General BARR. Well—

Senator KENNEDY. I mean, I totally think the message it sends is that the people at the top can cut corners and get away with it.

General BARR. What I can say, Senator, is, I think my experience with the S&L shows that I am not afraid of going after fraud—

Senator KENNEDY. I know that.

General BARR [continuing]. At the corporate level. And it is one of the most successful, I think, Government responses to that kind of whole-sector meltdown that there has been. So I am very proud of the job that was done by the Department on that.

Senator KENNEDY. You know, as we say in Louisiana, you were mean as a mama wasp.

[Laughter.]

Senator KENNEDY. And you did the right thing, but I do not think we did the right thing with the banking meltdown.

Senator Coons.

Senator COONS. Thank you, Senator Kennedy.

Thank you, Mr. Barr.

You have declined or, I would say, refused to commit to following the advice of the career ethics officials at DOJ with regards to recusal from the ongoing Special Counsel investigation. Will you, at least, commit to notify this Committee once you receive the ethics official's guidance, tell us what it was, and explain whether you agree or disagree with it?

General BARR. To tell you the truth, Senator, I do not know what the rules are and what the practice is, but, you know, off the top of my head, I do not think I would have an objection to that.

Senator COONS. So you would be comfortable letting us know that you had received an ethics opinion and either declined—

General BARR. Yes. But I am not sure what the practice and the rules are. I generally try to follow the rules.

Senator COONS. You said earlier in this hearing, you have an interest in transparency with regards to the final report of the Mueller investigation, but I did not hear a concrete commitment about release. And I think this is a very significant investigation. And you have been very forthcoming about wanting to protect it. The DOJ has released information about declination memos, about descriptions of decisions not to prosecute in the past. I will cite the Michael Brown case, for example. Would you allow Special Counsel Mueller to release information about declination memos in the Russia investigation as he sees fit?

General BARR. I actually do not think Mueller would do that because it would be contrary to the regulations, but that is one of the reasons I want to talk to Mueller and Rosenstein and figure out, you know, what the lay of the land is. I am trying to—

Senator COONS. But if appropriate under current regulations, you would not have any hesitation about saying prosecutorial decisions should be part of that final report?

General BARR. As I said, I want to get out as much as I can under the regulations.

Senator COONS. You also—

General BARR. I think it—that is the reason I say it is vitally important.

Senator COONS. Thank you.

General BARR. It is related to my feeling that it is really important—

Senator COONS. It is.

General BARR [continuing]. To, you know, let the chips fall where they may and get the information out.

Senator COONS. You also said in response to my first round of questions that the Special Counsel regulations should not be rescinded during this investigation. Just to be clear, you would refuse to rescind them if the President asked, even if that meant you would have to resign?

General BARR. Well, that came up in the context of wanting to change the rules so Mueller could be fired.

Senator COONS. Right.

General BARR. That—where there was no good cause.

Senator COONS. No good cause, correct.

General BARR. And I said there, yes, I would not agree to that.

Senator COONS. There is another ongoing investigation in the Southern District of New York in which I would argue the President is implicated as “Individual Number 1.” If the President ordered you to stop the SDNY investigation in which someone identified as “Individual 1” is implicated, would you do that?

General BARR. Well, that goes back to an earlier answer—explanation I gave, which is every decision within the Department has to be made based on the Attorney General’s independent conclusion and assessment that it is in accordance with the law. And so I would not stop a bona fide lawful investigation.

Senator COONS. So if the President sought to fire prosecutors in the Southern District of New York to try and end the investigation into his campaign, would that be a crime? Would that be an unlawful act?

General BARR. Well, I mean, that one—usually, firing a person does not stop the investigation. That is one of the things I have a little bit of trouble accepting, you know. But to—the basic point is, if someone tried to stop a bona fide lawful investigation to cover up wrongdoing, I would resign.

Senator COONS. Deputy Attorney General Rosenstein has said publicly your memo had no impact on the Special Counsel investigation. If you are confirmed and you are supervising the Special Counsel investigation, would you order the Special Counsel’s Office to accept and follow the reasoning in your memo?

General BARR. I would probably talk to Bob, Bob Mueller, about it. If—you know, if I felt there was a difference of opinion, I would try to work it out with Bob Mueller. At the end of the day, unless something violates the established practice of the Department, I would have no ability to overrule that.

Senator COONS. You were Attorney General when President Bush pardoned six administration officials charged with crimes arising from the Iran–Contra scandal, and you encouraged the President to issue those pardons. Is it permissible for a President to pardon a member of his administration in order to prevent testimony about illegal acts?

General BARR. Is it permissible under what?

Senator COONS. Would it strike you as obstruction of justice for him to exercise his presidential pardon power for the purpose of preventing testimony?

General BARR. Yes. I think that if a pardon was a quid pro quo to altering testimony, then that would definitely implicate an obstruction statute.

Senator COONS. Would it be permissible for the President to pardon family members—

General BARR. Let me just—

Senator COONS [continuing]. Simply because they are family members?

General BARR. Let me say this. No. I am sorry. Go ahead.

Senator COONS. Two last questions, and then we will be done. Do you think it would be permissible for the President to pardon a family member simply because they are a family member and where the purpose, the motive, is unclear? And do you think it would be permissible for a President to pardon himself?

General BARR. Yes. So here, the problem is, under the Constitution, there are powers, but you can abuse a power. So the answer to your question in my opinion would be yes, he does have the power to pardon a family member, but he would then have to face the fact that he could be held accountable for abusing his power or if it was connected to some act that violates an obstruction statute, it could be obstruction.

Senator COONS. How would he be held accountable?

General BARR. Well, in the absence of a violation of a statute, which is—as you know, in order to prosecute someone, they have to violate a statute. In the absence of that, you know, then he would be accountable politically.

Senator COONS. Thank you for your interest today.

Chairman GRAHAM [presiding]. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman.

And, Mr. Barr, thank you for your patience and for staying with us today.

A couple of questions. We have talked about border security and immigration law. And that is something that I want to return to. I appreciated your comments about going after the problem at the source, and I think that is so vitally important when we talk about the immigration issues and we look at what has happened when you are talking about drug traffickers and human traffickers, the gangs that are coming across that Southern border. And I do think that a barrier is there. But one of the symptoms, if you will, of an open-border policy has been the sanctuary city policy. And that pertains to those that are illegally in the country. And I tell you what, it is just absolutely heartbreaking to me every time I meet with an Angel mom and I hear these stories and then after Officer Singh was murdered, hearing that law enforcement, local law enforcement, officer talk about, and talk with specificity about, how sanctuary policies emboldened those that were illegally in the country. And when you look at this practice of sanctuary city, you know, if we do not do something consistent in this realm, then what is to say you do not develop sanctuary cities for other violations of the law, whether it is tax law or environmental protection law or traffickers or any others? So talk to me for just a minute about what your connection will be between dealing with the sanctuary cities and then dealing with some of these problems at the source. How do you—you have talked about compartmentalizing and putting lieutenants in charge, and this is an issue that affects every single community because until we stop some of this, we are going to have every State a border State and every town a border town.

General BARR. So, you know, I just think of it, immigration, you have pull factors and push factors. There are factors down in Latin America that are pushing people up, and there are attractions to the United States that are pulling them up. And one of the—you know, a—I think a pull factor is things like sanctuary cities, the idea that you can come in and not be—and can get away with flouting our laws in coming in. So I think that is one of the concerns I have about sanctuary cities.

The second concern I have is that the sanctuary city problem is a criminal alien problem. I think a lot of people are under the impression that sanctuary cities are there to protect, you know, the

illegal aliens who are quietly living as productive members of society and paying their taxes, as Senator Hirono said. It is not. The problem with sanctuary cities is that it is preventing the Federal Government from taking custody of criminal aliens, and it is a deliberate policy to frustrate the apprehension of criminal aliens by the Federal Government. So I do not think those cities should be getting Federal—

Senator BLACKBURN. Do you think it would be—would it be abided with any other violation of U.S. law?

General BARR. No, I do not. And there is a legal issue, which is the question of, what is the word, commandeering. You know, the States argue that for their law enforcement officers who have custody of a criminal alien to notify the Federal Government on a timely basis, so that they can turn that fugitive essentially over to the Federal Government, that that is commandeering State apparatus under the *Printz* case, and, therefore, it is—you know, the Federal Government should not have that power.

That is the issue. And I personally am very skeptical of the commandeering argument. That was adopted where the Federal Government passed gun control legislation, and basically were ordering the States to set up the whole background check, and everything else.

The idea here is simply one law enforcement agency notifying another, and holding the person until they can be picked up. So I am skeptical that that is commandeering. But that is the legal issue.

Senator BLACKBURN. My time is expiring, and I know we need to finish this up, but I do look forward to talking with you again about China—

General BARR. Uh-huh.

Senator BLACKBURN [continuing]. And the intellectual property violations. The way they go in and re-engineer, steal from our innovators, and, of course, the way they are forcing fentanyl, and illicit drugs—

General BARR. Uh-huh.

Senator BLACKBURN [continuing]. Through our ports and through that open southern border that we have to secure.

General BARR. Uh-huh.

Senator BLACKBURN. Thank you. Yield back.

Chairman GRAHAM. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

I want to join in thanking you for your patience. I am hoping that I can get through all my questions on this round. I do not know whether the Chairman will accede to a short third round, but let me just try as best I can.

On the pardon issue and accountability, you would agree that the President pardoning someone in return for changing his or her testimony would be an abuse of the pardon power, and the President should be held accountable.

General BARR. Well, a quid pro quo to change testimony could potentially be obstruction.

Senator BLUMENTHAL. Or for not testifying at all—

General BARR. Uh-huh.

Senator BLUMENTHAL [continuing]. Would be obstruction of justice. If the Special Prosecutor or the prosecutor anywhere else came

to you with proof beyond a reasonable doubt of that kind of obstruction, or any other crime, talking proof beyond a reasonable doubt, would you approve an indictment of the President?

General BARR. That is the kind of thing I am not—I am not going to answer off the top of my head. But if we take it out of this context and say if someone—if someone were—if a prosecutor came and showed that there was a quid pro quo by which somebody gives something of value to induce a false testimony or—

Senator BLUMENTHAL. It would be a crime.

General BARR. Yes.

Senator BLUMENTHAL. And the question is whether the President could be prosecuted while in office. I happen to believe that he could be, even if the trial were postponed until he is out of office. But because the statute of limitations might run for any other number of reasons, a prosecution would be appropriate. Would you agree?

General BARR. You know, for 40 years the position of the executive branch has been, you cannot indict a sitting President.

Senator BLUMENTHAL. Well, it is the tradition, based on a couple of OLC opinions. But now it is potentially an imminent, indeed, immediate possibility, and I am asking you for your opinion now, if possible, but if not now, perhaps, at some point.

General BARR. Are you asking me if I would change that policy?

Senator BLUMENTHAL. I am asking you what your view is, right now.

General BARR. You know, I actually have not read those opinions in a long time, but I see no reason to change them.

Senator BLUMENTHAL. Well, I am happy to continue this conversation with more time and another opportunity.

General BARR. Sure.

Senator BLUMENTHAL. I want to ask you about the Southern District of New York, which I believe is as important as the Special Prosecutor. As I mentioned earlier in my question before, the President has been named there, "Individual Number 1," as an unindicted co-conspirator.

If the President fired a United States Attorney, would you support continuing that investigation, even under the civil servants, the career prosecutors, who would remain? Assuming it is a legitimate prosecutor.

General BARR. Yes. And I have tried to say it a number of different ways. I believe, regardless of who or what outside the Department is trying to influence what is going on, every decision within the Department relating to enforcement, the Attorney General has to determine independently that—that it is a lawful action. And if there was a lawful bona fide investigation that someone was trying to squelch, I would not tolerate that.

Senator BLUMENTHAL. Putting it very simply, you would protect that investigation against political interference, as hopefully you would do—

General BARR. With any investigation in the Department.

Senator BLUMENTHAL. Exactly.

Let me move on to something unrelated, if I may. In the early 1990s, thousands of Haitians tried to flee persecution in their own country by coming to the United States by boat. As you will re-

member, you oversaw, I believe, a program that sent thousands of them—some of them were HIV positive—

General BARR. Uh-huh.

Senator BLUMENTHAL [continuing]. To Guantanamo Bay.

General BARR. Uh-huh.

Senator BLUMENTHAL. These asylum seekers were kept at Guantanamo Bay for 18 months. A Federal Judge in the Eastern District of New York described the living conditions in Guantanamo Bay by saying that asylum seekers were forced to live in camps “surrounded by razor barbed wire,” and compelled to “tie plastic garbage bags to the sides of the building to keep the rain out.”

In an interview in 2001, at the Miller Center, you defended this program. Do you have regrets about it now, and am I correct in saying that when these asylum seekers first started coming to the United States, it was your position that they should be kept there indefinitely?

General BARR. I really appreciate the opportunity to address this.

So in 1991, Aristide was overthrown in Haiti, and there was sort of a mass exodus from Haiti. And up until then the policy of the United States had been forced—until that time, administrations had forcibly returned Haitian asylum seekers and so forth without any kind of process.

It was a humanitarian problem, because a lot of these boats were sinking. It was a 600-mile journey. So the Coast Guard—there were two different issues. One issue is the processing of those who are healthy, and the second issue is the HIV.

In a nutshell, the processing we started actually giving them, you know, abbreviated asylum, hearings, on the ships. Eventually, we moved some of that to Guantanamo. And we were admitting to the United States 30 percent, which is the highest it has ever been. I think before that it was just miniscule. Later, when the Clinton administration adopted our policies, it went down to 5 percent, I am told.

But in any event, then it became so overwhelming that we forcibly repatriated the Haitians, because we felt that most of them, the conditions were changing. We did not think that there was a threat in Haiti, and we forcibly—we were just overwhelmed, and we forcibly sent them back to Haiti.

Meanwhile, HIV was an exclusion. You could not admit anyone with HIV, and this was adopted by the Senate, and then in the first year of the Clinton administration, the Clinton administration signed a bill that kept it as an exclusion, you cannot admit someone with HIV, except by case-by-case waiver, based on extreme circumstance.

So what we did with the HIV people is we first screened them for asylum, because if they could not claim asylum, then they would not be admitted, and then we started a case-by-case review.

I started admitting them on a case-by-case basis, where cases could be made that there was a particular reason for doing it, like pregnant women, and people who had not yet developed full-blown.

So I think there was a slowing down of the processing, because people felt that the Clinton administration, which at the time was attacking these policies, was going to be more liberal. And so peo-

ple thought, well, why should we go through this process with Bush, when Clinton's right around the corner.

Clinton came in, adopted our policies, and defended them in court, continued forced repatriation, continued the exclusion of HIV. As part of settling a case, he brought in 200—

Senator BLUMENTHAL. Which did not necessarily make it right.

General BARR. It was right under the law.

Senator BLUMENTHAL. Did you favor keeping those Haitians in Guantanamo indefinitely?

General BARR. No.

Senator BLUMENTHAL. And let me ask you—

General BARR. I think most of the articles at the time said we were sort of in a Catch 22. We were trying to process the HIV people on a case-by-case basis. And, in fact, the lawyers who—we, by the way, agreed to have lawyers come down and represent these people in the asylum hearings at Guantanamo.

In the book written by them, they say right at—we were making progress. It stopped when the Clinton administration was elected.

So we were in this Catch 22 on the HIV, and I had staff members go down there to Guantanamo, and they did not report, you know, inhumane conditions, or anything like that. And that is not mentioned, I do not think, in the book written by the lawyers who represented them.

So it was a mass exodus situation, and we did the best we could.

Senator BLUMENTHAL. Would you do it again in exactly the same way, if you had it to do again?

General BARR. I mean, I do not know. It would depend on the circumstances, and also depend on whether we thought this was really a case of persecution.

Senator BLUMENTHAL. I ask you this: Would you again house asylum seekers in Guantanamo?

General BARR. Well, the Clinton administration did. In fact, they doubled—they doubled the—and they started putting other nationalities in there, too.

Probably not, because of the associations of Guantanamo now.

Senator BLUMENTHAL. Would you segregate asylum seekers in some other way then?

General BARR. Well, I think it is always—given the abuses of the asylum system right now, I would always prefer to process asylum seekers outside the United States.

Senator BLUMENTHAL. And do you think we should do a better job with asylum seekers in this country, in terms of the kinds of facilities that we provide, particularly for women, and children, and families?

General BARR. Oh, absolutely. Yes. I think we—if we are going to detain families, I think those have to be facilities that are safe and appropriate for young children.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman.

Thanks again, to you, Mr. Barr, for being willing to answer all these questions today.

I want to continue on some of the same theme that Mr. Blumenthal raised a moment ago. He raised a couple of questions regarding immigration, regarding our asylum process.

I think it is significant to note here that we have some in our political discourse today who are suggesting that the enforcement of our immigration laws and the enforcement of our border is somehow immoral, that it is somehow wrong.

We have had people who, in one of the major political parties, multiple candidates, be elected, campaigning, among other things, on either eviscerating ISIS power, or abolishing the agency altogether.

As you noted earlier today, you gave a speech back in 1992, and you were one of the first people I remember using the metaphor of, you know, wanting to make sure that our immigrants come to this country through the front door, and not through the back door, and not through a side window, or something to that effect.

Can you just sort of describe to us why you think it is important that we draw a clear moral distinction between the enforcement of immigration laws, between legal immigration and illegal immigration?

Is this the functional equivalent, in other words, of the premature removal of a “Do Not Remove” tag on a mattress, or is it something more than that?

General BARR. I think it is something more. I mean, you know, we have built a great society here in the United States, and a vast—I forgot what the statistic is, but a very large majority of the world lives under our poverty level, and for them, even, you know, being poor in the United States would be a step up.

And we have a lot to be grateful and thankful for here. And if it was unrestricted, a lot of people would come here, more than we could possibly accommodate.

Senator LEE. And who would that harm, first and foremost, if we allowed that to happen? Would it be the wealthy who would most immediately be harmed by that?

General BARR. No, it would not.

Senator LEE. Yes.

General BARR. And so it just seems obvious that you have to have a system of rationing. You have to have a system that makes determinations who can come and when, and it is—Congress is in charge of that. They can make the laws and determine it, and we, I think, have a very expansive system. There are people waiting in line for 10, 15—at least there were when I last looked at it, you know, in the Philippines, for example, for over a decade waiting patiently, law-abiding people who want to come here and have family here and other things like that.

And just to allow people to come crashing in, be told that if you say this you will be treated as an asylum, and then you do not have to—you do not have to reappear for your hearing or whatever, it is just an abuse of the system, and it is unfair. I mean, all of us have been standing in lines, long, long lines, and someone just walks up to the front. That is unjust. That is unjust.

I also think that without control, you have unsafe conditions and uncontrolled conditions on the border, which create, you know, serious safety problems for everybody on both sides of the border. So

it creates uncontrolled access to the country as a national security threat. You know, there are people around the world that are coming into Latin America for the purpose of coming up through the border. So these are—you know, these are the reasons why I think it is important that we enforce—we have an enforceable system of laws, which right now, the laws are sorely lacking.

Senator LEE. Our desire to enforce our border is not unique to us. In fact, our neighbors on the southern side of our border in Mexico themselves have pretty strict laws which they enforce. And our neighbors in Mexico, including the officials in the—in the new López Obrador administration, with whom I visited recently, are themselves quite concerned about these uncontrolled waves of migration from Guatemala, from Honduras, from El Salvador.

It occurs to me, and it has occurred to them, that it is important for us to figure out ways to turn off the magnets that are bringing these uncontrolled waves in. If you could wave a magic wand, is there anything—any change you would make to current asylum law or policy that you think we ought to consider?

General BARR. I really could not say off the top of my head. I think—I had some ideas a while back about—you know, I am talking decades ago—about how we could change it because this has always been the problem. But I—you know, I would have to see exactly where the abuses are coming in and how we could deal with it.

Senator LEE. Mr. Chairman, I have got one more question. Could I—

Chairman GRAHAM. Sure. Absolutely.

Senator LEE. Thank you, Mr. Chairman. I want to get back very briefly to civil asset forfeiture. I referred briefly at the end of our previous exchange to a process whereby some State law enforcement agencies, seeing that they are prohibited from doing that which they would like to do under State law, will go to Federal law enforcement and agree to make the civil asset forfeiture that they want with Federal such that it is no longer governed by State law. Sometimes that happens, and the Department of Justice will enter into an equitable sharing arrangement with that State where the money is sort of—I do not like to use the word, “laundered,” but it is filtered through the Federal system deliberately in an effort to circumvent State law.

Would banning this type of equitable sharing in civil asset forfeiture be something that you would be willing to do as Attorney General?

General BARR. Now, I could not say I am willing to do it now because I do not know enough about it. You know, I come at this, number one, that asset forfeiture is an important tool; number two, that it is important, you know, how we work with our State and local partners; but number three, as you can tell from my early statement on this matter, I am sensitive to creating a speed trap problem and also due process issues where amounts are stolen that, for all intents and purposes, it would be too costly for some individuals to go and try to, you know, get back. So I am open to looking at whether there are abuses, what kind of abuses occur, and try to redress those.

Senator LEE. Okay. Thank you. And it is my view that, at least, in that circumstance where it is prohibited by State law, State law enforcement agencies should not be able to make themselves. They should not be able to seek the blessing of Government simply by making it Federal, so I hope you will consider that, and appreciate your remarks on due process. This really does touch on that, and it is right at the surface of a whole lot of constitutional rights. Thank you very much, sir. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you.

Senator Harris.

I am sorry—Booker. I apologize.

Senator BOOKER. Gosh. Give a guy a little power as the Chairman, and he starts to push you around.

[Laughter.]

Chairman GRAHAM. I tell you what—

Senator BOOKER. I thought we were friends.

Chairman GRAHAM. He is doing better than I am. I am getting tired.

Senator BOOKER. I thought we were friends.

Chairman GRAHAM. I apologize. We are friends.

Senator BOOKER. I am grateful, sir. Let me jump right in. You wrote an article where you described how the law was being used, and this was your opinion, and maybe it has changed because this was over a decade ago, where you said, “the breakdown of traditional morality by putting on an equal plane conduct that was previously considered immoral.” And you mentioned the homosexual movement is what you described as “one of the movements causing an erosion of morality in America.” I can only gather from this—the article I am quoting, unless your opinions have changed, that you believe that gay, bisexual—being gay or bisexual, lesbian, or transgender is immoral. Have your views changed on that?

General BARR. No, but I do not think I said—I think you were paraphrasing there. What did I say about the homosexual—

Senator BOOKER. I will put in the record the—

General BARR. Okay.

Senator BOOKER [continuing]. The article that you—and, again, I am quoting your actual language.

[The information appears as a submission for the record.]

General BARR. But I will tell you—I will tell you my views. If I had been voting on it at the time, I—my view is that under the law and the Constitution as I originally conceived it before it was decided by the Supreme Court, marriage was to be regulated by the States. And if I were—and if it was brought to me, I would have favored marital unions—single sex.

Senator BOOKER. I guess I am more asking do you still believe that homosexuality is a—is a movement or that—

General BARR. Well—

Senator BOOKER [continuing]. That somehow that is immoral behavior.

General BARR. What I was getting at is, I think there has to be a live and let—in a pluralistic society like ours, there has to be a live and let live attitude and mutual tolerance, which has to be a two-way street. And my concern, and the rest of the article addresses this, is, I am perfectly fine with the law as it is, for exam-

ple, with gay marriage—perfectly fine—but I want accommodation to religion. And what I was concerned about—

Senator BOOKER. But, I guess that is not my concern. We live in a country right now where, especially LGBTQ youth are disproportionately bullied at school.

General BARR. Yes.

Senator BOOKER. Many of them.

General BARR. Hate crimes.

Senator BOOKER. Hate crimes, serious hate crimes. Many of them are missing school because of fear, disproportionately homeless. And I guess what I am more concerned about is do you believe that laws designed to protect LGBTQ individuals from discrimination contribute to what you had described as a breakdown in traditional morality.

General BARR. No.

Senator BOOKER. You do not.

General BARR. No.

Senator BOOKER. Okay. Since—

General BARR. But I would like to say what—I also believe there has to be accommodation to religious communities.

Senator BOOKER. You and I both believe in freedom of religion. I guess what I am talking about, again, is discrimination. And I know you believe—I know you believe—you do not need to say it for me that you believe that firing somebody simply because they are gay is wrong.

General BARR. Totally wrong.

Senator BOOKER. I understand that you believe that, but do you believe the right to not be fired just because of your sexual orientation should be something that should be protected under civil rights law?

General BARR. I am sorry. Your right not to be fired?

Senator BOOKER. Sir, right now—

General BARR. In other words, are you saying that it should be part of—part of Title VII?

Senator BOOKER. I am saying that right now in the United States of America in the majority of our States, someone can be fired. They can post their wedding pictures on their Facebook page and be fired the next day just because they are gay.

General BARR. I think that is wrong.

Senator BOOKER. You think that is wrong.

General BARR. Yes.

Senator BOOKER. And so you would believe that efforts by the Department of Justice to protect LGBT kids or individuals from harassment from hate crimes and efforts to protect the civil rights of LGBTQ Americans—

General BARR. I support that.

Senator BOOKER. You support that. Okay.

General BARR. That is what I said in the beginning. I am very concerned about the increase in hate crime.

Senator BOOKER. Oh, I was really happy about that. You said you recognize that violence based on sexual orientation is not acceptable and that you will work to combat that. I was really happy to read that in your written testimony and hear it again. Will you recognize, then, that there is a place for the Department of Justice,

which is supposed to protect the civil rights of Americans, vulnerable communities, that there is a place for the Department of Justice to protect the civil rights of LGBT Americans by banning discrimination based on sexual orientation or gender identity?

General BARR. If Congress passes such a law, I—you know, I think the litigation going on now on Title VII is what the 1964 Act actually contemplated. But personally, I think—

Senator BOOKER. So you—I am sorry. You do believe the 1964 Act contemplated protecting individuals from having—being discriminated upon—

General BARR. No, no, no, I think it was male/female that they were talking about when they mentioned sex in the 1964 Act.

Senator BOOKER. So protecting someone's basic rights to be free from discrimination because of sexual harassment is not something that the Department of Justice should be protecting.

General BARR. No. I am saying Congress passes the law. The Justice Department enforces the law. I think the 1964 Act, on its face, and this is what is being litigated, what does it cover? I think, for, like, 3 or 4 decades the LGBT community was trying to amend the law.

Senator BOOKER. But the Obama administration—as you know, the Justice Department under the Obama administration was working to protect LGBTQ kids from discrimination. Are those practices that you would be pursuing as well?

General BARR. I do not—I do not know what you are referring to. You know, I am against discrimination against anyone because of some status, like, you know, their gender or their—

Senator BOOKER. I understand. Really briefly—

General BARR [continuing]. Sexual orientation or whatever.

Senator BOOKER. Thank you. With the indulgence of the Chair, just very briefly, the Department of Justice reversed the Federal Government's position in *Veasey v. Perry* after arguing that—for almost 6 years, that the Texas voter ID law intentionally discriminated against minorities. Even the Fifth Circuit of Appeal, one of the more conservative Circuits, ruled that the Texas law discriminated against minority voters. You said very strongly that voting—the right to vote is paramount.

General BARR. Mm-hmm.

Senator BOOKER. And I am wondering if confirmed, will you bring the Department of Justice back on—into the mode of defending the right to vote because they have now pulled out of a lot of cases that were—that were affirming people's access for the right to vote.

General BARR. I will vigorously enforce the Voting Rights Act.

Senator BOOKER. Okay. And then I will just say—Mr. Chairman, I just want to say to you, please, I hope we get a chance to talk more. I imagine this is our second round, and I am grateful for you today answering my questions. Thank you, sir.

Chairman GRAHAM. Now, Senator Harris.

Senator HARRIS. Thank you. Sir, you were the Attorney General, obviously under President H.W. Bush, and in the Reagan White House, a senior policy advisor, so I am going to assume that you are familiar with the Presidential Records Act. And my question is, in the context of a Washington Post report that the President took

possession of an interpreter's notes documenting the President's meeting with the Russian President Putin in 2017. And the question then is, does that violate the Presidential Records Act?

General BARR. Your initial assumption, I am afraid, was wrong. I do not—I am not familiar with that Act.

Senator HARRIS. You are not familiar at all with it?

General BARR. At some—at some time I was, but I—it is—you know, I really do not know what it says.

Senator HARRIS. You do not what it says?

General BARR. No.

Senator HARRIS. Okay.

General BARR. At some time—at some point I was——

Senator HARRIS. It requires the President to keep—to keep documents and not destroy them, essentially.

General BARR. Okay. At one point I knew what it said, but I am not familiar with it right now.

Senator HARRIS. Okay. In December, a Texas Judge struck down the Affordable Care Act. If the decision is upheld, the results could include an estimated 17 million Americans losing their health insurance in the first year alone. Protections for pre-existing conditions would be eliminated, and seniors would pay more for prescription drugs. And some adults would no longer be able to stay on their parents' insurance plans until the age of 26.

Attorney General Sessions refused to defend the Affordable Care Act in court. As you know, when there is a change of Attorney General in the Justice Department, there is often a change of priorities from the previous AG. So in the context of also understanding that many lawyers, including conservative legal scholars, have criticized the *Texas* decision, including Philip Klein of the *Washington Examiner*, would you reverse the Justice Department's position and defend the Affordable Care Act in court?

General BARR. That is a case that I, if I am confirmed, would want——

Senator HARRIS. If confirmed.

General BARR. If I am confirmed, I would like to review the Department's position on that case.

Senator HARRIS. Are you open to reconsidering the position?

General BARR. Yes.

Senator HARRIS. Attorney General Sessions also issued a memo limiting the use of consent decrees. This came up earlier in your hearing. And the limitation was on the use of consent decrees between the Justice Department and local governments. I am asking then, within your first 90 days, will you commit to—if confirmed—providing this Committee with a list of all consent decrees that have been withdrawn since Attorney General Sessions issued that policy? We would like some transparency and information about what consent decrees have been withdrawn during the Sessions' administration of the Justice Department. Would you commit to doing that?

General BARR. Yes.

Senator HARRIS. And if confirmed, will you commit to providing this Committee with a list of any consent decrees that you withdraw during your tenure?

General BARR. Through the tenure?

Senator HARRIS. Yes.

General BARR. Yes.

Senator HARRIS. And if confirmed, within 90 days of your confirmation, will you commit to convening civil rights groups to listen to their concerns about this policy in the Department of Justice?

General BARR. I will—I am very happy to convene that group.

Senator HARRIS. I am going to interpret that as a commitment that you will.

General BARR. I am not—I am not sure about 90 days. Give me 120.

Senator HARRIS. Okay.

[Laughter.]

Senator HARRIS. That is fine. That is the agreement then, within 120 days. That is terrific. And then the Voting Rights Act, you are familiar, of course, with that, I am going to assume, yes?

General BARR. Yes.

Senator HARRIS. Okay. And under the Act, the record of discriminatory voting practices, those States that have a record of such practices, had to obtain Federal approval in order to change their voting laws, as you know.

General BARR. Yes.

Senator HARRIS. And then came the 2013 *Shelby* decision where the Court, by a 5-to-4 vote, pretty much gutted the Act, ending the Federal pre-approval requirement. So, within weeks of that ruling, you are probably aware that legislators in North Carolina rushed through a laundry list of voting requirements. A Federal Appeals Court later held those North Carolina laws to be intentionally discriminatory against African-American voters, targeting them, quote, “with almost surgical precision.” Do you believe there are currently laws on the books that target African Americans or have the effect of discouraging African Americans from voting in our country?

General BARR. Well, it sounds like those laws do.

Senator HARRIS. Sure. Do you have any concern about that there may be other laws that have the same—

General BARR. I would be concerned if there are other laws, and that is why I would vigorously enforce Section 2 of the Voting Rights Act.

Senator HARRIS. And would you make it then part of your mission to also, in spite of the fact that the Voting Rights Act has been gutted, to make it your mission to also become aware of any discriminatory laws in any of the States, including those that were covered by the Voting Rights Act because of their history of discrimination and use the resources of the Department of Justice to ensure that there is not voter suppression happening in our country?

General BARR. Yes.

Senator HARRIS. Thank you. My time is up. I appreciate it.

Chairman GRAHAM. That was very efficient.

I think that is the end of the two rounds that I promised the Committee we would do.

I think, Senator Hirono, you have a few more questions. Is that correct?

Senator HIRONO. Yes, thank you very much, and I thank Senator Kennedy, as he was sitting in the Chair, to give me permission to go a little bit further, so I will be as brief as I can.

Last year, the Justice Department in *Zarda v. Altitude Express*—it was a Second Circuit case—argued that Title VII—it filed an amicus brief and argued that Title VII of the Civil Rights Act of 1964 did not prohibit discrimination on employment on the basis of sexual orientation. So both the Second and the Seventh Circuits have rejected the Department’s argument. So if confirmed, would you appeal this decision to the Supreme Court?

General BARR. I think it is going up to the Supreme Court.

Senator HIRONO. So is DOJ going to continue to argue that Title VII does not protect discrimination, employment discrimination?

General BARR. You know, it is pending litigation, and I have not gotten in to review the Department’s litigation position. But the matter will be decided by the Supreme Court.

Senator HIRONO. Well, I take it that—that sounds like a “yes” to me, that the Department will continue to push the argument that has been rejected.

General BARR. Well, it is not just the Department’s argument. It has been—it is sort of common understanding for almost 40 years.

Senator HIRONO. So, employment discrimination on the basis of sex is something that it would be okay by you if that—

General BARR. No, that is not at all what I am saying. I am saying the question is the interpretation of a statute passed in 1964. As I have already said, I personally, as a matter of, you know, my own personal feelings, think that there should be laws that prohibit discrimination against gay people.

Senator HIRONO. So perhaps, should you be confirmed, you will review the Department’s position on making the argument, continuing to put forth the argument that Title VII does not prohibit employment discrimination. Would you review—

General BARR. No, because there is a difference between law and policy. The question in law is what was—I will enforce the laws as passed by Congress. I am not going to amend them. I am not going to undercut them. I am not going to try to work my way around them and evade them.

Senator HIRONO. Well, the DOJ also does not have to file an amicus brief either.

Let me move on. Recently, The New York Times reported that the Department of Health and Human Services wanted to redefine gender for Federal anti-discrimination law such as Title IX—so now we are talking about Title IX—as being determined by the biological features one has at birth. So do you believe that transgender people are protected from discrimination by Title IX?

General BARR. I think that matter is being litigated in the Supreme Court, too.

Senator HIRONO. Do you know what the Justice Department’s position is on whether—well, if they are going to go along with what the Health and Human Services Department wants, then the Justice Department’s position is that Title IX does not protect discrimination on the basis of transgender—

General BARR. I do not know what the position—

Senator HIRONO. This is probably another one that I would ask you to review.

General BARR. Okay.

Senator HIRONO. Last questions. You have been asked this already, but after the *Shelby County v. Holder* decision, there were some 13 States that passed various kinds of laws that one could—that the argument could be made that they were intended to suppress voters. In fact, some of them were intentionally intended, not just the effect of discriminating against basically minority voters. So you did say that you would vigorously enforce the Voting Rights Act, so that is good.

The Washington Post reported last week that officials in North Carolina reported strong allegations of election fraud related to absentee ballot tampering to the U.S. DOJ. We are talking about election fraud, not voter fraud. But the Justice Department did not appear to take any action, and now that congressional race is still being decided. But one thing the Department of Justice did manage to do in North Carolina was to request that North Carolina turn over millions of voting records to Immigration and Customs Enforcement, ICE, apparently as part of a needle-in-the-haystack effort to prosecute voting by non-citizens.

If confirmed, will you continue to put resources into this kind of effort to prosecute voting by non-citizens, which the evidence is very clear that there is not this kind of voter fraud going on in spite of the fact that the President said there were some, I do not know, 3 million people who were not supposed to vote voting? So would you continue to expend resources on requiring turning over of millions of voter records to be turned over to ICE?

General BARR. Well, I do not know what the predicate for looking into that is.

Senator HIRONO. It was to get at voter fraud, which, according to the President, is going on in a massive way, which it is not.

General BARR. Well, yes, but the predicate, I do not know what information triggered that review, but, you know, when I go into the Department, I will be able to discern whether or not that is a bona fide investigation, and if it is, I am not going to stop it.

Senator HIRONO. What if the trigger was that there is massive voter fraud going on, which is not the factual—it is not a factual basis. I would hope that as Attorney General you would make decisions based on facts, not on some kind of ideological need to go after people. So that is all I am asking. I would just ask you to—

General BARR. You are right, I—

Senator HIRONO [continuing]. Make that the predicates are based on some factual basis so that we are not wasting short resources to go after fraud that is not even—there are plenty of other things that you could be doing to make sure that people are able to vote.

General BARR. Right.

Senator HIRONO. Thank you.

Chairman GRAHAM. Okay. Can you make it a few more minutes?

General BARR. Sure.

Chairman GRAHAM. Okay. I know comfort breaks are necessary. So what I would like to do, Senator Kennedy has one question—right? Senator Blumenthal has a couple. Then we are going to

wrap it up. If you had 10 minutes to live, you would want to live in this Committee.

[Laughter.]

Chairman GRAHAM. So 10 minutes is a long time. Senator Kennedy.

Senator KENNEDY. General, I am still confused about one point. Let us assume that Mr. Mueller at some point, hopefully soon, writes a report and that report will be given to you. What happens next under the protocol, rules, and regulations at Justice?

General BARR. Well, under the current rules, that report is supposed to be confidential and treated as, you know, the prosecution and declination documents in an ordinary criminal—any other criminal case. And then the Attorney General, as I understand the rules, would report to Congress about the conclusion of the investigation, and I believe there may be discretion there about what the Attorney General can put in that report.

Senator KENNEDY. So you would make a report to Congress?

General BARR. Yes.

Senator KENNEDY. Based on the report you have received?

General BARR. Yes.

Senator KENNEDY. Okay. Thank you.

Chairman GRAHAM. All right. A couple questions by Senator Blumenthal, and we are going to wrap it up.

Senator BLUMENTHAL. Thank you for your patience and your perseverance, and I appreciate, let me say, your willingness to come meet with me, and so I am going to cut short some of my questions. And, also, I hope that you will come back regularly to the Committee. Obviously, the Chairman is the one who determines when and whether we have witnesses, but the frequency—

Chairman GRAHAM. He comes every 30 years—

[Laughter.]

General BARR. Twenty-seven.

Senator BLUMENTHAL. Twenty-seven. You were asked by Senator Leahy about your statement that the Uranium One deal was more deserving of investigation than collusion with Russia. You answered that you were not specifically referring to the—referencing the Uranium One deal, but just generally referring to matters the U.S. Attorney might be investigating.

General BARR. I cannot remember the exact context of that. There was a series of questions a reporter was asking, and then the article sort of put them in a sequence that, you know, did not necessarily show my thoughts.

Senator BLUMENTHAL. Well, The New York Times just published, in a Tweet, the email that you sent them, and you did reference Uranium One specifically.

General BARR. Okay.

Senator BLUMENTHAL. I will ask that it be made part of the record.

Chairman GRAHAM. Without objection.

[The information appears as a submission for the record.]

General BARR. So what did I say?

Senator BLUMENTHAL. The Tweet from Peter Baker of The New York Times says, “Questions have been raised about what Bill Barr told us for a story in 2017. Here is his full email from then, re-

sponding to our request for comment. We are grateful he replied and hope this clarifies any confusion.” And the email from you says—and I will take the relevant part of the sentence—“I have long believed that the predicate for investigating the uranium deal, as well as the foundation, is far stronger than any basis for investigating so-called collusion.”

General BARR. And what came before that?

Senator BLUMENTHAL. I will read the full email, with the permission of the Chairman.

Chairman GRAHAM. Yes, please.

Senator BLUMENTHAL. “Peter, got your text. There is nothing inherently wrong about a President calling for an investigation. Although an investigation should not be launched just because a President wants it, the ultimate question is whether the matter warrants investigation, and I have long believed that the predicate for investigating the Uranium deal as well as the foundation is far stronger than any basis for investigating so-called collusion. Likewise, the basis for investigating various national security activities carried out during the election, as Senator Grassley has been attempting to do. To the extent it is not pursuing these matters, the Department is abdicating its responsibility.” Signed, “Bill Barr.”

General BARR. Right. So the abdicating responsibility, I was actually talking about the national security stuff, and that was my primary concern. You know, the Uranium One deal, the sort of pay-for-play thing, I think at that point—I may be wrong on this, but I think it was included in Huber’s portfolio to review, suggesting that there was something to look at there. But the point I was really trying to get at was that there was a feeling, I think, a strong feeling among many people that it appeared, at least, on the outside, that there were double standards being applied. And I thought it was important that the same standard for investigation between used for all matters. But I have no, you know, specific information about Uranium One that would say that it has not been handled appropriately.

Senator BLUMENTHAL. Well, that is really my question. What was the factual basis for your saying that the Uranium One deal was more deserving of investigation than Russian collusion, given what you have—

General BARR. I think the—

Senator BLUMENTHAL [continuing]. Very articulately described as the potential threat to the national security of the United States from Russian interference in our election?

General BARR. Yes, I think at that time there was a lot of articles appearing about it. I think maybe Congressman Goodlatte had written a letter about it. So there was smoke around the issue, as there has been smoke around a number of issues that have been investigated. But I was using it really as an example of the kinds of things that were floating around that some people felt has to be looked at as well.

Senator BLUMENTHAL. So the factual basis was whatever that smoke was—

General BARR. Well, the public information that a lot of opinions are being formed.

Senator BLUMENTHAL. And how about as to the foundation? What was the basis of your claim that the foundation was more deserving of investigation than Russian collusion?

General BARR. Well, the foundation—I did not necessarily think the foundation was—should be criminally investigated, but I thought—

Senator BLUMENTHAL. Well, you did say that in the email.

General BARR. I did? Criminally?

Senator BLUMENTHAL. Well, let me read that part of the sentence again: “I have long believed that the predicate for investigating the Uranium deal as well as the foundation is far stronger than any basis for investigating so-called collusion.” You were referring to the criminal investigation, as I read it.

General BARR. Yes. Well, the foundation I always wondered about—it was the kind of thing that I think should have been looked at from a tax standpoint and whether it was complying with the foundation rules the way a corporate foundation is. And I thought there were some things there that, you know, merited some attention. But I was not thinking of it in terms of a criminal investigation of the foundation.

I would like to—you know, Attorney General Mukasey said something that I agree with. He said, “It would be like a banana republic putting political opponents in jail for offenses committed in a political setting. Even if they are criminal offenses, it is something we just do not do here.” And one of my concerns, frankly, is, you know, politics degenerating into, you know, this kind of thing about should we investigate this, investigate that, about political opponents, and that concerns me. So, that is why I said I think in, if not that, some other article, I do not subscribe to this “Lock her up” stuff.

Senator BLUMENTHAL. But a political or public official, even the President of the United States, has to be held accountable. No one is above the law.

General BARR. Oh, yes, absolutely.

Senator BLUMENTHAL. And just one more question. You referred earlier in response to a question from Senator Feinstein about the emoluments issue, and I ask this question in the interest of full disclosure. I will tell you that I am the lead plaintiff in a litigation called *Blumenthal, Nadler v. Trump* that raises the issue of emoluments and the payments and benefits that have been going to the President of the United States without the consent of Congress in violation of the chief anti-corruption clause in United States law, the Emoluments Clause of the United States Constitution. So we claim.

You said that your understanding of emoluments was that it was—that it pertained only to stipends.

General BARR. No—well, first—

Senator BLUMENTHAL. Maybe—

General BARR. I have not looked at that clause, you know, I have not researched it, and I have not even looked up the word, “emolument.” But all I said is just colloquially, off the top of my head, that is what I always thought the word meant.

Senator BLUMENTHAL. So you are not necessarily disputing the conclusion of at least one District Court, perhaps others, that

emoluments relates to payments and benefits much broader than just a stipend. You were speaking only of your colloquial understanding.

General BARR. Yes. I mean, my colloquial understanding is that emoluments does not refer to exchange of services and stuff like that.

Senator BLUMENTHAL. Which is not—

General BARR. Commercial transactions.

Senator BLUMENTHAL. Which is not necessarily the understanding of the Founders and Framers of the Constitution.

General BARR. We will see.

[Laughter.]

Chairman GRAHAM. Well, that is a good way to end. We will see. Thank you, Senator Blumenthal.

Senator BLUMENTHAL. Thank you.

Chairman GRAHAM. Thank you, Mr. Barr, to your family. Thank you. You should be proud. This was a very thorough examination of a very important position in our Government. If confirmed, you will be the chief protector of the rule of law, and I really appreciate your time, attention, and your patience.

Any further questions can be submitted for the record by January the 21st. This hearing is adjourned, to be reconvened tomorrow at 9:30. Thank you.

[Whereupon, at 6:12 p.m., the Committee was recessed, to reconvene at 9:30 a.m., Wednesday, January 16, 2019.]

[Additional material submitted for the record for Day 1 follows Day 2 of the hearing.]

**CONTINUATION OF THE CONFIRMATION
HEARING ON THE NOMINATION OF
HON. WILLIAM PELHAM BARR TO BE
ATTORNEY GENERAL OF THE UNITED STATES**

WEDNESDAY, JANUARY 16, 2019

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:32 a.m., in Room SH-216, Hart Senate Office Building, Hon. Lindsey O. Graham, Chairman of the Committee, presiding.

Present: Senators Graham [presiding], Grassley, Cornyn, Cruz, Sasse, Hawley, Tillis, Ernst, Kennedy, Blackburn, Feinstein, Durbin, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, and Harris.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Chairman GRAHAM. Good morning, everyone. To our witnesses, thank you very much for sharing your testimony with the Committee.

We have nine very distinguished people. If you could keep it to 5 minutes, we appreciate it. We have your written testimony, and we will certainly look at all of it.

Senator Feinstein, thank you. Yesterday, I thought it was a very good hearing, asked a lot of good, tough questions that were appropriate. Nominating an Attorney General is no small matter, and I thought the Committee acquitted itself well. And Mr. Barr, I think, is a unique individual, and I am glad the President nominated him.

Today, the purpose is to hear from people that have concerns and support, and we are honored that you showed up. If you do not mind, I will mention who is here, then turn it over to you. Is that okay?

Senator FEINSTEIN. That is okay.

Chairman GRAHAM. Thank you.

Our first witness will be the Honorable Michael Mukasey, former United States Attorney, former U.S. District Judge, and former everything. Yes.

Mr. Derrick Johnson, president and chief executive officer of the National Association for the Advancement of Colored People from Baltimore. Welcome.

The Honorable Larry Thompson, former United States Deputy Attorney General. Welcome, Larry. Good to see you.

The Honorable Marc Morial. Is that right, sir? Morial. Sorry. President and chief executive officer of the National Urban League.

Mrs. Mary Kate Cary, former speechwriter for President George H.W. Bush and a senior fellow at the Miller Center, University of Virginia.

Professor Neil Kinkopf, professor of law, Georgia State University College of Law, Atlanta, Georgia.

Professor Jonathan Turley, TV star, smart guy. That is enough.

Reverend Sharon Washington Risher from Charleston, South Carolina, Mother Emanuel. God bless you. Thank you for coming.

Mr. Chuck Canterbury, the national president, Fraternal Order of the Police.

And I will now turn it over to Senator Feinstein.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN,
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thanks very much, Mr. Chairman, and I very much enjoyed your leadership yesterday and look forward to it in the future.

Chairman GRAHAM. Thank you. Thank you.

Senator FEINSTEIN. So thank you.

I would just like to take a moment to thank our panelists today and just a few comments, if I may, on the discussion that we had yesterday.

Yesterday, many of us from, I think, both sides of the aisle asked Mr. Barr about his legal memo, and that was allowing the Special Counsel to complete his work unimpeded and making the report at the end of the investigation public. His answers were good. He clearly understands the need for independence and the importance of protecting the Department, as well as Mr. Mueller, from political interference.

I was concerned by his equivocation regarding the report at the end of the Special Counsel's investigation. Mr. Barr was clear that he would notify Congress if he disagrees with Mr. Mueller, which I am grateful for. But his answers on providing a report to Congress at the end of the Special Counsel's investigation were confusing.

When I first asked him about the report, he said he would make it available. However, it seemed to me that as the day progressed, he referenced writing his own report and treating the Mueller report as confidential. I am going to follow up with him in writing on this. I think it is essential that Congress and the American people know what is in the Mueller report.

I first met Bob Mueller when he was U.S. Attorney and I was mayor in San Francisco, and I know his reputation, I know his integrity. And this is a big report, and the public needs to see it. And with exception of very real national security concerns, I do not even believe there should be very much redaction.

So I am hopeful that that report will be made public, and my vote depends on that, Mr. Chairman, because an Attorney General must understand the importance of this to the Nation as a whole, to us as a Congress, as well as to every American.

I also plan to follow up on questions that Senator Blumenthal asked about *Roe* and whether he would defend *Roe* if it were chal-

lenged. This has always been a critically important issue for me and, I believe, the majority of American women, and I very much regret that I did not get to ask follow-up questions.

Mr. Barr's nomination comes at a time when we are very divided on many issues, ranging from immigration and civil rights enforcement to the very independence of the Justice Department, and the witnesses today are going to speak to those key issues. For example, Professor Kinkopf from Georgia University served in the Justice Department's Office of Legal Counsel, and he can speak today about issues he is focused on, primarily presidential authority, as I understand it, and separation of powers.

Sharon Risher is an ordained pastor who lost her mother and cousins to gun violence in the horrific hate crime that took place at Emanuel AME Church in Charleston, South Carolina, and can speak to the importance of enforcing common sense gun laws.

We will also hear from two prominent leaders of the civil rights community who could speak to the impact of the Justice Department's policies under President Trump. Mr. Marc Morial—Where are you, Marc?—whose sister has been a colleague of ours, and it is great to see you, the president and chief executive officer of the National Urban League now. And Mr. Derrick Johnson, the president of the NAACP.

So, on behalf of this side, I welcome everyone here.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator Feinstein.

If it is okay, lead us off. Oh, sorry. Got to swear you in first.

Would you please stand? All of you. Raise your right hand.

Do you solemnly affirm that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses are sworn in.]

Chairman GRAHAM. All right, General Mukasey.

HON. MICHAEL B. MUKASEY, FORMER UNITED STATES ATTORNEY GENERAL; FORMER U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; AND OF COUNSEL, DEBEVOISE & PLIMPTON LLP, NEW YORK, NEW YORK

Judge MUKASEY. Thank you.

Good morning. Mr. Chairman, Ranking Member Feinstein, Members of the Committee, it is a tremendous honor as well as a great pleasure to be here to testify on behalf of Bill Barr to serve as Attorney General.

I do not know of any nominee who has had his background and his credentials for this job. Obviously, the job is about a lot more than credentials, but he has done literally everything that you could possibly do, including serving as Attorney General, to prepare him.

Now, obviously, the Department of Justice is a different place today from the time that he served. It is different from the time that I served. But he is obviously well equipped to deal with whatever problems he faces.

He was with the CIA. He headed the Office of Legal Counsel, which is, I think, the office that attracts, along with the Solicitor General's Office, the best legal minds in the Department. He head-

ed that office. He was Deputy Attorney General. So he knows how the Department runs. And, of course, he was Attorney General. It is impossible to improve on that. Not only what he did, but the way he did it.

When he was Acting Attorney General, he supervised the liberation of hostages at a Federal prison in a way that prevented any casualties, and then follow that up by not taking any public credit for it. That is the kind of person he is, and that is the kind of judgment he has.

And as far as pressure from the White House, he was asked at one point whether he could come up with a theory to justify the line-item veto. And he did a lot of research and found that, well, there was no precedent in our law. There was something that might be called common law, going back to about the 15th century.

He said there was a Scottish king who had done something that looked like a line-item veto. But, of course, that Scottish king, as it turned out, was suffering from syphilis and was quite out of his mind. And so you would have to call that the syphilitic prerogative if you did it, Mr. President. And so the President decided not to assert the power.

That is the kind of judgment he has. That is the kind of—

Chairman GRAHAM. You learn a lot on this Committee.

Judge MUKASEY. Yes, it was a revelation to me, too. It is a terrific story. But it illustrates what he is like. He does not—he is not intimidated by questions or by the source of them.

When I—a couple of months ago, when General Sessions was leaving, I thought to write an article pointing out all the good things that he had done. And I called up Bill Barr to ask whether he would join in that article. He did not hesitate for a nanosecond. He said he would.

He said it was the right thing to do, it was the correct thing to do, and he was glad he had done it. And that, I think, tells you in substance what it is this person is about. He is an honorable, decent, smart man, and I think he will make a superb Attorney General.

Thank you very much.

[The prepared statement of Judge Mukasey appears as a submission for the record.]

Chairman GRAHAM. Mr. Johnson.

DERRICK JOHNSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BALTIMORE, MARYLAND

Mr. JOHNSON. Good morning, Chairman Graham and—is that better? Great.

Thank you for allowing me to testify on the nomination of William Barr to be Attorney General of the United States.

My name is Derrick Johnson, and since October 2017, I have had the honor of serving as the president/CEO of the NAACP. Founded in 1909, the NAACP is our Nation's oldest, largest, and most widely recognized civil rights organization. The NAACP opposes Mr. Barr's nomination, and I urge every Member of this Committee to vote against his confirmation.

The Senate considers this nomination in extraordinary times. Under the Trump administration, we have experienced the worst erosion in civil rights in modern history. We have seen reversals and rollbacks of longstanding policies and positions that have enjoyed bipartisan support from their creation. We have seen an undermining of both substantive protections and the tools necessary for civil rights enforcement, such as the disparate impact method for proving discrimination and the use of consent decrees to address abuse by police agencies.

The next Attorney General of our United States has the opportunity to reverse course and place the Justice Department back on the track to fulfill its historic role of safeguarding our civil and constitutional rights. The Senate must seize this second chance for justice and insist upon an Attorney General capable of independence and willing to enforce our Nation's civil rights laws with vigor and resolve.

After a thorough evaluation and review of the record, William Barr is not that candidate. Mr. Barr's record demonstrates a lack of strong commitment to protecting the civil and human rights of all Americans. The community served and represented by the NAACP will have a difficult time placing our trust in the Justice Department and, by extension, the American criminal justice system overall, even with the improvements just signed into law with the First Step Act.

The Justice Department's enforcement of our voting rights laws is of paramount importance. But the current Department has jettisoned protections for the right to vote. It has reversed positions in lawsuits to support voter suppression measures and to purge voters from the rolls.

Because *Shelby County v. Holder* eliminated said guards under Section 5 of the Voting Rights Act, litigation under Section 2 of the Act is all more important. But the Justice Department has filed no Section 2 claims since this administration has been in place.

As the Nation experienced rampant voter suppression throughout the 2018 mid-term elections, the Justice Department stood silently as communities of color across the Nation were denied access to the polls. At a time when the Justice Department has abandoned voting rights protections, the need for Federal enforcement has never been greater.

The U.S. Commission on Civil Rights recently reported that voter suppression is at an all-time high and unanimously called on the Department to pursue more voting rights enforcement in order to address aggressive efforts by State and local officials to suppress the vote.

Mr. Barr's record on criminal justice is abysmal. As Attorney General, he championed mass incarceration and deprived countless persons of color of their liberty and dramatically limited their future potential. His Justice Department tenure was marred by extraordinarily aggressive policies that harmed people of color.

He was a general in the war on the crime on drugs that was rooted in racism. He literally wrote a book on, "The Case for More Incarceration," which stands in contradiction of the First Chance Act.

But William Barr did not and does not recognize racially discriminatory impact of our criminal justice system policies. In 1992, he said, “I think our system is fair and does not treat people differently.” And just yesterday, he told Senator Booker, “Overall,” and I quote, “the system treats Blacks and Whites fairly.”

This statement is singularly disqualifying. We need an Attorney General who understands both the history and persistence of racism in our criminal justice system.

The Government response to inhumanity is inconsistent as it relates to this administration’s enforcement of immigration rights. The NAACP, we filed a lawsuit as it relates to DACA. We need an Attorney General who respects the rights of individuals.

Finally—and I am trying to rush through this quickly now—Mr. Barr’s recent actions make his impartiality on the ongoing investigation into Russian interference in the 2016 elections suspect. And for the NAACP, we are very clear. Matters of international questions is not under our purview.

But any time a foreign nation used the worst common denomination in this Nation’s history of racism to suppress African-American votes in an effort to subvert democracy, it is a question of national security, and we need an individual who has the independence to stand up and be fair and make sure we protect democracy.

Thank you, Members of the Committee.

[The prepared statement of Mr. Johnson appears as a submission for the record.]

Chairman GRAHAM. Thank you, Mr. Johnson.

Mr. Thompson.

HON. LARRY D. THOMPSON, FORMER UNITED STATES DEPUTY ATTORNEY GENERAL, AND PARTNER, FINCH McCRANIE LLP, ATLANTA, GEORGIA

Mr. THOMPSON. Good morning, Chairman Graham, Ranking Member Feinstein, Members of the Committee.

It is my great honor to appear before you this morning in support of Bill Barr’s nomination to serve our country once again as Attorney General of the United States.

I have known Bill since 1992. I can attest to the fact that Bill has a deep, deep respect for and fidelity to the Department of Justice. Bill will go where the law leads him. In fact, as Attorney General, he did not hesitate when required by law to appoint or seek to appoint various Special or Independent Counsel in high-profile matters.

He served with great distinction as Attorney General and is highly respected and admired on a bipartisan basis by the career prosecutors and investigators he oversaw in the Department. Importantly, Bill knows how to develop much-needed partnerships with State and local law enforcement. He was very successful at this during his tenure as Attorney General and created strong and effective joint task forces across the country to combat white-collar and violent crime.

Bill believes that every citizen, no matter where he or she lives, deserves the full protection of the law. Bill also understands that Federal law enforcement cannot do the job alone. In 1992, Bill vis-

ited my hometown of Atlanta, Georgia, and spoke with members of the Southern Christian Leadership Conference.

He said that when cleaning up crime-infested neighborhoods, and I quote, “It cannot be a Washington bureaucratic project. It must be a project where the solutions are found in the community itself.”

He acknowledged to the Reverend Joseph Lowery that in the past decade, the Federal Government’s anti-crime efforts have relied too heavily on prison construction and not enough on crime prevention.

Now, as a former general counsel of a large public company myself, I also appreciate and admire Bill’s approach to his work in the private sector. Bill was very supportive of the lawyers who worked with him. He was collaborative with his colleagues. He welcomed input, dialogue, and discussion.

He created opportunities for everyone he oversaw to develop and grow in their careers, including many female lawyers and lawyers of color. He was also supportive of diversity in the legal profession.

In 2002, the company Bill served as general counsel received the Northeast Region Employer of Choice Award from the Minority Corporate Counsel Association for successfully creating a more inclusive work environment.

Finally, Members of the Committee, I think the most important point I can share with you is that Bill Barr is a person of very high integrity. He led the Department of Justice as Attorney General with an unbending respect for the rule of law. As general counsel of a large public company, he emphasized the importance of complying with all laws, rules, and regulations, and he stood up for his corporate client a world-class compliance program.

Bill Barr’s integrity is rock solid. He will not—and I repeat—will not simply go along with you is that Bill Barr is a person of very high integrity. He led the Department of Justice as Attorney General with an unbending respect for the rule of law. As general counsel of a large public company, he emphasized the importance of complying with all laws, rules, and regulations, and he stood up for his corporate client a world-class compliance program.

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Thank you.

[The prepared statement of Mr. Thompson appears as a submission for the record.]

Chairman GRAHAM. Thank you, Mr. Thompson.

Mr. Morial.

HON. MARC H. MORIAL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL URBAN LEAGUE, NEW YORK, NEW YORK

Mr. MORIAL. Thank you.

Chairman Graham, Senator Feinstein, and Members of this Committee, I want to thank you for the opportunity to testify on the nomination of William Barr to be Attorney General of the United States.

I am Marc Morial and have the pleasure of serving as president and CEO of the National Urban League. Before doing so, I served 8 years as the mayor of my beloved hometown, New Orleans, president of the national—the United States Conference of Mayors, a Louisiana State senator, a college professor, and a practicing law-

yer involved in one of the most important civil rights and voting rights cases to come before the Supreme Court in the 1990s.

The National Urban League was founded in 1910. It is an historic civil rights and urban advocacy organization with a network of 90 community-based affiliates, and we have affiliates in every town represented by the Members of this Committee. We have worked hard and fought for civil rights, justice, and equal opportunity, along with fairness, for our entire existence.

My illustrious predecessor, the late Whitney Young, was one of the "Big Six" of civil rights leaders who worked for the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act. One of our prime missions is to ensure that each of these laws is aggressively, faithfully, and consistently executed and enforced by every President, every Congress, and every Attorney General. That is why I am here today.

Mr. Chairman, on behalf of our entire Urban League movement across this country, I urge this Committee and the entire Senate, based on a careful examination of this nominee's record, to soundly reject the nomination of William Barr as the next Attorney General of the United States. Let me tell you why.

For the past 2 years, the Justice Department has been led by an Attorney General intent on restricting civil and human rights at every turn. This Nation needs an Attorney General who will dramatically change course and enforce civil rights laws with vigor and independence. Based on his alarming record, we are convinced that William Barr will not do so.

Indeed, in a recent op-ed, Mr. Barr called Jeff Sessions, the architect of these restrictive civil and human rights policies, an outstanding Attorney General and offered praise for his anti-civil rights policies. It is clear, based on the record, that Mr. Barr intends to follow Mr. Sessions down the same regressive, anti-civil rights road map.

The confirmation of William Barr, who espouses former Attorney General Sessions' policies, would enormously exacerbate our Nation's current civil rights crisis. When we submitted comments to the United States Commission on Civil Rights raising concerns relative to Sessions' actions on various civil rights issues, they were as follows: overturning a memo from former Attorney General Eric Holder aimed at reducing mass incarceration by avoiding mandatory sentencing, disproportionately subjecting African Americans and other minorities to long-term incarceration; abandoning the Justice Department's Smart on Crime Initiative; ending the Community Oriented Policing Services' Collaborative Reform Project, a Justice Department program that helped build trust between police officers and the communities that it served; announcing a Justice Department school safety plan that militarizes schools; offering a sweeping review of consent decrees with law enforcement agencies related to police conduct, nothing but a subterfuge to undermine a crucial tool in the Justice Department's efforts to ensure constitutional and accountable policing.

Mr. Barr has a troubling record that tells us that there will be no redress of Sessions' blunders. Last year, after arduous work done by many Members of this Committee, we passed the First Step and the Juvenile Justice Reform Act of 2018, and I want to

thank the Committee for its support of that. Mr. Barr's record on criminal justice places these achievements at serious risk and gives us no confidence that these hard-won reforms are going to be carefully executed.

Why? As Attorney General, Barr pushed through harsh criminal justice policies—or rather, he pursued them that escalated mass incarceration in the war on drugs. His 1992 book, “The Case for More Incarceration,” argued that the country was incarcerating too few individuals.

Barr led an effort in Virginia to abolish parole, build more prisons, and increase prison sentences by as much as 700 percent. Yesterday, Mr. Barr testified to this Committee of his intent to implement the First Step Act. If that is the case, this Committee should ask him for a commitment to rescind the guidance that Mr. Sessions issued on May 10, 2017, instructing all United States Attorneys to seek the maximum penalty in Federal criminal prosecutions.

The Attorney General has a duty to vigorously enforce our Nation's most critical law—to protect the rights and liberties of all Americans, to serve as an essential independent check on the excesses of an administration. And we feel the evidence is clear that Mr. Barr is ill-suited to serve as chief enforcer of our civil rights laws, and therefore, we urge this Committee, as a part of its deliberations, its duty, and its responsibility, to reject Mr. Barr's nomination as our next Attorney General.

And I want to thank you for your time.

[The prepared statement of Mr. Morial appears as a submission for the record.]

Chairman GRAHAM. Thank you, sir.

Ms. Cary.

MARY KATE CARY, FORMER SPEECHWRITER FOR PRESIDENT GEORGE H.W. BUSH, AND ANNE C. STRICKLER PRACTITIONER SENIOR FELLOW, THE MILLER CENTER, UNIVERSITY OF VIRGINIA, WASHINGTON, DC

Ms. CARY. Chairman Graham, Senator Feinstein, and Members of the Committee, thank you for the invitation to testify today, and I am here to give my enthusiastic support for the nomination of William P. Barr as our next Attorney General.

My name is Mary Kate Cary, and I was a White House speechwriter for President George H.W. Bush from 1989 to 1992. In January of 1992, I moved to the Justice Department from the White House for the final year of the Bush 41 administration to serve as Deputy Director of Policy and Communications, overseeing the speechwriters in the policy shop and serving as one of two spokesmen for the then-new Attorney General Bill Barr.

When I first started working for General Barr, I was 28 years old. I got to know him very well, as speechwriters do, and quickly learned the way he thinks. I found that Bill Barr has a brilliant legal mind. He knows Mandarin Chinese, and he plays the bagpipes. He has got a great sense of humor and an easy laugh. He is a kind and decent man, a dedicated public servant, and one of the best bosses I have ever had. He is always a gentleman.

Bill and I flew thousands of miles that year in a four-seater prop plane to towns and cities all over America, where he met with local law enforcement leaders, small town mayors, city council members, victims' rights advocates, criminal justice reform leaders, residents of public housing, prison wardens, Federal prosecutors, religious leaders, really all kinds of people from every walk of life.

We were often traveling in support of Bill's visionary initiative, Operation Weed and Seed, which sought to remove violent criminals and drug gangs from underserved neighborhoods and then allow grassroots organizations and programs to flourish, bringing hope of a better life to residents through education, opportunity, and stronger civil rights.

As we met with people in communities all over America, I saw that Bill was a good listener. He was masterful at drawing out people's concerns, and he had a knack for finding the best solutions on the ground, figuring out what worked in a neighborhood, and then putting the right policies in place. He made sure politics never entered into it.

Bill Barr treated everyone with the same respect, whether they were an up-and-coming chief of police, a receptionist at the Department of Justice, or an 80-year-old resident of public housing. I believe this is why Bill Barr continues to be held in high esteem by the career staff and the civil servants at the Department of Justice and why he was such a successful Attorney General.

I also believe that in addition to being good policy, Bill Barr's leadership style is why Operation Weed and Seed continued on for many years after he left office.

Everywhere we went that year, we were accompanied by rank-and-file FBI agents, and he was admired by every one of them that I met. More than once, I can remember being in very dangerous situations where the agents were concerned for his physical security. Every time, he was more concerned about my security. The fact that the Attorney General of the United States was more concerned about the safety of a 28-year-old staffer than his own safety tells you volumes about him.

Despite his top-notch education and his stunning intellect, Bill Barr is not an ivory tower kind of guy. He went out of his way to build friendships at the Department and across the United States, checking in when someone was sick, helping people get jobs, just staying in touch. He and his wife, Christine, came to my wedding, and we have stayed friends for the 27 years since we have worked together.

Like President Bush 41 did, Bill Barr has a devoted and wide collection of friends, each of whom think of him as a really good friend. I remember when he was Attorney General at the age of 42 and his three daughters were young girls. Despite the long hours he kept, the tremendous amount of travel, and the time spent away from his family, his daughters admired his devotion to the law so much that each of them later went to law school in order to follow in his footsteps.

As a mother myself, that, too, tells me volumes about the way he has lived his life and the example he has given to young people, especially women. It is no surprise to me that he is one of the few people in American history to be asked to be Attorney General of

the United States twice. It is an honor for me to highly recommend William P. Barr to you for confirmation. Thank you.

[The prepared statement of Ms. Cary appears as a submission for the record.]

Senator CORNYN [presiding]. Thank you.

Professor Kinkopf.

**NEIL J. KINKOPF, PROFESSOR OF LAW, GEORGIA STATE
UNIVERSITY COLLEGE OF LAW, ATLANTA, GEORGIA**

Professor KINKOPF. My thanks to the Committee for the honor and privilege to appear here today and testify on the nomination of William Barr to be Attorney General.

In his testimony yesterday, William Barr minimized his 2018 memorandum on obstruction of justice. He characterized it as a narrow analysis of a particular interpretation of a specific statute. That is true in a sense, but to answer that very narrow question, he elaborated a comprehensive and fully theorized vision of the President's constitutional power.

He declared without limit or qualification, and I quote, "Constitutionally, it is wrong to conceive of the President as simply the highest officer in the executive branch. He alone is the executive branch. As such, he is the sole repository of all Executive powers conferred by the Constitution. Thus, the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the kinds of cases subject to his control." That manifesto of an imperial Executive has alarming implications for the Mueller investigation and for the whole of the executive branch.

First, I wish to highlight two implications for the Mueller investigation. William Barr gave reassurances yesterday regarding what he would or would not do. These assurances are beside the point because, on Barr's theory, the power rests with the President. Therefore, the President does not have to ask Barr to do anything. In his view, the Attorney General and the Special Counsel are merely the President's "hand." Again, a quote.

The President needs only ask the Attorney General, "Can I terminate the Special Counsel's investigation," and Barr's answer to that question will be, "Yes." This is not speculation or inference drawn from the Barr memo. The Barr memo takes this on very directly. Again quoting the memo: "Say an incumbent U.S. Attorney launches an investigation of an incoming President. The new President knows it is bogus, is being conducted by political opponents, and is damaging his ability to establish his new administration and to address urgent matters on behalf of the Nation. It would be neither corrupt nor a crime for the new President to terminate the matter." Well, President Trump has told us that that is exactly how he regards the Mueller investigation.

Next, there was a great deal of discussion around the release of Mueller's report. First, it is clear that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict, declination decisions. In combination with the DOJ view that a sitting President may not be indicted, this suggests that Barr will take the position that any discussion or release of the Mueller re-

port relating to the President would be improper and prohibited by DOJ policy and regulations.

I wish to close by noting one consequence of the Barr memo's theory of Executive power that extends outside the Mueller probe. The memo asserts that the President has, and I am quoting again, "illimitable discretion to remove principal officers carrying out his executive functions." This would mean, for example, that the President may order the chairman of the Federal Reserve not to raise interest rates and to fire the chairman of the Federal Reserve if the chairman refuses to follow that order.

The independence of the Federal Reserve, the SEC, the FEC, the FTC, the FCC, the dozens of administrative—of independent administrative agencies are unconstitutional under Barr's theory of Executive power. This is in spite of the fact that for over 80 years, the Supreme Court has consistently upheld the constitutional validity of the independence of those entities.

Mr. Barr's theory of presidential power is fundamentally inconsistent with our Constitution and deeply dangerous for our Nation.

[The prepared statement of Prof. Kinkopf appears as a submission for the record.]

Senator CORNYN. Professor Turley.

JONATHAN TURLEY, J.B. AND MAURICE C. SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, WASHINGTON, DC

Professor TURLEY. Thank you, Senator Cornyn. Also allow me to thank Chairman Graham, Ranking Member Feinstein, and all the Members of the Committee for the honor of speaking to you today.

I have known General Barr for many years in my capacity as both an academic and a litigator. I actually represented him with other former Attorneys General during the litigation leading up to the Clinton impeachment. I can think of no better person to serve at that—in this position and lead the Justice Department at this critical time.

I come to this as someone that holds different views of the Constitution from General Barr. I am unabashedly a Madisonian scholar, and I admit—I have always admitted in testimony that I favor the legislative branch in fights with the executive branch. I also have been a critic of the expansion of Executive power. My default is in Article I. General Barr's default is Article II. He tends to take a robust view of Executive authority. Despite our different defaults, however, I have always admired him. I have always found him to be one of the most knowledgeable and circumspect leaders in the United States when it comes to constitutional history and theory.

Now, I have already submitted written testimony addressing the 1989 and 2018 memos. I respectfully disagree with my friend, Neil, even though I found many of the things he said very compelling. We disagree on both what General Barr has said and also the implications of his views. But ultimately this Committee has a difficult task regardless of the résumé of a nominee. You have to try to determine what is the person's core identity and values.

For me, that question has always come down to a rather curious and little known fact about the Seal of the Attorney General that sits underneath the Attorney General whenever he speaks. It has

the familiar image of a rising eagle with the olive branch and the 13 arrows and talons, but under it is actually a Latin legend that we continue to fight about how that legend was put on the seal. What we know is that it appears to be derived from how the Attorney General was introduced to the Queen.

The British Attorney General was introduced as one “who prosecutes for our Lady the Queen.” That phrase was clearly adopted by someone—there is a huge debate about who or when or even why—but they made one change. It would not do to use that language. So they changed the last words to “Domina Justitia,” “our Lady Justice.” It would not do for the Attorney General to litigate or appear on behalf of any leader. The Attorney General appears on behalf of the Constitution, not the President.

I know that Bill Barr understands that distinction. He has said so yesterday. He has maintained that position through his whole career. He has a record of specific leadership, not just at the Department of Justice, but in this very position. He is only the second person ever to be nominated to fit—fill that position twice. There are few nominees in history, as General Mukasey said, who has the résumé that Bill Barr has.

I will not go into depth about the discussion of the memo that Neil was talking about other than to say this. I do go into it in my written testimony. As Deputy Attorney General Rod Rosenstein said, it is not uncommon for former Justice officials to share their views about issues that they believe concern the Department. Indeed, General Barr wrote to other Justice officials about the prosecution of Senator Menendez. He had no connection with Senator Menendez, no interest in that case. His interest was the theory of prosecution being used against Senator Menendez, that he was concerned swept too broadly under the Criminal Code.

The 2018 memo is vintage Bill Barr. It is detailed. It is dispassionate. It is the work of a law nerd, and that is what he is. He is a law nerd. I should know because I am a law nerd, and I teach with other 80 other law nerds. When people are suspicious why would anyone write a memo this long spontaneously and send it to anyone, that is because you do not know law nerds, okay? We write these memos so that we do not follow strangers on the street trying to talk about the unitary executive theory. Indeed I think the best thing we could do for Christine and the family is to reincarcerate Bill on the fifth floor of Main Justice where he can talk about this all day long.

Now, the dispute about that obstruction provision is a real one. I am a little taken aback from the criticism. From a civil liberty’s standpoint, I have been critical of the expansion of the—of the obstruction theory. It sweeps too broadly for me, and it—as a criminal defense attorney, I have been critical of it for a very long time. The issue that he was raising is a real one. He raises it from the Article II standpoint. Some of us have raised it from the civil liberties standpoint.

What he really is arguing is not that the President cannot be prosecuted. He says exactly the opposite. He says the President can be charged with Federal crimes in office. He believes the President could be charged with obstruction in office. So he says the diametrically opposed thing to what many people are saying about him.

What he believes is, just as Confucius said, that, “The start of wisdom is to call things by their proper names.” He wants to call this by its proper name. If the President commits a crime, he wants that crime to be defined. He does not say, by the way, that that same conduct cannot be another type of crime. He was only talking about the Residual Clause of 1512. Those were fair questions about statutory interpretation. I do not agree with everything in his memo. I have said that publicly. I disagree on some of his conclusions, but I wholeheartedly agree with him that this is a serious problem and it has to be defined.

Now, ultimately, I believe if you read his testimony, you will find that he is more measured than some of my friends have suggested. Even Clinton’s own former appointees, like James Clapper, said that yesterday he went as far as he could go as Attorney General giving assurances. But this is a historic moment for the Justice Department. I hope it does not pass. They need this man, and they need it now.

I brought my children today, Aiden and Maddie, because I think that they really should be here. I suspect they are here because they heard that Senator Feinstein was giving out junk food to kids.

[Laughter.]

Professor TURLEY. But I hope that they will also understand the historic moment for what it is. And I thank you for the honor of being part of this.

[The prepared statement of Prof. Turley appears as a submission for the record.]

Chairman GRAHAM [presiding]. Thank you.

Reverend Risher.

**REV. SHARON WASHINGTON RISHER, ORDAINED
PASTOR, CHARLOTTE, NORTH CAROLINA**

Reverend RISHER. Good morning, Chairman Graham, Ranking Member Feinstein, and Members of the Senate Judiciary Committee. It is my honor to appear before you today to testify on the nomination of William Barr to be Attorney General of the United States.

My name is Reverend Sharon Risher, and I live in Charlotte, North Carolina. My life, like so many other people’s throughout this Nation, has been forever changed by gun violence—gun violence that is preventable with effective enforcement and common-sense safety laws. On Wednesday, June 17th, 2015 is the day that my life changed.

As a hospital trauma chaplain, I have worked and experienced grief and tragedy and pain and loss as I worked with patients and families to comfort them. But that night, I was the one in need of comforting when I received the telephone call that no American deserves to get. My beloved mother and two of my cousins had been shot and killed in the church along with six other parishioners at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina.

In the Charleston community which I was raised, when the doors of the church was open, my family was in the pews. That Wednesday was no different. A young White man entered the church at the beginning of the Bible study. In the spirit of our faith, he was

welcomed in by the congregation and sat near the pastor. After studying the Gospel of Mark, they held hands, and bowed their heads, and closed their eyes, and held hands in prayer. That was the final moment for many in that church. That day that young man pulled out his gun and started firing. Some ran, some hid under tables, but they were gunned down.

A house of worship is supposed to be a refuge from the storms of everyday life, but that young man robbed my family and the eight other families of their loved ones. Five people survived. Five people have to live every day with that tragedy in their hearts. After the massacre in Charleston, I struggled to answer why my loved ones and so many others had been killed. I was disturbed to learn that the shooting was premeditated and driven by hate. The shooter targeted parishioners at Emanuel simply because of the color of their skins.

Along with so many Americans, I was baffled at how such a hateful man was able to get his hands on a gun. We later discovered that a loophole in our gun laws allowed the shooter to obtain the gun used to murder my mother and my cousins and the six others in that church. That loophole allowed hatred to be armed to kill. The person that killed my family members should have not been able to buy that gun.

The National Instant Criminal Background Check System was designed to keep guns out of the wrong hands, including criminals, domestic abusers, and unlawful users of controlled substances. The Charleston shooter had previously been arrested for drug possession, something that should have blocked him from obtaining a gun under our existing laws. Yet he was able to legally purchase one because of a loophole in the Federal law. You see, if the FBI does not finish a background check within 3 days, the sale can proceed regardless of whether the check had been completed, and that is exactly how the man who killed my family exploited a loophole and got his gun.

And he is not the only one. The FBI reported that in 2017 alone, gun dealers sold at least 4,864 guns to prohibited people before the background checks had been completed. Those nearly 5,000 sales were primarily made to felons, domestic abusers, or, like the man who killed my family, unlawful users of controlled substances. A strong background check system is the foundation for commonsense safety laws that keep guns out of the hands of the wrong people. We cannot stop—we can stop hate from being armed, but we need background checks on all gun sales, and law enforcement needs enough time to complete the background check.

Each day I wake up motivated to ensure that hate will not win. As a member of the Everytown Survivor Network, I share my story to put a human face on our Nation's gun violence crisis. Our community of survivor advocates for change to help ensure that no other family faces the type of tragedy we have experienced. If he is confirmed as our Nation's next Attorney General, Mr. Barr will serve as our Nation's top law enforcement officer in a position of great power and influence. I hope he will make it a priority to prevent gun violence and work with Congress to update our laws and close loopholes that enable guns to get in the wrong hand, just like that young man filled with hate, murdered my family.

Nine lives were cut short in Charleston. Today I say the names of my mother and my cousins and the six other people to honor them in this most sacred place: my mother, Mrs. Ethel Lance; my two cousins, Mrs. Susie Jackson and Tywanza Sanders; my childhood friend, Myra Thompson; the pastor of the church, Reverend Clementa Pinckney; Reverend Daniel Simmons; Reverend Sharonda Coleman-Singleton; Mrs. Cynthia Hurd; Reverend DePayne Middleton-Doctor. I pray that whenever you hear their names, you feel empowered to help bring about change.

Thank you for listening, and I will answer any questions that you have.

[The prepared statement of Rev. Risher appears as a submission for the record.]

Chairman GRAHAM. Thank you, Reverend.
Mr. Canterbury.

**CHUCK CANTERBURY, NATIONAL PRESIDENT,
FRATERNAL ORDER OF POLICE, WASHINGTON, DC**

Mr. CANTERBURY. Good morning, Mr. Chairman, Ranking Member Feinstein, and distinguished Members of the Committee on the Judiciary. I am the elected spokesperson of more than 345,000 rank and file police officers, the largest law enforcement organization in the United States. I am very pleased to have the opportunity to offer the strong and unequivocal support of the FOP for the nomination of William P. Barr to be the next Attorney General of the United States.

In my previous appearances before this Committee, I have been proud to offer the FOP support for a number of nominees with the expectation that they would be good leaders, that they would serve our country honorably and effectively. In this case, however, there is no need to speculate whether or not Mr. Barr would make a good Attorney General because he has already been a good Attorney General in the administration of President George H.W. Bush. He had the experience, the knowledge, and the ability to lead the Department then, and he certainly does now.

Mr. Barr's career of public service began as a clerk for a judge on the U.S. Court of Appeals for the District of Columbia, and he served a short tenure in the Reagan White House. He then joined the Bush administration as Assistant Attorney General for the Office of Legal Counsel in 1989. President Bush took note of his leadership, integrity, and commitment to law enforcement and promoted him to Deputy AG in 1990.

In 1991, he was named acting Attorney General and was immediately faced with a public safety crisis. At the Talladega Federal Prison, more than 100 Cuban inmates awaiting transportation back to their country staged a riot and took seven corrections officers and three Immigration and Naturalization employees hostage. In the first hours of the standoff, General Barr ordered the FBI to plan a hostage rescue effort.

The Cuban inmates demanded that they be allowed to stay in this country and released one of the hostages. Over the course of the 9-day siege, it was clear then that negotiations were failing. General Barr ordered the FBI to breach the prison and rescue the

hostages. They were freed without any loss of life, and the incident was ended because of General Barr's decisive action.

Following the successful resolution of this incident, President Bush nominated him to be U.S. Attorney General.

The Committee on the Judiciary reported his nomination unanimously, and the Senate confirmed him as the 77th Attorney General. Through his service and his actions, he demonstrated he was the right man for the job. The FOP believes he is the right man for the job, again, today.

Two years ago, just after his inauguration, President Bush issued three—oh, excuse me—President Trump issued three Executive orders on law enforcement and public safety, the first directed to the Federal Government to develop strategies to enhance the protection and safety of our officers on the beat. The others created a task force on crime reduction and public safety, and for the development of a national strategy to combat transnational criminal organizations trafficking in human beings, weapons, and illicit drugs.

Mr. Chairman, during his tenure as Attorney General, Mr. Barr directed and oversaw a similar transformation at the Justice Department by refocusing its resources by making crimes of violence, particularly gang violence, a top priority for law enforcement. I submit to this Committee that Mr. Barr is the perfect person to complete the work begun by General Sessions with respect to focusing Federal resources to fight violent crime because he has not only done it before, he has done it as the Attorney General.

President Trump has clearly made law enforcement and public safety a top priority. His nomination of William Barr to be the next Attorney General demonstrates that these priorities have not changed. We know Mr. Barr's record and abilities as well as his prior experience in that office. The FOP shares his views, and we are confident that Mr. Barr will once again be a stellar top cop. We believe the President made an outstanding choice, and for Mr. Barr to return to public service as the Attorney General of the United States will serve this country well.

The FOP proudly offers our full and vigorous support for this nominee, and we urge this Committee to favorably report this nomination just as you did in 1991. Thank you for the opportunity to testify. I will be glad to answer any questions.

[The prepared statement of Mr. Canterbury appears as a submission for the record.]

Chairman GRAHAM. Thank you, all, very much. I appreciate your testimony, and I will get us started here quickly.

Reverend Risher, thank you for your coming up here and sharing your loss and your story and your hurt. Some comfort I hope is that Mr. Barr said, if he is the Attorney General, he will pursue red flag legislation that I am working on with Mr. Blumenthal and others that would allow law enforcement, if they have appropriate information, to go and deny somebody a gun who is showing dangerous behavior. I think that is a real gap in our law. Most of these cases, people are screaming before they act, and we are just not listening. The guy down in Florida did everything but take out an ad out in the paper, "I am going to kill somebody." And it would have been nice if the police would have had a chance to go in and stop it before it happened.

As to Dylann Roof, who is facing the death penalty in South Carolina, he applied for a gun in West Columbia, South Carolina. The system said he had just been arrested. During the 3 days of looking into the arrest, he had not been convicted. The FBI agent called the wrong solicitor's office. There are two counties in Columbia, and they did not find out the fact he had admitted to being—possessing and using a substance that would have kept him from owning a gun. So we need to reform the laws, but that was sort of a mistake more than it was a loophole.

Mr. Turley, thank you for very much for what you had to say. The Special Counsel regulation is 28 CFR § 600.8. It says “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.” So do you think Barr will take this report seriously if given to him?

Professor TURLEY. Absolutely.

Chairman GRAHAM. Okay. It also says, “The Attorney General will notify the Ranking Member and Chairman of the Judiciary Committee in both bodies.” Do you think he will do that?

Professor TURLEY. Absolutely.

Chairman GRAHAM. Okay. It also says, “To the extent consistent with applicable law, a description and explanation of instances, if any, in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established departmental practices that it should not be pursued.” So, under this regulation, if Mr. Muller recommends a course of action and Mr. Barr says I do not think we should do that, he has to tell us about that event. Do you—do you agree that is what the regulation requires?

Professor TURLEY. Absolutely.

Chairman GRAHAM. Do you believe he will do that?

Professor TURLEY. Absolutely.

Chairman GRAHAM. Okay. It also says, “The Attorney General may determine that public release of these reports would be in the public interest to the extent that their release would comply with applicable legal restrictions.” Do you think he will be as transparent as possible?

Professor TURLEY. Yes, and he said that, and I could add one thing to this, Mr. Chairman. The Committee pressed him on what he meant by that. I know that Ranking Member Feinstein also raised this in her comments. But as James Clapper and other people noted yesterday, there is only so much that—so far that a nominee can go. You cannot ask that he satisfy ethical standards when asking him to commit in advance to the release of information that he has not seen yet, because part of his duty is to protect things like Rule 6(c) information, grand jury information, and the derivative information, privileged information. He is duty-bound to review that. So the only thing a nominee can say is that he is going to err on the side of transparency and try to get as much of the report to Congress as possible.

Chairman GRAHAM. Based on what you know about Mr. Barr, should we take him at his word?

Professor TURLEY. Absolutely. I have never known Bill Barr—in all the years that we have known each other, I have never known him to be anything but honest and straightforward. The last time he came in front of this Committee, the Chairman of that Committee, one of your predecessors, praised Barr. He said that this is sort of a throwback to what Committee hearings used to be like where the nominee actually answered questions. He is a very honest person. And if he said that he is going to err on the side of transparency, you can take it to the bank.

Chairman GRAHAM. Okay. So, Mr. Johnson, thank you for coming today. I listened to your concerns about Mr. Barr. I voted for Holder and Lynch. Do you think I made a good decision voting for them to be Attorney General?

Mr. JOHNSON. I do.

Chairman GRAHAM. Why?

Mr. JOHNSON. I think their presentation before this Committee was honest, direct, but more importantly, they committed to protect our democracy. For African Americans, protecting democracy is to also rigorously enforce efforts to ensure that all citizens can cast their ballot. They committed to that, and they demonstrated that while they were in office.

Chairman GRAHAM. Okay. And you believe Mr. Barr will not be committed to that?

Mr. JOHNSON. I have serious reservations and concerns. Those concerns first start with this administration, their lack of enforcing Section 2 of the Voting Rights Act.

Chairman GRAHAM. How much of it is about this administration versus Mr. Barr?

Mr. JOHNSON. In many ways it is difficult to separate the two.

Chairman GRAHAM. So I just want to suggest something to you. There are a lot of concerns I had about the Obama administration. I will not bore you with my concerns. But I thought he chose wisely with Mr. Holder and Ms. Lynch because they have differences on policy than I, because I am a Republican, but I thought they would be good stewards of the law and they would be fair arbiters being Attorney General. It never crossed my mind that I would vote against them because I had policy disagreements. If that is going to be the new standard, none of us are going to vote for anybody on the other side. So thank you for your input—

Mr. JOHNSON. But if I may, Mr. Chair?

Chairman GRAHAM. Please.

Mr. JOHNSON. Going beyond policy disagreement, this Nation has had a long history of discriminatory practices, particularly in the criminal justice system. And any time we have a nominee come before this Committee who truly do not appreciate the disparities in the criminal justice system, as he stated yesterday, that goes beyond policy disagreement. That goes toward whether or not we understand the equal protection of the law should be afforded to all citizens.

Chairman GRAHAM. Well, I want to make sure you understand what he said, because I remember Senator Booker asking him, and he says, yes, that crack cocaine sentences were disproportionate to the African-American individual, and that is why we changed the disparity between powder cocaine and crack cocaine. He acknowl-

edged that. But in 1992, he thought the biggest victims of rampant violent crime were, you know, low-income, mostly minority communities. So I do not buy what you are saying about him not understanding their differences and how one group is affected, particularly in the drug arena. So, I think, what he was trying to do is talk about crime.

But here is what is perplexing to me. The NAACP has been in the fight for social and racial justice for a very long time, and I do not know how we got here, but you do a scorecard every year. And in 2017, every Democrat got 100 percent. I got 22 percent; Grassley got 11; Cornyn got 11; Lee got 11; Cruz got 11; Sasse got 6; Ernst got 11; Kennedy got 17; Tillis got 11; and Crapo got 6.

There is a disparity here. I would hope you think because I disagree with your scorecard rating that I am not a racist. And I certainly do not know how to close this gap, but I would like to.

Mr. JOHNSON. Right. So the NAACP, we are a nonpartisan organization. Our scorecard is not based on political parties. Our scorecard is based on our agenda, and our agenda—

Chairman GRAHAM. Well, how do you explain the differences?

Mr. JOHNSON. If you will allow me, our agenda is set by the delegates from across the country, and we are very clear that discrimination should not be a part of any agenda.

Chairman GRAHAM. How many of them are Republican?

Mr. JOHNSON. Excuse me.

Chairman GRAHAM. How many of them are Republican?

Mr. JOHNSON. We do not determine how many members are Republicans. We have Republicans among our membership, on our national board.

Chairman GRAHAM. I do not want to—

Mr. JOHNSON. But if you will allow me to explain the report card.

Chairman GRAHAM. Please.

Mr. JOHNSON. And so we establish our agenda not based on political parties, because we understand that political parties are nothing more than vehicles for agendas. And as many African Americans were members of the Republican Party before the 1965 Voting Rights Act, many African Americans may decide their agenda based on the party's platform. And if party platforms align with the needs and interests of our communities, then they will vote for a platform that support their needs, whether it is access to quality public education, ensure that all African Americans can cast a fair ballot, fair housing policies, making sure we have true tests to determine disparate impact. Those are the issues we are concerned about. Those are not partisan issues. Those are policy issues. And individuals who run under party labels, they decide based on the platform that they believe which party label they run under. We do not make partisan decisions. We make policy decisions that are informed by members across the country. Some are Democrats, some are libertarians, some are Republicans.

Chairman GRAHAM. You may not think that you are making—that your agenda is party-neutral. All I can tell you, as somebody who wants to solve problems, it is pretty odd to me that every Democrat gets 100 percent, and I do the best as a Republican getting 22. Maybe the problem is all on our side. I do not think so. I think the agenda that you are pursuing in the eyes of conserv-

atives is not as good for the country as you think it is, and it has got nothing to do about Republican and Democrat. It is more it has to do about liberal and conservative.

You have got to ask yourself: Why does every conservative on this Committee—the best I can do is to get 22?

Mr. MORIAL. Mr. Chairman?

Mr. JOHNSON. Well, I think it is a different question. I think the members of the Republican Party should ask yourselves: Are you willing to be expansive enough and inclusive—

Chairman GRAHAM. That is a good question.

Mr. JOHNSON. To ensure the rights of individuals despite their racial background, their interests are met, not based on conservative or liberal tendencies but based on those individuals' needs—

Chairman GRAHAM. Fair enough.

Mr. JOHNSON. And the interests that they advocate for.

Chairman GRAHAM. Will you ask yourselves why I cannot get better than 22 percent from conservatives?

Mr. JOHNSON. Yes, sure, we can go down each one of the policy agendas—

Chairman GRAHAM. Fair enough.

Mr. JOHNSON. And we can go through each one of them, and we can make a determination.

Mr. MORIAL. Mr. Chairman, let me—

Chairman GRAHAM. That is a good discussion.

Mr. MORIAL. I want to sharpen this discussion, because I think it is an important discussion, and give you what concerns me when it comes to this entire discussion. This is about whether the nominee is going to aggressively, faithfully, enforce the civil rights laws, and let me give you a couple facts.

Chairman GRAHAM. Can I ask you one question? Then you can give me all the facts you want.

Mr. MORIAL. Yes.

Chairman GRAHAM. Name one Republican that you would support.

Mr. MORIAL. I am not here to talk about Republicans and Democrats. I supported him when he was a Democrat.

Chairman GRAHAM. I just cannot think of a better person to pick than Mr. Barr if you are a Republican. So, I do not know who is going to do better than him in terms of experience, judgment, and temperament. So, if this guy does not cut it, I am at a loss of who we can pick.

Mr. MORIAL. Well, but, Senator, let me make my point because I want the Committee to be extremely clear on this, and I want to cite two examples. Attorney General Sessions—and we have to talk about his record because the question for us is whether Mr. Barr is going to continue the policies of Attorney General Sessions when it comes to enforcing civil rights laws. In two instances, Attorney General Sessions, in his first days and months in office, had the Justice Department change sides in the middle of an important civil rights case.

Chairman GRAHAM. Elections matter.

Mr. MORIAL. Texas—but, Senator, the enforcement of the law does not. Enforcement of civil rights laws is neutral when it comes

to elections. So what Attorney General Sessions had the Justice Department do is, switch in a Texas voter ID law after the judge had made a finding, a preliminary finding that the Texas voter ID law was discriminatory. You know what it would be an example of? If Drew Brees or Tom Brady, after leading his team to a lead, went in at halftime and came out with the jersey of the other team on. In the middle of the case.

Second, in the Ohio voter-purge case, the same thing occurs. Why did the Justice Department, without any discussion with the Congress, without any discussion with the civil rights community, switch sides miraculously and immediately? That should not have anything to do with who wins an election.

Chairman GRAHAM. I will say this: I could have given you a hundred examples of where Eric Holder and Loretta Lynch had a different view of a statute or a policy than I did. But if you do not expect elections to matter, that is a mistake. The policy differences we have are real. To expect Trump to win and everything Obama did stay the same is unrealistic. All I am asking is let us look at qualifications, because a Democrat will win 1 day and they will nominate somebody with a completely different policy view than I have. It will be a very simple decision. If I can find a difference, I will vote no. The question I am trying to ask the country is: Do you expect quality people to be chosen by the other side who has differences with you? If the answer is "Yes," then Mr. Barr is as good as it will get.

Mr. MORIAL. Well, you know, Senator, lots of us thought you were going to be nominated as Attorney General.

Chairman GRAHAM. Would you have supported me?

Mr. MORIAL. Hey, guess what? I know we would have had a discussion, and I would not close the door on that.

Chairman GRAHAM. Well, I appreciate that.

Mr. MORIAL. So I will say that. We thought you were going to be nominated—

Chairman GRAHAM. But I do not think I am nearly as qualified as Mr. Barr. I do not think I could hold a candle to him. But the fact you said that about me, I appreciate the hell out of it. And let us see if we can find a way to get me above 22 percent.

Mr. MORIAL. Let us work on it.

Chairman GRAHAM. All right. We may change a few policies.

Senator Feinstein.

Senator FEINSTEIN. Reverend Risher, I just want to say something to you personally. I will never, ever forget your words, your emotion, the truth you spoke, and your feelings. And I just want you to know that there are so many of us that now know so many victims of guns in this country that we will continue to fight on to change this environment. So just know that. And I am so happy. You are one of the best witnesses I have ever heard, and your words will not be lost. I hope your family is in a better place. Thank you.

Reverend RISHER. Thank you so much.

Senator FEINSTEIN. Thank you.

Mr. Kinkopf, if I may, Mr. Barr has stated that the memo that I spent all day reading and is very complicated, has stated that that memo was narrowly focused on obstruction of justice. How-

ever, Mr. Barr's arguments outline broad presidential powers. Please explain how his view of Executive authority could impact the Mueller investigation.

Professor KINKOPF. Okay. Well, in any number of ways, I think most fundamental is his claim, without limit or qualification, that the President is the executive branch and that, therefore, all Executive power is vested in the President personally, that the President can personally exercise that power. And not leaving this to speculation or to chance, the memo specifically says that the President can control any litigation, any prosecution or investigation, including a prosecution or investigation of the President personally or the President's family members. And, further, it says that the Attorney General, the Special Counsel, anyone serving under the President, is merely the President's hands.

Senator FEINSTEIN. Well, it was certainly the case for the unitary executive and the all-powerful central figure. There is no question, I think, about that. In my mind, the question is, you know, how—does he really mean this? And it is hard if you do not know a man—and he is here and he is in front of you for the first time and you meet him—it is very hard to make those judgments.

He is obviously very smart. He was Attorney General before. No one can say he is not qualified. The question comes we are at a time and a place where there are a lot of other subjects that are important.

He has stated that his memo was narrowly focused. Mr. Turley—we have got a Defense Counsel, I guess—how do you see that same question I asked Professor Kinkopf?

Professor TURLEY. It is a fair question, and Neil and I agree actually on a great deal because we both have real difficulty with the expansion of Executive authority. We are both critics of aspects of the unitary executive theory, but we disagree on the Barr memo. I think it was narrow. He says in the memo that he believes the President can be charged with obstruction in office. He believes that a President can be charged with other crimes in office.

And where I disagree with Neil is that it is true that he says in his memos that the Constitution does not limit the power of the presidency in these regards, and that is demonstrably true. It is not in the Constitution. There are not those limitations. But he has said repeatedly in writing and before this Committee that he believes that a President can be charged for acts in office. He also believes that if the President misuses his authority, it can be an abuse of power and it can be a violation of his duty to faithfully execute the U.S. laws.

Senator FEINSTEIN. Well, it does not mean that Mr. Mueller could recommend indictment of the President and Mr. Barr could disagree.

Professor TURLEY. On that, I am not sure where Neil is—

Senator FEINSTEIN. Now, that is an esoteric question, I understand, but I think it is along the line of your thinking.

Professor TURLEY. And I agree with some of the Senators on this Committee. I have always said that a sitting President could be indicted in office. I disagree with the OLC memos in that respect. Would a General Barr change that position? My guess is he probably would not. Would the Special Counsel ask for a change? My

guess is probably not. It is not really—if you look at the history of both of these individuals, they are not like to either disagree or move for a change.

Senator FEINSTEIN. Let me ask both of you or anyone who wants to answer this, this memo and the whole concept of the unitary executive, all powerful, I think, has never been better expressed in a contemporary way than I have read it in this memo. And I was thinking last night, obviously Mr. Barr is qualified, he is bright, he is capable. But it is hard for me to understand why, with our Constitution, our Bill of Rights, why we want somebody that is all powerful in every way to take these actions.

Professor KINKOPF. Senator, I think—

Senator FEINSTEIN. My question was not well stated, but I think you got the gist of it.

Professor KINKOPF. Right. Senator, I think we do not. So I would agree that William Barr is amply well qualified by virtue of experience, by virtue of intellect, by virtue of integrity. I have no doubt that he will stand up for his vision of the Constitution, and that is what I find so troubling, because his vision of the Constitution is so expansive and alarming with respect to the President's power. That is why I have quoted it. It is not my characterization. He says directly, "The President alone is the executive branch." He speaks repeatedly through the memo of the President's "illimitable" powers. And while it is true that the Constitution does not specifically authorize Congress to limit the President's prosecutorial discretion by its text, it also does not by its text give prosecutorial discretion to the President. All investigation and prosecution is done pursuant to laws enacted by Congress, and within that authority to enact those laws is the authority to establish the parameters on that power. You do that, and you do that validly and legitimately. The Supreme Court has said that repeatedly. And what is so alarming about the Barr memo is that it reads the Constitution in a way that frees the President from those constraints.

Professor TURLEY. This is where we do disagree, and I thought the question was presented quite well, because it does isolate where we depart, and that is, first of all, even though I do not like the unitary executive theory, there are many, many judges and lawyers who believe fervently in it. Also, there is not one single definition of that theory. There is sort of a gradation of where you fall on that.

Bill Barr actually disagrees with the position of the Trump legal team. He expressly said that they are wrong, that it does not curtail a President's authority to prosecute him in office. So he is not at the extreme on this.

But the other thing I wanted to note is, that I think where Neil and I disagree is that Neil is taking Barr's statement as to the constitutional footprint, the mandate of the Constitution, which does not have limitations in these areas, from how they would apply, where he said very clearly the President cannot do whatever he wants; there are consequences; he can even be prosecuted.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman, and thanks to all of you for being here today.

General Mukasey, can I start with you, I think? And thank you, General, for your long service both as Attorney General, distinguished service, and on the Federal bench. As a former Attorney General yourself, of course, you know the office firsthand. You have done this job. You have done it at a time of great national security peril for this country.

You referenced in your opening statement the qualifications that Bill Barr brings, would bring to this job, and the advantages in some ways he would have having done the job already. Can you just speak more to that? I mean, I imagine if you were coming back to be Attorney General again, there are things you would do differently, knowing the job as you do now. So can you just elaborate for us why you think that his prior experience is a major plus?

Judge MUKASEY. Quite simply, he does not have and will not have the same steep learning curve that I had coming out of Article III. He does not have to do DOJ 101 and learn how each office runs, and he does not have to learn how they interact. He does not have to contemplate from ground zero the powers and the authority of each of the offices under him. He has seen it and done it.

But I do not want to overstate the degree to which his experience prepares him. Obviously, we are living in a different time, and the issues are different. He is going to have to face that. But he is going to be able to devote 100 percent of his energy to doing that rather than learning the basics. That is what I meant.

If I can go back, if I may, to the conversation you were just having about the President's powers, I do happen to believe in the unitary executive, unlike the other two folks, and this is not a question of a religious belief, and it is not some quirky attitude. The Constitution says at the beginning of Article II, "The Executive authority shall be vested in the President of the United States." It does not say, "all except a little bit of it." It does not say, "most of it." It says, "the Executive power." That means, all of it.

Obviously—obviously—the President can be removed not only for crimes, but also for using his conferred powers in an improper way, and the President runs the political risk of having that happen every time he does something that comes close to the line or goes over the line. And that, I think, is the constraint. And it has so far been a reliable constraint. Everybody says that, "Well, he could remove Mueller." Perhaps he could. But guess what? He has not done it yet, and there is good reason why he has not done it yet: because the Earth would open up and swallow him. We all know that. So I think that that is really what is at stake here, the political risk.

Senator HAWLEY. General Mukasey, just staying with that point, because I think this is interesting, and, again, as someone who has held this office and advised Presidents and enforced the law as you have, you are familiar with Mr. Barr's views on Executive authority, Article II power. Do you think that those are out of the mainstream?

Judge MUKASEY. I do not.

Senator HAWLEY. Do you think that they are inconsistent with the Constitution?

Judge MUKASEY. No. They are faithful to the Constitution. That is what he is faithful to.

Senator HAWLEY. Go ahead. I mean, explain to us why you think it is important that the fact that Article II vests all Executive power in one person, in the President of the United States, why that is an important concept and important for the functioning of our constitutional system.

Judge MUKASEY. It is important because it assures that there is going to be political responsibility lodged someplace. It assures that when people in the executive act in a particular way that they, and the person at the top, can be held responsible for what they do. People spoke about independent agencies. They are in a sense independent in the sense that they do not relate to other agencies. But they are not a fourth or fifth or sixth branch of Government. They are within the executive. And it is important that that be true, because there has got to be somebody responsible for how that functions.

The people who wrote the Constitution were—if they were afraid of anything, what they were afraid of was their experience under the Articles of Confederation where there had been a very weak executive and no ability of the govern—of the country to defend itself. They needed a strong executive, and that was the Constitution they wrote. If we want to amend it, I guess we can. But that is what is there.

Senator HAWLEY. Tell me this: In your view, the Vesting Clause, the fact that the Vesting Clause in Article II gives the Executive power to a President of the United States, a single President of the United States, does that mean that this individual, the President of the United States, has illimitable power or is able to do whatever he or she may please?

Judge MUKASEY. No, because the one duty that it imposes on the President—and this is also imposed by the Constitution—is to see to it that the laws are faithfully enforced. That is just as much a constitutional duty as any other. And if he does not do that, he is subject to removal. That is his obligation. That is his really principal obligation.

Senator HAWLEY. Thank you very much.

Mr. Canterbury, I want to ask you, you lead the Fraternal Order of Police. It is incredibly important to me that the top law enforcement officer in this country, the Attorney General, have the confidence of the men and women of our Nation's police forces. Can you just elaborate for us what the most important issues were for your members that led your group to support former Attorney General Barr, hopefully future Attorney General Barr, for this nomination?

Mr. CANTERBURY. One is his past experiences, his job that he did in the prior administration. We have been around a long time, and we knew him then. We saw the way he administered the Department of Justice, the way he worked with State and local law enforcement.

Regardless of who leads the Justice Department, if there is no outreach to State and local law enforcement, then it really does not transcend to the State and local level. Under former Attorney General Barr, he did just that, and as General Sessions did and as Eric

Holder did. You know, we have testified for a number of nominees over the years. Eric Holder had a tremendous reputation as a prosecutor in the law enforcement community, so I sat at this very table and testified for him. It is all based on the experiences that they had as either U.S. Attorney, Federal judges, or even in private practice.

Senator HAWLEY. Why do you think it is so important to police officers that they have a capable, effective, experienced Attorney General?

Mr. CANTERBURY. Just the administration of justice. I have heard the complaints about the Civil Rights Division, but we know from experience that a collaborative effort rather than consent decrees have real consequences in the cities. For instance, in Cincinnati, when the administration entered a collaborative agreement and all parties were at the table, we came out with a plan to help bring that city back together. In the last election in Cincinnati, the FOP endorsed a member of the NAACP to be a city councilmember. That would not have happened if they had not gotten to know each other sitting around a table working together for the betterment of that community.

We favor the collaborative approach for consent decrees because they are real circumstances other than just say you will do this or, you know, we will not leave. Then they do it, and then obviously nothing ever changes. But when it is collaborative and everybody is at the table, we saw real change.

Senator HAWLEY. Thank you very much.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you.

Senator Durbin.

Senator DURBIN. Thanks, Mr. Chairman.

Reverend Risher, thank you. Thank you for your testimony, and thank you for your touching words about that telephone call. I will remember that, because so many people receive that telephone call about people that they love who are victims of gun violence. I am honored to represent the city of Chicago. Sadly, we have a lot of gun violence and a lot of victims, families just like yours who will never, ever forget as long as they live what happened.

I often think about what I am going to say to them. I stopped saying, "Let me tell you about a new law that I have got in mind." I have stopped saying that because we do not pass laws on gun safety in this United States Congress. We do not. And it is unfortunate. We do not even pass the most basic and obvious things about background checks. We just cannot do it, politically cannot do it. A lot of reasons for it I will not get into here, but I will just suggest to you that, as fate would have it, sitting to your left is a gentleman, Mr. Canterbury, representing—345,000, did you say?

Mr. CANTERBURY. Yes, sir.

Senator DURBIN. Members of the police who put their lives on the line every single day, and those guns on the street are aimed at them many times. And if there is ever a moment when the victims of gun violence like you, Reverend Risher, and Mr. Canterbury and the police ever come together on agreement on a piece of legislation, call me immediately. It will be a breakthrough moment. We can talk about gun safety with credible voices on both sides.

Mr. Canterbury, while on the subject, thank you for the First Step Act. The endorsement of the Fraternal Order of Police and criminal justice reform and prison reform was historic and meaningful and made a difference.

It was also noteworthy that we had the support of the prosecutors, the criminal prosecutors across this country, and the support of the American Civil Liberties Union. Go figure. How many times has this bunch ever gotten together? Not very often. But I think we passed something historic as a result of that, and I just want to personally thank you and publicly thank you for the role that your organization played in it.

Mr. Johnson, we are looking back on the history of Mr. Barr, the things that he said, things that he has done, and I gave a speech that people have heard a few times now, but they were startled the first time I gave it. The title of my speech is, "Let Me Tell You About the Worst Vote I Ever Cast as a Member of Congress."

It was over 25 years ago, and I will bet you know what it was. It was 100-to-1, crack cocaine to powder cocaine. We were determined to stop this new narcotic in its tracks. It was super cheap. It was deadly. Pregnant women who got hooked on crack cocaine would give birth to babies with lifelong problems, and we came down as hard as we could, not just with 100-to-1 but mandatory minimum sentences on top of it. Three strikes and you were out for life, and we hit them hard, and we watched our prison population explode, primarily with African Americans.

I look back on it as a big mistake, one of the worst I ever made as a public official, and I have tried to rectify it. We passed the Fair Sentencing Act 8 years ago. We have now passed the First Step Act. We are starting to give to these men and some women a chance to start their lives again.

So now we look at Mr. Barr, and some of the things he said were consistent with my vote and the votes of a lot of Democrats back in the day when we were getting tough on narcotics, and he was as tough as it gets. He was writing books about building more prisons and putting more people in these prisons. He has continued in that vein up until the last few years.

So I just want to tell you, I pray for redemption, both personal and political. Do you think Mr. Barr is entitled to a chance to redeem himself when it comes to this issue?

Mr. JOHNSON. Thank you, Senator Durbin. I think any individual is entitled to redeem himself when they make a mistake. Our position on mass incarceration is just that. We have had a lot of individuals who have made a mistake who should have been exonerated or not prosecuted to the extent they were.

I grew up in Detroit, Michigan. I lived through the crack epidemic in the 1980s. I have seen the damage it did, but I have also seen many individuals who were thrown away for many, many years. For an individual who is situated to acknowledge the history of what took place and, as you have just done, to say I made a mistake, that is a good thing. I have not heard that from the nominee. That is my concern.

The other concern I have goes back to the exchange earlier when we oftentimes conflate civil rights issues, issues of democracy, with partisan considerations. Ensuring that individuals have access to

the vote is not a partisan issue. It is an issue of democracy, and any A.G. should vigorously protect the right of individuals to vote, especially when over the last 2 years we have seen more attacks on voter suppression than we have seen in the last 25 years.

Issues of equal protection under the law, it is not a partisan issue. It is an issue to ensure that all citizens of this Nation are afforded equal treatment.

So our objection to Mr. Barr's nomination is not a partisan issue. It is not an issue of disagreement. It is an issue of concern as it relates to the mass incarceration and the vigorous prosecution that took place in the 1990s and whether or not we are considering a nominee who is still thinking in the 1990s frame or are we looking at a nominee who is really looking at the First Step Act and the progress that has been made.

Senator DURBIN. I only have a minute left, but I want to take it to the issue that you took it to, and I invite Mayor Morial to join in on this too.

This question of election integrity has become a code word. When you hear election integrity from the other political party, it is about making sure that people who are not qualified and not legally eligible do not vote, and I do not think anybody disagrees with that premise. But there is something else going on in the name of voter integrity, and that is obstacles to voting that are totally unnecessary and really discourage people from using this right which is fundamental to a democracy.

When I held hearings in this Committee in Ohio and in Florida and asked them about ID cards and early voting and said, what is the incidence of voting abuse in your State that led you to make it harder to vote, there were none. I think it is just a policy, a political policy, to fight demographics to try to keep people away from the polls who may change the outcomes of elections.

I did not hear yesterday from Mr. Barr any commitment to voter integrity in the terms that you and I would probably discuss it, and that concerns me. I am not sure I can expect to hear it under this administration.

But—Mr. Morial, would you close?

Mr. MORIAL. I think there is something important about what you are saying. I would certainly point the Committee to exit polls that took place after the 2018 election wherein people were asked, Do you believe that voter suppression or voter fraud was a greater issue? Voter suppression won the poll of the American people overwhelmingly. These are exit polls where the numbers were sort of 58, and voter fraud was down, maybe in the thirties or forties. That is number one.

Number two, the *Shelby* case has done significant damage, because it was post-*Shelby* that 40—the shenanigans of voter suppression, of cutting back on early voting, on voter ID laws, on restricting groups like the League of Women Voters in conducting voter registration drives really, really exploded. Some 40 States had proposals to restrict access to the ballot box.

When I think about this, I think about it that we are waging war to, quote, “promote democracy,” Senator Graham, in Iraq, in Afghanistan. But right here on the home front, how can we coun-

tenance efforts based on no evidence to restrict access to the ballot box?

The *Shelby* decision, I predict, will be seen in history the way *Dred* was seen, the way *Plessy* was seen: as a bad, ill-advised decision. We need—because what we are left with is the power of the Justice Department under Section 2, and under Sessions, not one single Section 2 case was brought even though you have had this explosion of voter suppression efforts.

So, what we need is an Attorney General who says, I am committed to the utilization of my Section 2 of the Voting Rights Act powers to enforce the Voting Rights Act. I would certainly encourage that the nominee be asked his position on this, because this is so crucial to the protection of democracy, which is really what this Nation is all about. Democracy and voting is at the foundation of our system.

Chairman GRAHAM. I will make a quick comment, and then, Senator Kennedy.

I am glad you mentioned Iraq and other places where we are trying to help people. There was an attack today on a restaurant. I think it is the same restaurant I visited with Kurds and Arabs and others in Manbij, Syria, to hold on to some representative government. Unfortunately, I believe some American advisors were killed there by ISIS. So this is not the subject matter of the hearing, but I want to make a quick statement.

My concern about the statements made by President Trump is that you have set in motion enthusiasm by the enemy we are fighting. You have made people who we are trying to help wonder about us, and as they get bolder, the people we are trying to help are going to get more uncertain. I saw this in Iraq, and I am now seeing it in Syria.

Every American wants our troops to come home, but I think all of us want to make sure that when they do come home, we are safe, and I do not know how we are ever going to be safe if people over there cannot, at least, sit down and talk with each other. The only reason the Kurds and the Arabs and the Christians were in that restaurant was because we gave them the space to be in that restaurant.

You can think what you want to about those people over there, but they have had enough of killing. They would love to have the opportunity that we have, to fix their problems without the force of violence.

So I would hope the President would look long and hard before he set it in Syria. I know people are frustrated, but we are never going to be safe here unless we are willing to help people over there who will stand up against this radical ideology.

Here is the good news. Very few fathers and mothers over there want to turn their daughters over to ISIS, their sons over to ISIS. They just need our help.

So to those who lost their lives today in Syria, you were defending America, in my view. To those in Syria who are trying to work together, you are providing the best in hope for your country. I hope the President will look long and hard about what we are doing in Syria.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Pastor, I am very, very sorry for your loss. I wanted to tell you that personally.

Reverend RISHER. Thank you, Senator.

Senator KENNEDY. Before I ask my sole question, which I will direct to each of you to comment briefly, if you could, I want to do a couple of things. I want to give a shout out to my former mayor, Mayor Morial. Many of you know him as the president and chief executive officer of the Urban League. I, of course, know him in that capacity as well, but I know him as our mayor in New Orleans and as the head of the League of Cities and a State senator. We still claim him in Louisiana.

I also want to recognize his sidekick, Senator Cravins—former State Senator Cravins. We miss him in Louisiana, too.

I listened to the discussion we had about the scorecard that Chairman Graham brought up. I want to make one very gentle observation that may be appropriate in other areas, including but not limited to the challenges we face with the shutdown, and that is, that so long as all of us on both sides and all sides and of every political persuasion are drunk on certainty and virtue, it is going to be hard to make progress. We probably ought to listen more and talk a little less.

Here is my question, and if you do not care to answer it, that is okay, or if you do not have any thoughts, but I would like to know this. As you know, we have a Sixth Amendment right to counsel in America. It is part of our Bill of Rights. But in some instances, in too many instances, it is a hollow promise, and I would like to know your thoughts about our Public Defender system in America and whether you think it comports with the requirements of the Sixth Amendment, the right to counsel.

We will start down here and just go down there, if that is okay. I would ask you all to be brief because I want everybody to have a chance.

Mr. CANTERBURY. From our experience, the Public Defender system is in dire need of assistance. It leads to plea bargains that should not have happened, and we would definitely support more money for right to counsel. We do not take a back seat to anybody on your right to be represented. The system is woefully underfunded.

Senator KENNEDY. Okay. Thank you, sir.

Pastor?

Reverend RISHER. I believe our Public Defender Office needs resources. Most of the people that receive a Public Defender are marginalized people without resources, and their opportunity to have the best counsel they can is not something they get, and I would want that office to be able to serve everyone regardless of whether they have money or not.

Senator KENNEDY. Okay.

Professor TURLEY. Senator, I am particularly thankful for you to raise this issue. As a criminal defense attorney, I can tell you that the Public Defender system is an utter wreck. It is underfunded. Judges are sanctioning Public Defenders because they have too many cases and they cannot get to court. So Public Defenders are in this position where they cannot handle all the cases, and yet

they are held in contempt, but they do not want to do a case inappropriately, without zealous representation.

So they have this absolutely impossible situation, and it is even worse in the State system. I gave a speech in Pittsburgh and I sat down with some Public Defenders there. The Public Defenders in Pittsburgh who I had dinner with are all moonlighting as bartenders and waiters to try to continue to be Public Defenders and feed their families. I mean, that is how bad the system is.

Senator KENNEDY. Professor?

Professor KINKOPF. I agree that Public Defenders are heroic public servants. They are overworked, they are underpaid, and the system of public defense and provision of counsel needs to expand far beyond even the limited area it applies to now, into municipal courts, into infractions that should not, but do, end up in people serving jail time.

Ms. CARY. Senator, I am the daughter of a criminal defense lawyer. I am married to a criminal defense lawyer, and he is the son of a criminal defense lawyer. So I am all in favor of great lawyering available for all Americans who find themselves in front of a courtroom.

The thing that I would suggest is, I am aware here, in Washington, of many law firms who are partnering pro bono with Public Defender services to try to get young people in court and get them great experience while also giving good representation to people who need it. Maybe that is one of the answers that you can look into. But my understanding is they need all the help they can get, and maybe young people can help.

Senator KENNEDY. Thanks.

Mr. MORIAL. A couple of quick things. I had the great privilege and pleasure last year to speak in Atlanta to the Federal Public Defender Service at its convening and gathering, and I would offer to the Committee perhaps this, as an example of a bipartisan-oriented initiative for this Committee, to hold hearings and do an examination of both the Federal Public Defender system, which may be in a little bit better shape but underfunded and understaffed, as well as local Public Defender systems, and you will get a real sense of what everyone has said, how stretched, how overworked, and how damaging this is to the operation of justice and to the constitutional guarantee of the Sixth Amendment.

The last thing I would say is, in the late 1980s, Senator Kennedy, I was part of a small group of lawyers that actually challenged the very same issue in Louisiana. We challenged it by asking the State Supreme Court to conduct an investigation, which they did. They found that the system was underfunded, but then they took the position that, as the Supreme Court, they could not instruct the executive branch to adequately fund the Public Defender system.

The bottom line here is, I would offer this, and I am glad you raised it, as an important element of this discussion around criminal justice reform, and that is to repair, to fix, to reform the Public Defender systems both at the Federal, at the State, and also at the local levels across this Nation.

Senator KENNEDY. Thank you.

Mr. THOMPSON. Thank you, Senator Kennedy, for raising this issue. As someone who served on the board, at one time, of the Atlanta Federal Defender Program, I think that the Public Defender program, definitely at the Federal level, needs strengthening. However, at the State level, it is in total collapse. I think what the Department of Justice can do, and you can pursue this with Attorney General nominee Barr, is through the Office of Justice Programs encourage OJP to develop programs to assist State Public Defender Offices, appropriate funds for that purpose in terms of the grants, because the Department of Justice is not the Department of Federal Prosecution. It is the Department of Justice. Thank you.

Mr. JOHNSON. I certainly agree with the panelists today that the Public Defender system is in dire need. I served as a commissioner on the State of Mississippi Access to Justice Commission, and we reviewed this issue. Mississippi is one of the poorest States, similar to Louisiana, and what we found was a system so corrupt it was one of the primary factors for prison overcrowding, that a large number of individuals are sitting in jail as pre-trial detainees because they have ineffective counsel or no counsel at all. So it is an issue that I agree with my colleague, Marc Morial, that this could be a bipartisan issue we could work on because the need is definitely there.

Senator KENNEDY. Judge?

Judge MUKASEY. Senator, in my experience, I think it is probably more limited than virtually the experience of all of the other panelists because my experience is largely confined to one district in the United States. That said, my experience with Federal defenders in the Southern District of New York was that they were people of unparalleled skill. There was competition to get those jobs, and they were highly valued.

Similarly, under the Criminal Justice Act we appoint private lawyers to represent defendants. Again, there is competition to get on that list, so you really get lawyers, by and large, in my court who represented indigent defendants were by and large more skillful in my experience than the privately retained lawyers, some of whom were simply showboats.

That said, I think the system is definitely in need of support, certainly at the State level. I second Larry Thompson's call for having OJP target particular areas with grants so that there can be demonstration projects that would show the way.

Senator KENNEDY. Thanks to all of you. You honor us with your time and your testimony today.

Chairman GRAHAM. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

And thank you very much to the panel, particularly Reverend Risher. I would like to join my colleagues in expressing my appreciation for your testimony here. I had the opportunity nearly 3 years ago to visit Emanuel AME Methodist Church with the Faith and Politics Institute. It was one of the most moving experiences of my life. It was remarkable, and to meet with the survivors a few months later here in Washington was impressive, and I am so glad that you are keeping that tragedy alive in our hearts because it should not be overlooked, and I appreciate it.

Reverend RISHER. Thank you, sir, for your words. And the Emanuel Nine will be something that I will continue to talk about their lives to let other people know that they did not die in vain, and I thank you for your comments.

Senator WHITEHOUSE. Do not ever stop.

Reverend RISHER. Thank you.

Senator WHITEHOUSE. Mr. Mukasey, I have some questions for you, and I want to let you know right off the bat that this goes back about 10 years, and so you will have full—I will give you every chance to answer more fulsomely in written answers, you know, questions for the record, so that if there is anything that you do not recall now.

But the reason I wanted to ask you your questions is that I view it, anyway, as a responsibility of the Attorney General to fearlessly go where the evidence and the rule of law lead, and to allow, particularly in investigative matters, to let the evidence and the law be your guides. Now, given the circumstances that surround the Department, the willingness of an Attorney General to be independent where evidence leads to the White House is of, I think, particular moment.

And that takes me back to the investigation into the removal of nine U.S. Attorneys in 2006. That report was concluded in 2008 on your watch as Attorney General. As you will recall, it was a joint effort. Those do not happen all that often in the Department, but this was a joint effort between the Department of Justice Office of Inspector General and the Department of Justice Office of Professional Responsibility.

The investigation led both into White House files and into Office of Legal Counsel files. As to the White House files, the White House refused to cooperate and refused to provide access to your OIG OPR investigators to close out their investigation. The OLC refused to provide un-redacted documents to members of their own Department.

The report that was issued in 2008 indicated that the investigation had been, and I quote it here, “hampered and hindered” and left with “gaps” as a result of the failure of the White House and OLC to provide the necessary information to the investigators.

Judge MUKASEY. That was the OIG report?

Senator WHITEHOUSE. Yes, OIG/OPR. It was both of them together, as you may recall.

So here is my concern. You were the Attorney General at the time. You could have readily instructed OLC: Knock it off, guys, provide these folks the documents. And while you cannot instruct the White House what to do, when the investigation leads to the White House gates and the White House gates come down, to me it is the Attorney General’s responsibility, at that point, to walk down to the White House and say, one of two things is going to happen, we are going to get cooperation in our investigation or we are going to have a resignation, because the Department of Justice needs to follow the law and the facts wherever, including into the files of the Department.

As you know, there is no executive privilege issue as between the Department of Justice and the White House. That is a separation

of powers issue, and it keeps things from us but it does not limit documents within the executive branch.

So, I would like to get, now, your recollection in a more fulsome way, in a written fashion if you would like to elaborate, why it is that you felt that when the Department of Justice had an ongoing investigative matter that led to the gates of the White House, it was okay for the White House to say, no, we are not cooperating, and for the Department of Justice to stand down, because I think that would be a lousy precedent for now.

Judge MUKASEY. This goes to the qualifications of Mr. Barr to serve as Attorney General, does it?

Senator WHITEHOUSE. To the extent that there is a concern about whether he would be willing to do that, because we do not want a replay of this. And if he is citing the Mukasey precedent, I want to know more about the Mukasey precedent.

Judge MUKASEY. I doubt that he is citing the Mukasey precedent, number one.

Number two, my recollection of that, which is dim over 10 years—

Senator WHITEHOUSE. Which is why you—

Judge MUKASEY. Nonetheless, older people have a better recollection of the distant past sometimes than they do of the recent past, so I do remember it to some extent.

My recollection is that the investigation did not lead to the gates of the White House. It involves the circumstances under which nine U.S. Attorneys were terminated, and those people were offered the opportunity to come back. They were also offered apologies by me, and that is the way the matter ended. That is my recollection.

Senator WHITEHOUSE. Okay. Well, I would ask you to take a look at the question for the record that I will propound to you because that is different than what the OIG and OPR said at the time, because they felt that they were hampered, hindered, and left with gaps in their investigation, and it was White House files that were at issue.

So my time is expired, but I hope we can settle this question because I do think it creates a difficult precedent in a world in which the Department of Justice may now have to ask similarly tough questions that take it into White House files.

Judge MUKASEY. I seriously doubt that one investigation and how it was handled creates a precedent in any sense for another, but I will answer your question.

Senator WHITEHOUSE. Thank you.

Chairman GRAHAM. Senator Grassley.

Senator GRASSLEY. First of all, for the Reverend, I do not understand how people can have so much hate that they do what they do. That is what comes to my mind all the time when I hear stories like yours. I remember it from the day it happened. Thank you for bringing it to our attention.

Reverend RISHER. Thank you, sir, for listening.

Senator GRASSLEY. Mr. Canterbury, you have talked some about the First Step Act. I want to go back to the Fraternal Order of Police, who was very instrumental in helping get it across the finish line. And obviously, as the Chairman of the Committee at that

time, I thank you for doing that. We appreciate your strong leadership.

The First Step Act requires that the Justice Department and the Attorney General implement a risk and needs assessment system, allow nonviolent inmates to receive earned time credit for participating in recidivism reduction programming, and recalculate good time credit for all inmates.

Given Mr. Barr's past statements opposing criminal justice reform, especially sentencing reform, do you believe that he will be able to dutifully implement the system that the Fraternal Order of Police worked so hard to get passed? To be fair to Mr. Barr, yesterday he testified that he would implement the law and not undermine it. Are you comfortable with that commitment?

Mr. CANTERBURY. I think his past experience in following the law speaks volumes to his ability to be able to take what Congress sent to the President and the President signed and implement the program. We have full confidence in that.

Senator GRASSLEY. Now, adding to what Senator Durbin said about the vast support that this legislation had from what I would say is extreme right to extreme left and everything in between—law enforcement, the judicial branch, victim rights groups, civil rights groups, faith groups—in your opinion, will Mr. Barr be able to work with these stakeholders to effectively implement the First Step Act?

Mr. CANTERBURY. Yes, sir. We have full confidence that he will be able to do that.

Senator GRASSLEY. Now to General Mukasey and to Mr. Thompson. I am not questioning Mr. Barr's truthfulness when I ask you this question, but in the past Mr. Barr opposed our efforts at criminal justice reform. Mr. Barr also had concerns about the constitutionality of the False Claims Act and opposed that law. Yesterday, Mr. Barr testified that he would implement the First Step Act and had no problem with the False Claims Act. We all know that the Attorney General of the United States has a duty to enforce the laws in a fair and even manner, and, of course, without personal bias.

General Mukasey, in your opinion, will Mr. Barr be able to do that? Do you believe that Mr. Barr will be able to faithfully implement and enforce the laws that he may not personally agree with?

Judge MUKASEY. I certainly think he will. His record shows that he is—if he adheres to one thing, it is to the requirements of the law. And I will tell you in my own case, I was initially opposed to some part of the First Step Act. I later became a supporter of it. So I am assuming that he will have the same open mind, at least, the same open mind, that I have.

Senator GRASSLEY. Okay. And, Mr. Thompson, along the same lines, your opinion on Mr. Barr's ability to enforce the laws fairly, evenly, and without personal bias?

Mr. THOMPSON. Senator, as you know, I was a very strong supporter of the First Step Act. If you look at what Attorney General Barr did when he was Attorney General in the Bush administration and his emphasis in the Weed and Seed program on community collaboration, his admitted statements to Reverend Joe Lowery, as I mentioned in my opening statement, about the failure of

prison, putting more people in prison, to help rid our crime-infested neighborhoods, he understands the need to do more than just lock people up. So I think he will faithfully implement the First Step Act, both in the spirit and literally.

Senator GRASSLEY. Also, do you, Mr. Thompson—since you have worked with Mr. Barr so much, knowing him as you do, would you say that he will be independent leader of the Justice Department that we ought to expect? And—well, let me finish this because I want General Mukasey also to speak to it. And maybe these questions come from the fact that we recently had an Attorney General that referred to himself as the “wing man” for the President. So what is your opinion of Mr. Barr’s ability to be independent head of the Justice Department? Do you have any doubt that he will be able to stand up to the President? So, it is kind of the same question to both of you.

Judge MUKASEY. I have not got any doubt at all. He has done it in the past, number one. He is not anybody’s wing man. And I think he understands that if he ever so behaved, he would come back to the Department to find a mound of resignations on his desk. So I do not think he would ever do anything like that, and he is not inclined to do it.

Senator GRASSLEY. Mr. Thompson.

Mr. THOMPSON. I agree with General Mukasey. Bill Barr understands the many policies, traditions of the Department of Justice that have stood for a separation between the Department and the White House on matters of criminal investigations, decisions to indict. I do not think that—the men and women that he has led over the past years in the Department of Justice, I think he will understand their respect for these traditions. And I think he will—he understands the nuances that lead to why we have these policies and traditions, and I think he will faithfully follow them and support them.

Senator GRASSLEY. Yes. And, for Ms. Cary and Mr. Thompson, I think I will kind of answer my first question. I think you would say about Mr. Barr’s fitness to be Attorney General in the United States, but could you tell us some observations you have had about him that leads you to believe he is the person that you have worked with and then, in turn, to be a good Attorney General?

Ms. CARY. The year that he was Attorney General, in 1992, you may recall, started with President Bush throwing up on the Japanese prime minister. It was at the beginning of a rough year. As General Mukasey pointed out, there was the Talladega prison riots. There was the crack epidemic that Senator Durbin was talking about. General Barr yesterday was pointing out that the violent crime rate had quintupled over the previous three decades. Hurricane Andrew—you may not remember this, but Hurricane Andrew hit south Florida particularly hard and knocked out a tremendous amount of Federal law enforcement resources down there. And there was great fear that it was going to become sort of a lawless place, where drug dealers would take control and the Coast Guard would not be able to control things. And then there was also the Rodney King verdict and the L.A. riots. So it was a very dangerous year in a lot of ways.

And I remember going to a press conference we were going to have in Richmond, I think. It was with the late great Jack Kemp, who was Secretary of HUD at the time. And as the two motorcades pulled in with the Attorney General and the Secretary of HUD, into this public housing project that we were going to talk about how to make public housing projects more safe, right before we got there, there was some sort of gang violence. And the law enforcement had come in and arrested a whole bunch of people. And there was gunfire. And so, as we got out of the cars, they came to Secretary Kemp and General Barr. And they said, "It is still a little dangerous here. There could be some stray bullets. We have got two bulletproof vests for the two of you. And why don't you put these on and head up to the podium?"

And General Barr points at me and says, "Well, what about her?"

And the agent said, "Oh, I am sorry, sir. We only have two bulletproof vests."

And he says, "Okay. Well, Mary Kate, you take mine."

And the agent said, "No, no, no, sir. That is not going to happen. You take the vest. You head to the podium with Secretary Kemp."

And he turns around to me, and he says, "Well, this is unacceptable. You get in the car, the armored limo, and just keep your head down."

And I thought at the time, "Boy, that tells you volumes about him," that he even noticed that I was standing there. But, really, what was going on, the point of the story, is, that it was a very dangerous place, and there were people who lived there all their lives. And we were arriving in limos and going to be able to leave, and they could not. And that, I think, made a big impression on everybody involved, what people's lives were like in this crazy year of how dangerous things were, how bad the violent crime rate was. And all he wanted to do was try to help some of these people who were in these horrible situations. And I think that tells you volumes about him and his motivations and the kinds of things he tried to do as Attorney General. And, I think, I have no concerns whatsoever about his enforcement of the First Step Act because that is the kind of person he is.

Mr. THOMPSON. Senator, I have observed Bill Barr in problem-solving situations. Yes, he will be the leader, but he listens to people very carefully. He has an open mind. He is respectful of different opinions. And he has a problem-solving personality in the sense that everything is collaborative. And I think he will be a terrific leader of the Department of Justice, and I have no doubt about that.

Chairman GRAHAM. Thank you. It is been a terrific panel. Senator Klobuchar, then we will take a break. You all have been going at it for 2 hours. We will take a 10-minute comfort break after Senator Klobuchar. And we will plow through until we get done. Thank you all for your patience.

Senator KLOBUCHAR. All right. Thank you very much, Mr. Chairman.

I am going to talk—start talking here about voting rights. I asked a few questions of Mr. Barr about this, and it has been such a problem across the country. I come from a State, as you know, Mr. Johnson, with one of the highest voter turnouts, the highest in

the last election. And part of that is because we have same-day registration, a bill that I have sponsored to bring out nationally. And I have looked at the numbers that show States that have that. Whether they are more red or more blue, they always are in the top group for highest voter turnout. It makes a huge difference to allow people to vote either with an ID or with a neighbor or with some other forms of identification. And so I am very concerned about the Supreme Court's ruling, of course, in the *Shelby* case.

And yesterday I asked Mr. Barr about the State election officials in North Carolina who contacted the Justice Department to express concerns about the integrity of the elections 9 months before the election and about allegations of voter suppression. So he was not there, of course, at the time, but I am just wondering how you think the Department of Justice responded, how they should have responded when they first heard from those State officials?

Mr. JOHNSON. From the NAACP's perspective, we are extremely concerned with the lack of responsiveness from the Department of Justice. Ever since the *Shelby v. Holder* case was decided, we knew that Section 2 would be the vehicle to protect voters. The lack of the current administration use of Section 2 was problematic. Mr. Barr's commending AG Sessions' tenure as AG is also concerning. His lack of clarity on how he will use his Justice Department to ensure all Americans can cast a ballot free of vote suppression or intimidation leaves a huge question mark for us. Any individual who serves as AG should have a primary consideration, the protection of the rights to vote of all citizens. It is not a partisan issue. It should not be seen as a partisan issue. It should be something that is above partisanship.

I am a resident of Mississippi. And we have seen the dog-whistle politics for a very long time. In fact, if you look at the history of voting in the State of Mississippi, some of the languages that were used during the period called Redemption and after 1865 is being used today. Some of the tactics that was used in 1870 and 1890 is being used today. So we need a Justice Department that can rise above partisanship and to appreciate that in order for our democracy to truly work, all citizens should be afforded free and unfettered access to the ballot box.

Senator KLOBUCHAR. Very good. Could not have said it better. Thank you.

Mr. Mukasey, you and I worked together when you were Attorney General. And, as you know, we had an issue in Minnesota, and the U.S. Attorney left. And you worked with me to get a replacement, which I truly appreciated. And we put someone good in place in the interim, and the Office continues to be a very strong Office. So, thank you for that.

Could you just briefly talk about when you were Attorney General. Did you ever say "No" to the White House?

Judge MUKASEY. Yes.

Senator KLOBUCHAR. Okay. Can you remember some of the instances where you—

Judge MUKASEY. I remember one—

Senator KLOBUCHAR [continuing]. If some of them were public?

Judge MUKASEY. I remember one in particular. And I cannot—I mean, I do not think I can discuss it here.

Senator KLOBUCHAR. Yes.

Judge MUKASEY. But it involved a position that the Government would take in litigation. And the White House was of a particular view, and the Department was of a particular view. And we prevailed.

Senator KLOBUCHAR. So, you think that is an important—but I had a discussion with Mr. Barr yesterday, just this concept of yes, you are the President's lawyer and that you are giving advice, but you are also the people's lawyer. And there are some times where those may conflict. Do you want to just expand on that?

Judge MUKASEY. Yes. I mean, when it comes to a pure legal position and the White House has taken a policy position that affects that legal position, yes, it gets very delicate. And it did in the one instance that I mentioned. And the Solicitor was of a particular view and was told, basically, "You do what you think the proper view is, and let me take care of the politics."

Senator KLOBUCHAR. Very good. All right. Thank you.

Mr. Morial, we—there has been discussion, bipartisan discussion, up here about the First Step Act. And could you just talk about some of the steps that we are going to need to take, that the Attorney General will need to take, immediately to implement it?

Mr. MORIAL. Yes.

Senator KLOBUCHAR. Because you can put all of the laws you want on the books, but if you do not—

Mr. MORIAL. Certainly. And let me just reaffirm my thanks to you and every Member of the Committee who supported that. It was a very, very long and difficult effort to arrive where we arrived. We supported it early and continue to push for its improvement, but it is the First Step Act.

The important, I think, step for the Attorney General is to get this Oversight Committee in place with the right people on it, and I think the most important thing that is going to be in the Attorney General's bailiwick is, one, organizing the U.S. Attorneys who are going to be responsive to those who are going to go back to the court where they were sentenced and request resentencing because the resentencing, for example, for the crack cocaine disparity, is not automatic. It is going to require a Public Defender service. It is going to require private lawyers. And my hope is that the United States Attorneys' Offices are not going to get in the way, not going to slow down the process, are going to move with speed and dispatch to facilitate and work with, if you will, criminal defense lawyers to identify those who might be eligible and get the Act in implementation.

But I also think that the aspect of it, which involves the work of the Office of Justice, the Bureau of Prisons, which is the—and this was a great concern under the Act, whether the Bureau of Prisons was going to have the enthusiasm and the resources, Senator, to execute the ability of people to earn more "good" time, which requires them to participate and develop release plans and take steps toward preparing themselves for release. That is an entire effort. I think you authorized some \$350 million in order to do that. That has got to be implemented. That has got to be executed. And we do not need any foot dragging in order to do that. So, I think, if the Committee continues to have oversight over the work

on resentencing and the work on the execution of the pre-release program, and then the third element of it will certainly be—and this was a great concern of ours—I think the nominee should be asked to rescind the Sessions guidance that—wherein he directed U.S. Attorneys to seek maximum sentences or the maximum prosecution. So, if the nominee is going to be true to, “I will implement the First Step Act,” then a good faith effort by him would be to rescind that guidance, right, to restore the discretion of the United States Attorneys when it comes to charging decisions. So, there is a lot of work to be done and I would urge the Committee to maintain its oversight role in ensuring that these things are executed.

Senator KLOBUCHAR. Okay. Thank you.

And I am out of time, but I wanted to thank you, Reverend, for coming forward. And I will ask you on the record, not now, some questions about our bill that we have on stalking, because I know you have been supportive of that, and on the boyfriend loophole. So thank you.

And, Mr. Canterbury, we want to move forward on that cops bill that we have with the training and the money for the officers. And thank you for your support and work on that. Thank you.

Chairman GRAHAM. Thank you. We will take a 10-minute recess to give you a comfort break. I am going to have to go do something else. And if Senator Blackburn would be kind enough to chair the hearing until we are finished, I would appreciate it. And it has been a great panel. Thank you, all, for coming—very, very much. So, 10-minute recess.

[Whereupon the Committee was recessed and reconvened.]

Senator BLACKBURN [presiding]. The Committee will return to order.

Senator Cornyn, you are recognized.

Senator CORNYN. Thank you, Madam Chairman.

I was just complimenting Senator Blackburn on her rapid ascension to the Chairman of the Committee. I have been on the Committee for 16 years, and I haven't quite made it there. So, congratulations.

Well, thank you all for coming and sharing your views. I cannot help but comment on the stark differences that we are hearing from the various witnesses about this particular nominee. He is either the most-qualified person you could ever find, or he is the least-qualified person, and there does not seem to be much room in between.

But let me ask some specific questions. First, I want to talk a second about criminal justice reform because it strikes me that of all the topics that we have dealt with here recently, that is one of the areas that brings us together. And I will just reflect, Mr. Johnson, I remember being in Dallas, Texas, maybe 10, 12 years ago. I was visiting with a number of African-American pastors, and I asked them, I said, What is the biggest problem in your congregation?

And they said, well, it is formerly incarcerated men who have a felony on their record, and it is they cannot find a job, and they cannot find a place to live. And that has sort of always haunted me a little bit.

But in light of some of the great work that has been done at the State level on prison reform—and I would have to say I am proud of the efforts made in Texas and elsewhere to try to provide people opportunities when they are incarcerated, those who are willing to accept responsibility for their own rehabilitation—that we have had some remarkable successes in the people who have taken advantage of the opportunity to turn their lives around.

And I think our view as a Government and as a people has changed significantly. Mr. Barr talked about 1992 and violent crime back then, and there was a different attitude. And I think we have learned from our experience.

But I want to go, General Mukasey, one of the things that you testified to, I think, in a previous Congress when we were talking about criminal justice reform, you said that really the test, the ultimate test for the success of criminal justice reform is the crime rate. I think I am quoting you correctly.

Could you explain that? Because there are a lot of people who want to focus on other things, like incarceration rates and other issues, but the crime rate, it strikes me—public safety—strikes me as the most important one.

Judge MUKASEY. Yes. I think that is—that is the ultimate test for this, the statute that has just been passed and for future statutes. What does it do to the crime rate?

The criminal justice system is there in substantial part to protect the public. If it is doing that and the crime rate is dropping, then bravo to the experience. And to a certain extent, it is going to be an experiment. We will see how people do when they get out. We will see how much money is saved and what it can be directed toward by way of prevention, and hopefully, our situation will improve.

Senator CORNYN. Well, fortunately, in the criminal justice field, though, we have actually used the States as the laboratories of democracy, and we tried this out before we have implemented at the national level. And I think we have benefited from those State-based experiences.

In my State, for example, we have reduced not only the crime rate, but the recidivism rate, and we have closed plans to build new prisons to incarcerate more people. So it really strikes me as something that it is one of those unusual scenarios where, basically, we were able to come together, people of dramatically different ideology and orientation, and come together and do something very positive for the country. And I am—we are going to keep an eye on the crime rate, to me is the litmus test of the success of what we tried to do.

Professor Turley, I wanted to just, first of all, compliment you on your article that you wrote in *The Hill* and just preface that—the title, of course, was, “Witch Hunt or Mole Hunt? Times Bombshell Blows Up All Theories.”

I have been extraordinarily troubled, frankly, by the politicalization of the Department of Justice, including the FBI, and I think you pretty much—in this polarized world we are living in, you talk about cognitive bias. And depending on the lens you are looking through, you can see a narrative, you can build a narrative that tells your story.

Would you take a minute to sort of explain the thesis of your article and the views you express there?

Professor TURLEY. Thank you, Senator.

What I thought was most interesting about The New York Times article was actually not the point of the article, which was that the President may have been investigated under the suspicion that he could be an agent of a foreign power. But what came out to me from the article was an insight into what and how the FBI was looking at this early in the Trump administration, and we also have an insight of how the Trump administration was viewing what the FBI was doing. And this gets to the issue of cognitive bias.

That it is a well-known concept that you can look at a problem with a bias where you see things that reaffirm your suspicion. But in this case, the FBI moved early on with an investigation that the White House was aware of. That fulfilled the White House's own bias that this was a "deep state" conspiracy, and the White House pushed back.

And when the White House pushed back, it fulfilled the cognitive bias of the FBI that they are trying to hide something. And if you take a look at the timeline, you see this action and reaction occurring where each side is reaffirmed by the actions of the other side.

So what the column raises is a distinct possibility that we might not have Russian collusion or a "deep state" conspiracy. That we may have two sides that are fulfilling each other's narrative, and we have gone so far down this road that it is impossible now to stop and say, well, what if neither of these things actually did exist?

In economics, it is called "pathway dependence," that you can invest so much into a single path that you can no longer break from it. And so what the column is suggesting is that perhaps we can actually use these stories and take a step back. And instead of assuming the worst motivations by both sides, look at this as whether both sides were trying to do what they thought was right or reacting to what they thought was correct, but they might have both been wrong.

Senator CORNYN. Madam Chairman, my time is up. Could I take one more minute?

Senator BLACKBURN. Without objection.

Senator CORNYN. Yesterday, I was asking Mr. Barr about Rod Rosenstein's memo that is entitled, "Restoring Public Confidence in the FBI." And to me, one of the most encouraging things about Mr. Barr's appointment is, I think he is exactly the kind of person who could do that, having done this 27 years ago and being willing to do it again for no other reason than his desire to help restore confidence in the Department of Justice and the FBI.

So, but if you go back even further, back when James Comey was—and the FBI were investigating Hillary Clinton's email server, and he took the unprecedented step of having a press conference on July the 7th, 2016, at which he essentially exonerated Ms. Clinton while detailing all the derogatory information in the investigation. And then later on had to come back because of that press conference when the Weiner laptop was identified and say, hey, we found some more emails.

The idea that the FBI and the Department of Justice would become so tangled up in an election and potentially influence an election is really unprecedented in our country and very dangerous, from my perspective. And then, of course, when Mr. Comey was fired by the President, then folks on the left thought he was St. James and after he had been the devil, I guess, previously when he was investigating Ms. Clinton.

So I do think there is some of that cognitive bias going on here, and we need to identify it and maybe step back from it and learn from it.

Thank you, Madam Chairman.

Senator BLACKBURN. Senator Hirono.

Senator HIRONO. Thank you, Madam Chair.

Reverend Risher, I, too, have had the opportunity to meet with some of the survivors of that tragic day, and so thank you very much for your heartfelt reminder of the work that remains for us to do.

Professor Kinkopf, you have written a lot about the unitary executive, and that is something that Mr. Barr subscribes to. So I found it really interesting what you mentioned today because there were a lot of questions from so many of us, seeking reassurances from Mr. Barr that he would not interfere with the Mueller investigation in any way, shape, or form.

And today, though, you said those assurances are irrelevant because under the unitary executive theory that if Mr. Barr were asked can the President fire Mr. Mueller, Mr. Barr would say yes. So there goes the entire investigation.

I found that to be a really interesting statement on your part. So that means that let us say that if the President does fire Mueller, and one would say that under a normal circumstance that kind of firing could be part and parcel of an obstruction of justice kind of investigation. But if the entire underlying investigation goes away because the investigator is fired, then where are we?

So that is very interesting as we sought to see the kind of reassurances that would enable us to feel that the Mueller investigation is, in fact, going to be able to proceed.

So you talked a little bit about what the impact of the unitary executive—and I do—that theory—and I do understand that there is a range. It is not—you know, there is a continuum there. So I just want to ask, under the unitary executive theory, can a President commit obstruction of justice with impunity?

Professor KINKOPF. So I will answer based on the memo that—

Senator HIRONO. Yes.

Mr. KINKOPF. Mr. Barr wrote last summer, because, as you say, there is a range, and so the answer would be different, depending on where you are on the range.

The Barr memo allows that there may be circumstances where a President can be understood to have committed obstruction of justice. Now that is different from saying the President can be charged with obstruction of justice, and in fact, Mr. Barr yesterday during his testimony said he sees no reason to deviate from the Department's policy that a sitting President cannot be indicted.

But even within that construct that a President can commit obstruction of justice, it is really difficult to see on his theory how

that would end up happening, because he says when the President exercises a legitimate Executive power, that that cannot provide the basis for an obstruction of justice charge. And therefore, if he exercises his authority to fire someone—James Comey is the discussion in the memo—then that cannot be the basis of an obstruction of justice charge.

If President Trump then used his authority to fire Mueller, that, by extension, would not be something that could serve as the basis of an obstruction of justice charge on the theory set forth in the memo. And I think he should be, at least, asked in follow-up questions, whether or not he would apply the logic of the memo to that situation, and he should be asked if that were to transpire, would he resign?

Because I think yesterday, he indicated that that would be an abuse of power, and that is something an Attorney General should resign if the Attorney General sees.

Senator HIRONO. I think you have given us a further line of questions to submit to Mr. Barr.

Regarding the Voting Rights Act, so this is for Mr. Johnson and Mr. Morial, we know that after the *Shelby County* decision, there were many, many States that passed all kinds of legislation that would be considered by a lot of us as voter suppression.

And yesterday, Mr. Barr testified that he would vigorously enforce the Voting Rights Act, the Section 2 of the Voting Rights Act. For the two of you, since there has not been a single Section 2 proceeding brought by the Justice Department, what specifically could Mr. Barr—what would you want Mr. Barr to do to vigorously enforce the Voting Rights Act, as he testified yesterday?

Mr. MORIAL. I think, number one, that he should review the decision by the Justice Department to switch sides in these two cases. One has been resolved.

Number two, he should ask the Voting Section of the Civil Rights Division to present to him all instances where the Justice Department has been asked to initiate Section 2 claims.

Number three, I believe that he should investigate, evaluate, and review those States that have passed voter suppression law to determine whether, in fact, they are discriminatory. And in fact, if they are discriminatory, to initiate a Section 2 claim.

The issue is, is for the Attorney General and the many competent lawyers in the Civil Rights Division at Justice to do their job without political interference, to make recommendations to him on what steps should be taken. A lot of stuff has been put into the deep freeze in the Sessions administration because he was just not interested at all in enforcing the Voting Rights Act because he disagreed with the Voting Rights Act and had had a long career of disagreeing with the Voting Rights Act.

Well, the Attorney General does not have an option to pick or choose which laws they want to enforce. They must enforce all laws that are vigorous—vigorously because it is your job, as the legislative branch, to pass those laws.

So, I think, that there are a number of things that the Attorney General can do, and most importantly, to publicly state that he will not follow the policy of Attorney General Sessions when it comes to the entire realm of civil rights. It is important for him to be on

the record as forceful as possible, but also to commit to take the necessary steps to ensure that Section 2 is vigorously enforced and also to look at those instances where the Justice Department has either switched sides—

Senator HIRONO. Yes.

Mr. MORIAL. Or refused to take a position. The case I mentioned earlier in my testimony, the *Chisom* case, which was a judicial reapportionment case in which I was a plaintiff. The case was brought in 1985. It was decided by the Supreme Court in 1991—was a case where the Justice Department sided with us during the Reagan administration.

And so the consistency of the Justice Department in siding, taking an affirmative stand in voting rights cases in support of those who have been aggrieved is something that until the Sessions administration was a bipartisan matter. And I think that this nominee should be asked whether he is going to restore that emphasis and that integrity to the enforcement of the Voting Rights Act.

Senator HIRONO. Madam Chair, I would like to ask Mr. Johnson to respond.

Mr. JOHNSON. I agree with my colleague, but I also think he should intervene in current litigation. There are several ongoing voting rights cases that are taking place across the country.

Second, he should work to fix the issue around Section 5. The House Special Committee on the Voting Rights Act will be doing hearings across the country, from my understanding, and if he becomes the Attorney General, he should seek to also support a fix in terms of Section 5.

And then, third, review formerly covered jurisdictions to see if, in fact, they have made changes in their policies, practices, or procedures and if those changes were, in fact, vote suppression methods so we can document the record to show that without a proactive Justice Department and law, jurisdictions will revert back to past practices of discriminatory actions.

Senator HIRONO. Thank you.

Senator BLACKBURN. I recognize myself for questions at this time.

And Mr. Turley, I would like to come to you first. You spoke last December at the Press Club about privacy rights and security in a world with changing technology and the rising use of artificial intelligence and facial recognition technology. And the challenges that that is going to pose for the Justice Department, I think we all realize they are going to be there and will have to be confronted.

And no clear answers have emerged at this point as to who owns the virtual you, you and your presence online. And more and more now, on a daily basis we are hearing from consumers who are wanting to make certain that there are privacy protections in a digital world and in that virtual space and that they are for everybody and that everybody plays for the rules.

So Mr. Barr is going to have to address these issues because it is going to require greater enforcement from the Attorney General. And I would like to hear from you on the role that you see the Department of Justice under Mr. Barr's leadership playing as we deal

with companies like Twitter and Facebook and some of these edge providers in the technology space.

Professor TURLEY. Thank you, Senator.

Of those emerging areas, facial recognition technology is probably the fastest moving and the one that has to be addressed the soonest. I have already spoken with people at Justice Department and to see if there is any way that the privacy community and the Government and private industry could find common ground here.

I think that for privacy advocates, we can no longer just simply say that all facial recognition technology is an evil, and we are not going to work with it. Part of the reason is that the Fourth Amendment controls the Government. It does not control private businesses.

And this market has progressed to the point that you are not going to get that cat to walk backward. I mean, this is a—this is an emerging market. The Chinese have put a huge amount of investment in it. If you just land at Shanghai, you will see what facial technology is going to look like across—around the world.

So the question is, how do we then marry the privacy values that we have with the legitimate security interests of the Government? And the answer is, there is a couple of things that we can do. One is, that most of this technology is going to require a data bank to be used effectively, including facial recognition data.

We can act proactively to try to create privacy protection for the access of that information, how long that information can be stored, for what reasons it can be used. We need to really get ahead of this. And frankly, Bill Barr is a perfect person to do this because not only does he have really the law enforcement chops in terms of understanding how technology is used, but he has spent a lot of time in private business at the highest levels.

And so I cannot imagine anyone better on this issue, quite frankly, to tackle it.

Senator BLACKBURN. Mr. Thompson, let me come to you with another technology question because last fall DOJ met with some of our States' Attorneys General to talk about the frustrations with Google and Amazon and some of these edge providers and their failure to protect consumer data and also their anti-competitive behavior.

And one of the things that came out of this was how Google prioritizes search results—theirs—to give them a competitive advantage over Yelp. So we know that these challenges are only going to be resolved if there is a multifaceted strategy that includes a partnership with our States' Attorneys General and if there is enforcement by the Antitrust Division and Consumer Protection Branch.

So, with that in mind, how would you advise Mr. Barr or how do you see him moving forward at DOJ to deal with big tech and these issues that they are really confronting consumers every day?

Mr. THOMPSON. What I see with respect to your question, Senator, is that this is something, number one, that I really do not know a lot about this. But I think the Attorney General nominee, if he is selected, would come in and review with career Department of Justice lawyers and other professionals in the Department on

the issue, review the issues, listen to them carefully. This is what he has done on other issues of import.

But more importantly to your question is that, I think, he has great experience in the past of working with joint task forces, joint efforts with State and local authorities, especially the State AGs, and he knows how to do this. He has done it successfully in the past, and I think he would be able to work with our State law enforcement colleagues and get at the answers to—that are raised in your question. Very important, very important matters.

Senator BLACKBURN. In the minute that I have left and before I yield—Mr. Blumenthal will be next—I just want to thank each of you for being here.

And Reverend Risher, I want to thank you for your testimony. And in the—I came to the Senate from the House, and we have passed some of the red flag legislation that Senator Graham had mentioned that he is working on here in the Senate. We look forward to some of those steps being taken, and I know that is something that is important to you.

And Mr. Canterbury, we always thank you for the work you do for the thin blue line.

Mr. CANTERBURY. Thank you.

Senator BLACKBURN. And the good work that you all are doing there.

My time has expired.

Senator HARRIS, you were actually next. You are recognized.

Senator HARRIS. Thank you. I appreciate that.

And thank you, Senator Blumenthal.

Mr. Morial, as we have heard, there has been a lot of discussion about this nominee and the book that was entitled, “The Case for More Incarceration,” for which Mr. Barr wrote the foreword. There has been concern about his opposition to efforts to lower mandatory minimums.

And so my question to you is based on your experience as the mayor of New Orleans. During the time you were mayor, you saw a 60 percent reduction in violent crime. And as General Mukasey has talked about and others, one measure of the effectiveness of criminal justice policies is a reduction in crime.

Mr. MORIAL. Right.

Senator HARRIS. So can you talk a bit about what it is that as mayor you did and perhaps even best practices around the country that have led to a reduction in crime?

Mr. MORIAL. Well, thank you very much for your question, and it was a powerful moment for our community when we changed the landscape of public safety. And I might add, we embarked on a plan that was comprehensive in nature. There was a law enforcement component to it, but there was also a human services and youth development component to it. And I set aside the debate between the two and said that we needed to do both.

So our law enforcement component was a comprehensive reform of what was at that time a very broken New Orleans Police Department. And that comprehensive reform included weeding out corruption, dealing with a very brutal police force. It involved discipline and firing and remaking of how we recruited, how we trained, how

we paid, how we deployed, how we used technology. It was broad-based. It was highly successful.

We did not have the problems whatsoever because we also put our foot down and said we were going to have responsible and constitutional policing. So it is important in the context of the Justice Department—and when I took office, there was a Justice Department investigation of the New Orleans Police Department. And instead of fighting the investigation, instead of trying to delay the investigation, I worked with the Justice Department and presented my own far-reaching, far-ranging plan, which, at that time, went farther—we were prepared to go farther on a proactive basis than any Department at that time had gone under a consent decree.

That is number one. But number two, and this is part of the purview, because Justice, in addition to its law enforcement responsibility, runs mentoring programs, programs funded by the Office of Justice Programs. In the old days, Weed and Seed.

We also deployed and made full utilization of all of those initiatives, too, to invest in youth development, to expand recreation, to expand after school programs, to expand youth summer jobs. It was not just law enforcement. It was not just human services. It was a combination of the two. So I think it is important to understand that Justice has law enforcement responsibilities, but also Justice has responsibilities with respect to investing in a community, investing in youth.

I would point this out, and I think this is important. At the time, and this was during the Clinton administration, the Clinton administration worked cooperatively with us both to help us pursue violent crime through gun prosecutions and drug prosecutions, but also invested through Weed and Seed and Office of Justice Programs. Also at that time, you had the Community Oriented Policing program, which provided us with additional resources for police technology.

So the lesson to be learned, and I would say this, the consent decrees that are out there—and this is misunderstood by people. A consent decree is, by its very definition, a voluntary agreement between a city and its police department and the Justice Department. And most of those consent decrees that are entered into have been entered into in lieu of litigation that the Department had the right to do.

So the idea that pursuing consent decrees is, in effect, a voluntary collaboration. And I think General Sessions was against consent decrees but offered nothing in exchange, offered no other strategy in exchange. “I am just against consent decrees because I think that they negatively affect police morale,” but did not offer another approach.

We need this nominee to indicate that he is going to be committed to constitutional policing, committed to public safety. But understand that public safety, we have learned, is not just crack-down law enforcement. It is something much more comprehensive. It is something much more proactive.

Yes, you have got to prosecute violent offenders, no doubt. But you have also got to ensure that there are reentry programs so that when people come out of jail, they are not apt to repeat. And that is part of, I think, a sensible, smart on crime initiative.

I hope that helps.

Senator HARRIS. And, as a follow-up to your point, some of the best and most innovative initiatives we have seen in the last few—in a couple of decades on criminal justice policy have been the result of the U.S. Department of Justice funding innovation in a way that supports local law enforcement, local prosecutors, and local community groups to create the kind of collaboration that you are talking about.

Mr. MORIAL. There used to be a Local Law Enforcement Block Grant Program—

Senator HARRIS. Right.

Mr. MORIAL. That provided money, which allowed you, because State—city governments are strapped always for resources, that created a way for you to invest in some innovation, some collaboration, some differential sorts of things. And I think Justice can play a proactive, smart-on-crime role in helping make our communities safer.

Senator HARRIS. Thank you. Mr. Johnson, you have testified about your concern about the nominee's statements that have been made in the past about the fact that there is not statistical evidence of racism in the criminal justice system. He did mention during his testimony yesterday and acknowledged the disparities between crack and powder cocaine enforcement, but did not acknowledge or mention any other of the disparities that we have seen in the criminal justice system, such as arrest rates that relate to a variety of crimes, but, in particular, drug crimes, the disparities based on race in terms of who gets what amount of bail in the criminal justice system, and, of course, incarceration rates, which there are huge distinctions based on race in terms of the application of sentences. So if he is confirmed, what do you believe will be the ramifications or—of his failure to acknowledge that, and what do you—what would you recommend he do if he is confirmed to acknowledge and to be informed about these disparities?

Mr. JOHNSON. An individual who serves as Attorney General of this Nation must recognize the long legacy of race disparity. And as AG, I would hope that he would really look into the credible research, and it would be obvious that in the criminal justice system there is a huge disparity. Some of that could be accounted for based on income, but much of it is accounted for based on the racial makeup of juries. It could be accounted for selective prosecution. It could be accounted for as it relates to a myriad of things.

And as the Attorney General, I would hope he would factor in that race is a problem. We are far from a post-racial society, and we must attack problems with a racial lens because there is very little in our criminal justice system that is race neutral.

Senator HARRIS. And just one more question, Madam Chair. He did—I requested that if—within a period of time, if he—if he is confirmed, that he would meet with civil rights groups to understand the ramifications of any policies. He agreed to do that within the first 120 days, if confirmed. I think that we will all expect that he will do that, and I look forward to hearing about the results of those meetings. And thank you.

Mr. JOHNSON. Thank you.

Senator BLACKBURN. Senator Cruz.

Senator CRUZ. Thank you, Madam Chairman. Let me say thank you to each of the distinguished witnesses for being here, for being part of this hearing. I appreciate your testimony and wisdom and judgment.

Judge Mukasey, let me—let me start with you. You have served as a Federal judge, you have served as U.S. Attorney General, as has Mr. Barr, and you have built a long and distinguished career of public service. Can you share, for this Committee, in your judgment, the importance of rule of law and the importance of having an Attorney General who is faithful to enforcing the law and Constitution regardless of party, regardless of partisan interest?

Judge MUKASEY. It is really the only guarantee that we have because this country is defined by and is constituted by a law, the Constitution. It is not based on land. It is not based on blood. It is based on the law. It all started with a law. And that is what we have built the society on, the notion that you can have a society in which—that operates fairly, in which neutral principles neutrally applied allow people to reach their maximum potential. If that is ever abandoned, if it is deviated from, if it is ever perceived to be deviated from, then we are lost. Then we have no—nothing to define us because we are defined by a law.

Senator CRUZ. Now, you have testified today that you know that Mr. Barr is a, quote, supreme—“superbly qualified nominee, that he has good judgment, and just importantly, that he has the will to exercise that judgment despite pressure from any source.” Can you share with the Committee what in your professional or personal experience gives you confidence that Mr. Barr will once again well and ably carry out the responsibility of Attorney General of the United States?

Judge MUKASEY. Well, as I mentioned, he has had a past history of doing that when he served as Attorney General, notwithstanding that a desired—it was a desired result from the White House, and he kind of deflected it and, as it were, laughed it off. He is somebody who has testified here that—in view of the fact that most of his career is the rearview mirror. He does not really have to concern himself with the possible negative consequences of resisting pressure from an administration. So that is an additional—that is an additional guarantee.

But I think the person himself and who he has been over the years consistently really speaks to that, and it is not just a question of his having nothing to lose. I think that is the way he is constituted. As Professor Turley said, he is a “law nerd,” meaning he is devoted in a—in a way that very few people are to what defines this country, and that is what he enjoys. That is his occupation and his preoccupation. And that is, I think, an excellent guarantee for the way he is going to approach the job.

Senator CRUZ. Well, this Committee, in particular, I think you will find no criticism for being a law nerd. We tend to attract more than a few of them.

Mr. Thompson, you, likewise, have a long, distinguished, honorable career marred only by briefing being my boss at the Department of Justice. And I apologize for all of my errant mistakes since then—that time. Let me ask you the same question I asked Judge Mukasey, which is, in your professional and personal career and

interactions with Mr. Barr, what gives you confidence that he will once again ably carry out the role of Attorney General?

Mr. THOMPSON. Thank you, Senator, and I am very proud to have you as one of my colleagues and former alums from the Deputy Attorney General's Office. You have certainly acquitted yourself well. Bill Barr has a long history in the Department of Justice as I said in my opening statement. He has a great love for the Department. I think that may be one of the reasons he wants to return to public service. He has great fidelity to the Department.

But in addition to some of the sort of sterile constitutional questions that we have been discussing this morning, important but still sterile in my view, he understands the traditions of the Department of Justice. He respects the traditions of the Department of Justice. He knows the impact that his decisions will have on the men and women who are in the Department, who are in the investigative agencies.

And there are reasons for these policies. There are good reasons for these traditions, not the least important of which is public perception, that justice in this country, investigative decisions in this country are carried out fairly, without fear or favor of what your status is in society, and, most importantly, without political considerations. He understands this, and I think this makes him superbly qualified to be, again, the Attorney General of the United States.

Senator CRUZ. Thank you. Ms. Cary, you have worked with Mr. Barr some 2 decades. One of the things you testified about was Mr. Barr's busy schedule, long travel hours, and yet in the midst of it all, juggling to find time to be a husband and a dad to his three daughters. As the father of daughters myself, I know how difficult that can be with public life. Can you share with the Committee some of what—just what you saw firsthand about how he managed to carry out his responsibilities and still be there for his daughters?

Ms. CARY. Yes, he was a tremendous father, as we saw yesterday, and a grandfather. And as I said in my testimony, the fact that all three of his daughters went into the law is huge. My husband is hoping that our daughters do not go into the law because he thinks it is becoming an increasingly difficult profession.

But to your question about his demeanor and the way he conducts himself, which, I think, is an example to his daughters—we were in Houston and we were there for some events. And as he was hearing from all these victims of crime and people talking about how high the violent crime had gotten, can he please do something to help, he spontaneously turned around to me and said, what do you say we stop by the Harris County Jail? And it was not on the—on the agenda at all. For security reasons, you would never tip that the Attorney General was going to a prison. And the FBI basically kind of rang the doorbell over at the prison and said, "We're here," and did an unannounced visit to the prison.

And the Attorney General—the prisoners did not know who he was. Obviously, we did not announce it. He went around asking these guys what their lives were like, what did they do get in here, what is for lunch today, where do you exercise. And as much of a law nerd as he is, this was a very compassionate side of him. He was not showboating. He—there was no press involved. And to me, it showed the way he could sort of shoehorn in a quick visit so he

could back and see his family, but yet learn about what people's lives were like, see the impact, not just of the violent crime on the victims, but also on proposed reforms on the people who were actually in the prisons.

And I would be willing to bet there are not a lot of Attorneys General, present company probably excepted, who have been inside a cell block like that on an unannounced thing so that he could get back to his family, but also continue to learn the impact of the policies in a very real way.

Senator CRUZ. Thank you for sharing that wonderful story. And I will say his grandson, Liam, has become an internet sensation—

Ms. CARY. Oh, he stole the show.

Senator CRUZ [continuing]. Not seen since John Roberts' son, Jack, did Spiderman at his announcement, and then, he, too, had a moment of glory.

Ms. CARY. Right.

Senator CRUZ. Thank you to each of you.

Senator BLACKBURN. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chairwoman. Thank you to every one of you, and thank you for all of your written testimony which I will review. We have only 7 minutes, and as a matter of fact, we are in the middle of a vote right now, so I am going to be quick with a number of you.

First of all, Reverend Risher, thank you for being here today telling your story so powerfully and eloquently, and making sure we understand that your mother and your two cousins would be alive if that shooter could not get his hands on a gun.

Reverend RISHER. Thank you.

Senator BLUMENTHAL. A dangerous person with a gun. And I assume that you would support the legislation that has been introduced to improve the background check system. As you probably—I am sure you know, that shooter was able to take advantage of a loophole—

Reverend RISHER. Yes.

Senator BLUMENTHAL [continuing]. In the current laws. But more broadly, Senator Graham and I have proposed a bipartisan measure to take guns away from people who are deemed to be dangerous by a court after due process, and thereby keep guns out of the hands of criminals and other dangerous people. I hope that you can lend your voice and your face to supporting that legislation.

Reverend RISHER. I would support that legislation, sir, yes.

Senator BLUMENTHAL. Thank you very much.

Reverend RISHER. Thank you.

Senator BLUMENTHAL. Professor Turley, you and I are in agreement that the President can be indicted. I think we are in agreement—

Professor TURLEY. Yes.

Senator BLUMENTHAL [continuing]. While in office even if the trial has to be postponed. I articulated that position to Mr. Barr yesterday and asked him to agree with me, and he would not. You implied this morning in your testimony that he did agree with it. Do you have some information that—

Professor TURLEY. Oh no, actually, I have no information. I have never spoken to him about it. I was saying that if you look at the history of both Mueller and Barr, I would not expect that they would change this longstanding policy. From a constitutional standpoint, I have never really—I agreed with it as, I think, we share this view. The Constitution does not say that the President is immune from indictment, but an indictment goes to the President as a person. Impeachment goes to the President as an officeholder.

That does not mean that a President is going to stand trial during a term, as you have noted ably. And indeed as you also know as a—as a prosecutor, it is exceptionally unlikely that when you got to the point of an indictment, that a President would actually face a trial, let alone incarceration during that term.

Where Bill Barr falls in this, I really do not know. When we talk about him being a great advocate of the unitary executive theory, this is not—I do not—I do not share in Neil’s view that even though I am not a big fan of the theory, that it is so horrific, you know. He believes in clear lines, and I share that view of what is an executive function and what is a legislative function. And when we talk about the avoidance doctrine of courts in trying to interpret statutes to avoid conflicts, it is important to remember that same avoidance conflict protects Congress, right, I tend to favor in Article I. Courts also avoid conflicts interpreting statutes that might impede your own authority. So I am not too sure where he comes out on this specific issue.

Senator BLUMENTHAL. Let me ask you, and I am going to ask a couple of other members. I am deeply disturbed, an understatement, by some of the President’s comments about the FBI, about judges, about our judicial system generally. And shouldn’t the Attorney General of the United States be someone who stands up for—you know, it is easy to say, “I am for the rule of law,” but when the rubber hits the road, he should be defending all of those institutions. Do you agree?

Professor TURLEY. I do. What I should caution is that I do not think that Bill Barr is the type that is going to take a public stance often against the President, but he is someone who I think will be quite firm in his support with the—with the Department. I do not know what the President thought he was getting with Bill Barr, but I know what he is getting. He is going to get someone who identifies incredibly closely and intimately with that Department. And I think he will be a vigorous defender of it.

Senator BLUMENTHAL. Judge Mukasey, let me ask you, and I am—I know that you may wish to be referred to as “General.”

Judge MUKASEY. I do not. I have always been uncomfortable with that even when I was in the position. I thought it was weird.

[Laughter.]

Senator BLUMENTHAL. As Attorney General—as Attorney General, I was referred to as “General” for 20 years, and I never was comfortable with it, either.

Judge MUKASEY. Yes, in the U.K., they call the Attorney General “Attorney,” which seems a lot more civilized and a lot more accurate, particularly when there are people in uniform around.

Senator BLUMENTHAL. As Professor Turley pointed out, in his testimony about the seal, the UK has a very different system. And I thought, by the way, the—your history of the seal was really very pertinent in terms of showing the differences between the Attorney General as an advocate of justice as opposed to an advocate for the queen or the President.

Professor TURLEY. Thank you.

Senator BLUMENTHAL. But let me ask you, are you not deeply troubled by the President's attacks on the judiciary?

Judge MUKASEY. I disagree with them. I think it is extraordinarily unwise for him to do it, and in that sense—in that sense I am troubled. Obviously there is a—or there is or should be a political price to be paid for that, and I think we are in the process of seeing it paid to a certain extent. But there has always been a certain level of tension between and among the branches. How it is expressed and how civilly it is expressed is a different thing, and I think we are probably in agreement there. But there is always a certain level of pulling and hauling. That is built into the constitutional system.

Senator BLUMENTHAL. And are you not also troubled by the President's attacks on the FBI and the Department of Justice?

Judge MUKASEY. Again, the FBI can function on a day-to-day basis without a rooting section in the White House or a razzing section in the White House. I think that some of his criticisms of the FBI may very well turn out to be warranted. So far as the Department, that is a different story entirely, and I have articulated that. I think that the former Attorney General had no choice but to recuse himself. He did, and that was not something that was—that was not a criticism that ever held any water.

Senator BLUMENTHAL. Well, I want to, again, thank you all for being here. I have a lot more questions. Maybe I will contact some of you privately. My time has expired, and I know that Acting Chairwoman and I have to go vote. But thank you, all, for being here today.

Senator BLACKBURN. Thank you. Without objection and on behalf of Senator Grassley, I would like to enter this letter from Taxpayers Against Fraud into the record.

So ordered.

[The information appears as a submission for the record.]

Senator BLACKBURN. Thank you all for being here today and for your insight into how Mr. Barr would lead the Department of Justice in what is a very challenging time.

Excuse me?

[Voice off microphone.]

Senator BLACKBURN. All right. He is in, just as I am getting ready to end this hearing.

Mr. Coons, you are recognized.

Senator COONS. Thank you, Senator Blackburn.

Senator BLACKBURN. You just made it in under the wire.

Senator COONS. Yes, ma'am. Thank you to the panel. I appreciate your patience. There have been, as you know, votes and other issues happening in other settings. Reverend Risher, we did have an opportunity to speak during the break, but I just wanted to reconfirm my sense of loss at what you shared with us, and the fact

that I had the opportunity to visit, and to worship, and then to travel with Felicia Sanders and Polly Sheppard. It was a blessing to get to meet you today, and I look forward to your upcoming writing, *For Such a Time as This*, and talking about reconciliation work together. It is important and difficult work.

But I wanted to start, if I could, by asking both you and Mr. Canterbury, with whom I have had the honor of working on other issues, about background checks in particular. We talked previously about the ways in which the NICS System does not currently fully work to deny access to weapons to those who should under the law be denied access to weapons.

Senator Toomey and I introduced a bipartisan bill in the last Congress, the NICS Denial Notification Act, that would make a simple improvement to how we enforce our current law. If you lie and try, if you go into a gun dealership and fill out the form and say I am entitled to buy a gun, they run the background check and come back and say, umm, we are really sorry, but you spent 5 years in a Federal penitentiary for armed robbery, we are not giving you a gun today, and you storm out. In my home State, nothing more happens. In his home State, because the State police conduct that NICS notification, they know that they can now go have a conversation with you about for what purpose were you purchasing this weapon.

This bill, if it were to become law, would require notification, simple notification, to a State or local law enforcement contact. And these cases—these so-called “lie and try” cases are rarely prosecuted at the Federal level, partly because of a lack of knowledge, partly because of a lack of resources. Mr. Canterbury, I would be interested—I am grateful for what I understand is the FOP support for the concept in the bill. I wondered if you would be willing to advocate with Attorney General Barr, should he be confirmed, for the resources to enforce “lie and try” laws and to make sure that our NICS system is working as it should.

Mr. CANTERBURY. Absolutely. We have been very critical of the lack of resources for the NICS System, and the fact that a “lie and try” normally goes without prosecution. So, you know, we have supported that bill in the past. We are with you and Senator Toomey on that. And obviously with that will come the necessary appropriations and authorization to enforce.

Senator COONS. I sure hope. Reverend Risher, would it have made any difference in the Dylann Roof case if he had been denied the opportunity to purchase a weapon?

Reverend RISHER. Yes, it would have made a difference. I believe if he was not able to secure his gun at that particular day, that maybe the tragedy in Charleston may not have happened. One of the things that we are up against is the 3-day waiting period that I know that needs to be expanded in order to be able to have a complete background check. And I think things would have been different if those things were in place at the time he bought the gun.

Senator COONS. Thank you, Reverend. As the Co-chair of the Law Enforcement Caucus, I intend to work in this Congress as I did in the last to try and find ways that both parties can support

that would strengthen law enforcement and our system of denying access to weapons to those who should not have them.

Professor Kinkopf, if I might, there was some vigorous back and forth about the unitary executive theory. We could have a very long conversation about this, but I am just going to ask a focused question. Tell me specifically, the unitary executive theory is that it is theory. It is not currently the law of the land. Am I right about that?

Professor KINKOPF. That is correct. In fact, the Supreme Court has rejected it repeatedly in every case beginning with *Humphrey's Executor*.

Senator COONS. Yet you suggested that if we were to have an Attorney General with a very expansive view of Executive power, it might have some negative implications, and it might have some negative implications that would have some current relevance. Could you just explain that just a little bit more? My superficial and ill-informed view of this is that the Founders did not actually say "all" Executive power is given to the—to the President, that it was "the" Executive power. And then are examples of ways in which Executive power is actually shared with other branches historically. I do not want to get into a wonderful law nerd fight, but I am interested in what are the practical implications if we have an Attorney General who has a very broad and expansive view.

My predecessor, Senator Biden, when he was Chairman Biden, although he was very complimentary of Mr. Barr, did express real concern about how broad his Executive power theory was.

Professor KINKOPF. Right. So that reading of the Executive Vesting Clause was argued by President Harry Truman in the Steel Seizure Case, and specifically rejected by the Supreme Court, but that did not kill it. It keeps coming back. Lawyers in the Justice Department, earnestly believing in it, applied it in the torture memo, most infamously. So it is something we keep hearing.

And the torture memo is a good example in the sense that it illustrates that much of what the Justice Department does never gets into court. And so, the Attorney General is such an important office because very often the Attorney General is the rule of law. It is only the Attorney General's willingness to not only stand up for what the Constitution says, but to recognize what the Constitution actually says. I have no qualms about William Barr on the first score. It is on the latter that I have real trouble.

And so the Attorney General is a crucially important figure from that standpoint for issues we cannot even begin to contemplate and we may never know about it. But as the issues we do know about, that we can be quite certain, and even issues that may end up in court one day, that role is crucially important. Suppose the President decides he wants to tell the Federal Reserve how to run monetary policy.

Now that is something that might end up in court, but the *Myers* case, sort of the first case of the modern approach to the President's removal power, is a case where Woodrow Wilson fired Frank Myers, the Postmaster First Class in Portland, Oregon, while he was President. His presidency ended in 1921. The *Myers* case was decided by the Supreme Court in 1927. Can you imagine 6 years of a cloud hanging over the independence of the Federal Reserve?

So, even if, ultimately, the Supreme Court vindicates the proper view of the Constitution, we have potential for enormous chaos in the markets. And that is just one example of one independent agency and the important role it plays in our lives.

Senator COONS. And you previously cited a list of independent agencies in *Humphrey's Executor*, and this is a line of questioning I pursued with our most-recently confirmed Supreme Court Justice. I am very concerned about how this view, which begins with the Scalia dissent, and now has expanded significantly in terms of its adherence, what its real consequences might be. If I might, with deference to the Chair, ask one last brief question.

Senator BLACKBURN. Very brief—

Senator COONS. Very brief.

Senator BLACKBURN [continuing]. Because I have not voted.

Senator COONS. Mr. Morial, about 67,000 Americans every year are dying of overdoses. Mr. Barr once said, "I do not consider it an unjust sentence to put a drug courier in prison for 5 years. The punishment fits the crime." I have come to the conclusion we cannot incarcerate our way out of the opioid crisis. Do you believe Mr. Barr will advance policies to help those suffering from addiction get the help they need without needlessly prosecuting and incarcerating large numbers of low-level drug couriers?

Mr. MORIAL. I do not think we heard anything from him—I was not here yesterday—or anything in his record that would suggest that. I think it is going to require strong constitutional oversight. It is not the—if the way we treat the opioid crisis mirrors the way we treated the crack crisis, we are just continuing the ill-advised policies of mass incarceration. And they certainly do not work particularly for the user class. The user class. And what we did in the crack cocaine crackdown is it was users who were incarcerated for 18 months, 2 years, 3 years. Sometimes they repeated, and they went back to jail a second time.

And the opioid crisis is an opportunity now that we are losing 60,000 people a year, more than we are losing to gun violence, to break from those policies and treat the opioid crisis for what it is. It is a public health crisis, just like the crack and cocaine crisis—these are people with deep problems with substance abuse. It is not to exonerate the pusher, it is not to sanction it, but it is to come up with a more intelligent approach. So I do not know if the nominee is there, if—and I think that this Congress and this Committee is going to have to force him to get there.

Senator COONS. Thank you, Mr. Morial. Thank you to the whole panel. Thank you to the Chair for your forbearance.

Senator BLACKBURN. And we thank you all for helping to give us a clearer picture of what you perceive to be the judgment and the understanding and the commitment of Mr. Barr. And this concludes the hearing to consider William Barr as Attorney General.

I will remind the Senators that the record will be open until 5 p.m., on January 22nd, to submit questions, and we request your timely response.

Senator BLACKBURN. This hearing is adjourned.

[Whereupon, at 1:04 p.m., the hearing was adjourned.]

[Additional material submitted for the record for Day 1 and for Day 2 follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Attorney General Nomination”

Tuesday, January 15 and Wednesday January 16, 2019
Hart Senate Office Building, Room 216
9:30 a.m.

Introducer

The Honorable Orrin G. Hatch
Former United States Senator
State of Utah

Panel I

The Honorable William P. Barr, to be Attorney General of the United States

Panel II

The Honorable Michael B. Mukasey
Former United States Attorney General
Former U.S. District Judge for the Southern District of NY
Of counsel, Debevoise & Plimpton LLP
New York, NY

Mr. Derrick Johnson
President and Chief Executive Officer
NAACP
Baltimore, MD

The Honorable Larry D. Thompson
Former United States Deputy Attorney General
Partner, Finch McCranie LLP
Atlanta, GA

The Honorable Marc Morial
President and Chief Executive Officer
National Urban League
New York, NY

Ms. Mary Kate Cary
Former speechwriter for President George H.W. Bush
Anne C. Strickler Practitioner Senior Fellow
The Miller Center, University of Virginia
Washington, DC

Professor Neil J. Kinkopf
Professor of Law
Georgia State University College of Law
Atlanta, GA

Professor Jonathan Turley
J.B. and Maurice C. Shapiro Professor of Public Interest Law
The George Washington University Law School
Washington, DC

Reverend Sharon Washington Risher
Ordained Pastor
Charlotte, NC

Mr. Chuck Canterbury
National President
Fraternal Order of Police
Washington, DC

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

William Pelham Barr

2. **Position**: State the position for which you have been nominated.

Attorney General of the United States

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Kirkland & Ellis, LLP
655 15th Street, NW
Washington, D.C. 20005

McLean, Virginia

4. **Birthplace**: State date and place of birth.

May 23, 1950
New York, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

George Washington University Law School, 1973 – 1977, J.D. received 1977

Columbia University, 1971 – 1973, M.A. received 1973

Columbia College, 1967 – 1971, A.B. received 1971

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2009, 2017 – Present
Kirkland & Ellis, LLP
655 15th Street, NW
Washington, D.C. 20005
Of Counsel

2011 – Present
Home Address
Self-Employed Consultant

2000 – 2008
Verizon Communications
1 Verizon Way
Basking Ridge, New Jersey 07920
Executive Vice President and General Counsel

1994 – 2000
GTE Corporation
One Stamford Forum
201 Tresser Boulevard
Stamford, Connecticut 06901
Senior Vice President and General Counsel

1993 – 1994
Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW
Washington, D.C. 20037
Partner

1989 – 1993
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Attorney General of the United States (1991 – 1993)
Deputy Attorney General of the United States (1990 – 1991)
Assistant Attorney General, Office of Legal Counsel (1989 – 1990)

1983 – 1989
Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW
Washington, D.C. 20037
Partner (1985 – 1989)
Associate (1983 – 1984)

1982 – 1983
The White House

1600 Pennsylvania Avenue, NW
Washington, D.C. 20500
Senior Policy Advisor/Deputy Assistant Director, Office of Policy Development

1978 – 1982
Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW
Washington, D.C. 20037
Associate

1977 – 1978
U.S. Court of Appeals for the D.C. Circuit
E. Barrett Prettyman U.S. Courthouse and William B. Bryant Annex
333 Constitution Avenue, NW
Washington, D.C. 20001
Law Clerk to the Honorable Malcolm Richard Wilkey

1971 – 1977
Central Intelligence Agency
Washington, D.C.
Office of Legislative Counsel (1975 – 1977)
Intelligence Directorate (1973 – 1975)
Summer Intern Program (1971 – 1972)

Other Affiliations* (Uncompensated Unless Otherwise Indicated):

2018 – Present
President's Intelligence Advisory Board
New Executive Office Building
725 17th Street, NW
Washington, D.C. 20502
Consultant

2017 – Present
Director's External Advisory Board
Central Intelligence Agency
1000 Colonial Farm Road
McLean, Virginia 22101
Member

2016 – 2018
Och-Ziff Capital Management Group, LLC
9 West 57th Street, 39th Floor
New York, New York 10019
Director (Compensated)

2014 – 2017
Catholic Information Center
1501 K Street, NW
Washington, D.C. 20005
Director

2009 – Present
Dominion Energy, Inc.
120 Tredegar Street
Richmond, Virginia 23219
Director (Compensated)

2009 – 2018
Time Warner, Inc.
1 Time Warner Center
New York, New York 10019
Director (Compensated)

2008 – 2013
Holcim (US) Inc. and Aggregate Industries Management, Inc.
24 Crosby Drive
Bedford, Massachusetts 01730
Director, Holcim (US) (2008 – 2013 (Approximate)) (Compensated)
Director, Aggregate Industries Management, Inc. (2010 – 2013 (Approximate))
(Compensated)

2004 – 2009
The Ethics and Public Policy Center
1730 M Street, NW
Washington, D.C. 20036
Director

1994 – 2016
Selected Funds
c/o Davis Selected Advisers
620 5th Avenue
New York, New York 10020
Director (Compensated)

1994 – 2015
Becket Fund for Religious Liberty
1200 New Hampshire Avenue, NW
Washington, D.C. 20036
Director

1986 – 1988

Dalkeith Corporation (a subsidiary of Scottish Widows Fund Assurance Society)
1146 19th Street, NW
Washington, D.C. 20036
Director, Vice President, and Treasurer

1986 -- 1988
1146 19th Street, NW (a subsidiary of Scottish Widows Fund Assurance Society)
Washington, D.C. 20036
Director, Vice President, and Treasurer

1984 -- 1989
2300 N Street Associates
2300 N Street, NW
Washington, D.C. 20037
Real Estate Partner (Compensated)

* In connection with my law practice at Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman), when the firm was asked to set up a new corporation for a client, I would occasionally be listed as an incorporating director/officer for purposes of filing incorporation papers but would be replaced by the permanent director/officer. These affiliations are not listed above except where I continued to serve on the board beyond my role for filing incorporation papers, as was the case with Dalkeith Corporation and 1146 19th Street Corporation.

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. Military. I was born in 1950 and was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

George Washington University Law School Stockton Guard Alumni Award (2017)

Horace Mann Distinguished Achievement Award (2011)

Honorary Degree, Mercy College (2000 (Approximate))

John Jay Award, Columbia College (1998)

George Washington University Distinguished Alumni Achievement Award (1994)

Catholic Lawyers Guild of New York, St. Thomas More Award (1992 (Approximate))

Honorary Doctorate, George Washington University (1992)

International Brotherhood of Police Officers Distinguished Service Award (1992)

Order of the Coif, George Washington University Law School (1977)

J.D. with Highest Honors, George Washington University Law School (1977)

National Defense Foreign Language Fellowship (Mandarin Chinese) (1967)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Member (1978 – unknown)

Americans for Victory Over Terrorism

Senior Advisor (2002 – unknown)

Central Intelligence Agency Director's External Advisory Board

Member (2017 – Present)

Council on Crime in America

Member (1995 – 1996 (Approximate))

Economic Crime Council

Chairman (1990 – 1991 (Approximate))

Organized Crime Drug Enforcement Task Forces Executive Review Board

Chairman (1990 – 1991 (Approximate))

Federalist Society

Convention Planning Committee (1987)

First Freedom Coalition

Co-Founder (1993 – 1994)

Governor's Commission on Parole Abolition and Sentencing Reform

Co-Chair (1994)

The International Conference Series on the Foundations and the Future of Democracy
(Democracy Conference Series)

Honorary Vice Chair (2007)

National Center for State Courts
General Counsel Committee (1999 – 2005 (Approximate))

National Institute of Justice
Peer Reviewer (1986 – 1988)

National Legal Center for the Public Interest
Legal Advisory Council (Dates Unknown)

National Security Council Deputies' Committee
Member (1989 – 1991 (Approximate))

Organized Crime Council
Chairman (1990 – 1991 (Approximate))

President's Intelligence Advisory Board
Consultant (2018 – Present)

University of Virginia, Miller Center of Public Affairs, National Commission on
Federal Election Reform
Member (2001)

University of Virginia, Miller Center of Public Affairs, National Commission on the
Separation of Powers
Member (1997)
Commissioner (1998)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Virginia, 1977

District of Columbia, 1978

New York, 2002

New Jersey, 2007

There have been no lapses in membership. My New Jersey bar membership ended in 2009 when I ceased serving as in-house counsel for Verizon Communications.

- b. List all courts in which you have been admitted to practice, including dates of

admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Virginia Supreme Court, 1977

District of Columbia Court of Appeals, 1978

U.S. Court of Appeals for the District of Columbia Circuit, 1978

U.S. District Court for the District of Columbia, 1978

U.S. Court of Appeals for the Federal Circuit, 1988

U.S. Supreme Court, 1992

U.S. Court of Appeals for the Third Circuit, 1994

U.S. Court of Appeals for the Eighth Circuit, 1996

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Red Cross
Board of Governors (1998)

Army Navy Club (2014 – Present)

Becket Fund for Religious Liberty
Board of Advisors (1994 – 2015)

Carnegie Club at Skibo Castle (2004 – Present)

Catholic Information Center
Board of Directors (2014 – 2017)

College of William & Mary Board of Visitors
Member (1997 – 2005)

Vice Rector (1999 – 2001)

Davis Selected Advisers
Board of Directors (1994 – 2016)

Dominion Energy, Inc.
Board of Directors (2009 – Present)

The Ethics and Public Policy Center
Board of Directors (2004 – 2009)

George Washington University Law School Board of Advisors (1993 – 1995
(Approximate))

Chairman, Law School's Centuries Campaign (Dates Unknown)
National Chairman, Law School Annual Fund (2005)
Emeritus Member (1995 – 2015 (Approximate))

Holcim (US) Inc. and Aggregate Industries Management, Inc.
Board of Directors, Holcim (US) (2008 – 2013)
Board of Directors, Aggregate Industries Management, Inc. (2010 – 2013
(Approximate))
Member, Audit Committee, Holcim (US) (2008 – 2013)
Member, Audit Committee, Aggregate Industries Management, Inc. (2010
– 2013 (Approximate))

Inner City Scholarship Fund
Board of Trustees (2005 – 2008)

Knights of Columbus
Member (1984 – Present)
Supreme Board Member (1995 – 1998)

Och-Ziff Capital Management Group, LLC
Director (2016 – 2018)
Chairman, Committee on Corporate Responsibility and Compliance (2016
– 2018)

Prospect Hall Shooting Club (2008 – Present (Approximate))

Time Warner, Inc.
Board of Directors (2009 – 2018)

Union League Club of New York City (2007 – 2012)

United States Piping Foundation
Board Member (2017 – 2018)

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Knights of Columbus is a Catholic fraternal organization limited to men, although there is a corresponding organization for women. To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

See Appendix 12a.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

See Appendix 12b.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

See Appendix 12c.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

See Appendix 12d.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

See Appendix 12e.

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

The White House, Office of Policy Development
Senior Policy Advisor/Deputy Assistant Director, 1982 – 1983, Appointed by President Ronald Reagan

Department of Justice, Office of Legal Counsel
Assistant Attorney General, 1989 – 1990, Appointed by President George H. W. Bush

Department of Justice
Deputy Attorney General of the United States, 1990 – 1991, Appointed by President George H. W. Bush

Department of Justice
Attorney General of the United States, 1991 – 1993, Appointed by President George H. W. Bush

Virginia Commission on Abolishing Parole
Co-Chairman, 1994, Appointed by Governor George Allen

College of William & Mary Board of Visitors
Member, 1997 – 2001, Appointed by Governor George Allen
Vice Rector, 1999 – 2001, Appointed by Governor George Allen
Member, 2001 – 2005, Appointed by Governor Jim Gilmore

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Catholics for Romney
National Advisory Committee, 2012

Reaganites for Romney
Member, 2011

Romney Advisory Committee on Law Enforcement
Member, 2011 – 2012

McCain 2008 Justice Advisory Panel
Co-Chair, 2008

National Catholics for McCain Committee
Member, 2008

Bush for President
Vice Presidential Candidate Screening Team, 1988

D.C. Lawyers for Reagan-Bush
Vice Chairman, 1984

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1977 to 1978, I served as a law clerk to the Honorable Malcolm R. Wilkey of the U.S. Court of Appeals for the D.C. Circuit.
 - ii. whether you practiced alone, and if so, the addresses and dates;

2011 – Present
Home Address
Self-Employed Consultant
 - iii. the dates, names and addresses of law firms or offices, companies or

governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1978 – 1982

Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW
Washington, D.C. 20037
Associate

1982 – 1983

The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500
Senior Policy Advisor/Deputy Assistant Director, Office of Policy Development

1983 – 1989

Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW
Washington, D.C. 20037
Associate (1983 – 1984)
Partner (1985 – 1989)

1989 – 1993

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Assistant Attorney General, Office of Legal Counsel (1989 – 1990)
Deputy Attorney General of the United States (1990 – 1991)
Attorney General of the United States (1991 – 1993)

1993 – 1994

Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW
Washington, D.C. 20037
Partner

1994 – 2000

GTE Corporation
One Stamford Forum
201 Tresser Boulevard
Stamford, Connecticut 06901
Senior Vice President and General Counsel

2000 – 2008
Verizon Communications
1 Verizon Way
Basking Ridge, New Jersey 07920
Executive Vice President and General Counsel

2009, 2017 – Present
Kirkland & Ellis, LLP
655 15th Street, NW
Washington, D.C. 20005
Of Counsel

- iv. Whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1978 to 1982, I worked as an associate with the law firm of Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman). I functioned largely as a generalist, with about 70% of my time devoted to civil litigation and about 30% to other areas of the firm's practice. The litigation—all civil—was varied, although a significant part of it involved environmental cases. My litigation matters also included a broad range of commercial disputes, securities matters, and employment cases.

In 1982, I left Shaw, Pittman, Potts & Trowbridge to serve as Deputy Assistant Director for Legal Policy in the Office of Policy Development at the White House. My responsibilities included: preparing and coordinating briefing papers and decision memoranda for the Cabinet Council on Legal Policy; representing the White House on inter-agency working groups; and reviewing agency bill comments and testimony as part of the Office of Management and Budget process.

In 1983, I returned to Shaw, Pittman, Potts & Trowbridge. My practice was different than it was during my earlier period with the firm—I spent less time on litigation and more on administrative/regulatory matters before federal agencies. About one-third of my work involved litigation in federal court or administrative tribunals. My litigation work was all civil, with the exception of one large criminal matter representing the Henry J.

Kaiser Co. in connection with a grand jury investigation into possible violations of federal law in the construction of the William H. Zimmer nuclear power plant in Ohio. My non-litigation practice focused on administrative practice before a number of federal departments and agencies, including the Internal Revenue Service, Department of the Treasury, Department of the Interior, Department of Housing and Urban Development, Department of Education, and Office of Personnel Management.

From 1989 to 1993, I worked in the Department of Justice, serving first as an Assistant Attorney General in the Office of Legal Counsel (1989 to 1990). My principal responsibility in that position was providing legal advice and issuing legal opinions to Executive Branch departments. In 1990, I was confirmed as Deputy Attorney General of the United States. As Deputy Attorney General (1990 – 1991), my responsibilities became more managerial in nature, overseeing the day-to-day operations of the Department of Justice. I also participated as a member of the National Security Council Deputies' Committee. In 1991, I was confirmed as Attorney General of the United States and served in that role until 1993.

After my service in the Department of Justice, I rejoined Shaw, Pittman, Potts & Trowbridge, working from 1993 to 1994 as a partner, before joining GTE Corporation. During my tenure with Shaw, Pittman, Potts & Trowbridge, with the exception of a case I argued representing the Republic of the Philippines against Westinghouse Electric Co. (*Republic of Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65 (3rd Cir. 1994)), I did not litigate in court, and instead advised clients on litigation strategy and questions of law arising in litigation.

From 1994 to 2008, I served as the Senior Vice President and General Counsel of GTE Corporation and then its successor corporation, Verizon Communications. Approximately half of my work involved supervising the company's advocacy in regulatory proceedings before state public utilities commissions and the Federal Communications Commission. I managed and participated in a series of both administrative and federal court litigation challenging Federal Communications Commission regulations that required local phone companies to unbundle their networks and provide the unbundled elements at wholesale prices to competitors. I also developed and conducted litigation challenging the WorldCom and MCI merger, arguing the case before a competition panel of the European Commission. Apart from litigation and regulatory matters, approximately half my work at GTE Corporation and Verizon Communications consisted of supervising commercial and corporate work, including securities, M&A, employment, intellectual property, compliance, and corporate governance.

After I retired from Verizon Communications, I joined Kirkland & Ellis as Of Counsel in 2009, where I engaged in firm promotional activities. Following my time at Kirkland & Ellis, from 2009 to 2017, I served on several corporate boards.

In 2011, Kirkland & Ellis engaged me as a self-employed consultant to provide advice on the BP Gulf of Mexico oil spill. In early 2012, BP retained me to provide consulting services to the company directly on this matter. I stopped work on this project in the summer of 2012 due to a grave health crisis in my family. In 2014, the law firm of White & Case retained me as a consultant to assist the firm in providing advice to Credit Agricole with respect to a Department of Justice investigation. My involvement in this matter was limited and ended around 2015. In 2017, Caterpillar, Inc. requested me to represent the company in connection with a Department of Justice grand jury investigation. I rejoined Kirkland & Ellis on a non-exclusive basis to accept the Caterpillar, Inc. engagement. Recently, consistent with my agreement with Kirkland & Ellis, and approved by the firm, I have been retained by Cerberus Capital Management to advise on regulatory aspects of multiple potential private equity investments.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

In private practice at Shaw, Pittman, Potts & Trowbridge and Kirkland & Ellis, the firms' clients were mainly national or large local corporations.

In government service, at the White House and the Department of Justice my clients have included public institutions, such as the President, the Office of the President, and the United States.

During my tenure at GTE Corporation and Verizon Communications, my clients were the companies.

In my role as a consultant, my clients are mainly national or large local corporations

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

During my first period with Shaw, Pittman, Potts & Trowbridge as an associate (1978 to 1982), my appearances in federal cases were infrequent and were usually handled by the supervising partner. I occasionally appeared in state court cases, usually to argue motions. Most of the cases upon which I worked either were settled or disposed of on motion.

Upon returning to Shaw, Pittman, Potts & Trowbridge in 1983, after a stint in the Office of Policy Development at the White House, I took on fewer cases and assumed lead responsibility on my matters. My court appearances were more frequent, either in federal court or administrative tribunals.

After my service in the Department of Justice (1989 to 1993), I rejoined Shaw, Pittman, Potts & Trowbridge as a partner for approximately a year and a half. During this time, I argued a case representing the Republic of the Philippines against Westinghouse Electric Co. (*Republic of Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65 (3rd Cir. 1994)). Other than this, during this period, I did not litigate in court, but advised clients on litigation matters.

When I worked for GTE Corporation (1994 to 2000) and then its successor corporation, Verizon Communications (2000 to 2008), approximately half of my work involved supervising the company's advocacy in regulatory proceedings before state public utilities commissions and the Federal Communications Commission. I was heavily involved in drafting briefs and argued appellate level cases concerning Federal Communications Commission regulations. I also challenged the WorldCom and MCI merger before a competition panel of the European Commission.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 45% (approx.)
 - 2. state courts of record: 15% (approx.)
 - 3. other courts: 0%
 - 4. administrative agencies: 40% (approx.)

- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings: 85% (approx.)
 - 2. criminal proceedings: 15% (approx.)

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

At Shaw, Pittman, Potts & Trowbridge, I tried three matters to final decision as associate counsel. As chief counsel I have directly participated in trying several matters to final decision and briefed and argued various appellate cases.

- i. What percentage of these trials were:
 - 1. jury: 0%
 - 2. non-jury: 100%

- e. Describe your practice, if any, before the Supreme Court of the United States.

Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have argued three cases before the Supreme Court of the United States: *Brecht v. Abrahamson*, 507 U.S. 619 (1993); *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999); and *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002).

Citations to briefs, amicus or otherwise, and, any oral argument transcripts reflecting my practice before the Supreme Court of the United States are supplied in Appendix 14e.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Atchison, T. & S.F.Ry. Co. v. Alexander*, 480 F.Supp.980 (D.D.C. 1979), *aff'd in part, rev'd in part sub nom., Izaak Walton League of America v. Marsh*, 655 F.2d 346 (D.C. Cir.), *cert. denied*, 454 U.S. 1092 (1981) (District Judge: Richey) (Circuit Judges: Wright, Robb, and Penn)

Almost one-quarter of my time from October 1978 through July 1981 was devoted to defending against an action brought by 18 midwestern railroads and three environmental groups challenging, under the National Environmental Policy Act and the Administrative Procedure Act, a Corps of Engineers' decision to construct an expanded replacement facility for Lock & Dam 26 on the Mississippi River. We represented the defendant-intervener, Association for the Improvement of the Mississippi River ("AIMR"), an association of over 350 municipalities, businesses, farm and labor organizations, waterway carriers, and shippers that depend on waterway transportation. The case involved extremely complex technical and legal issues. Although the Corps was represented by the Department of Justice, AIMR played a leading role in all aspects of the case. I was responsible for legal research, developing factual and expert evidence, discovery, trial preparation, and drafting numerous motions, pre-trial and post-trial briefs, appellate briefs, and an opposition to a petition for certiorari. The trial

court found for the Corps and AIMR; the Court of Appeals upheld the trial court on all material points.

Principal Counsel:

Fred Disheroon
Deceased

Joseph V. Karaganis
Karaganis Law Office P.C.
414 North Orleans Street, Suite 810
Chicago, Illinois 60610
(212) 870-3500

2. *Murray v. Henry J. Kaiser Co.*, 84-ERA-4 (1984) (DOL ALJ: Rokentenetz)

From September 1983 through May 1984, I defended Henry J. Kaiser Co. (“HJK”), constructors of the William H. Zimmer nuclear power plant, against a “whistleblower” suit brought by a discharged employee under the Energy Reorganization Act. The case was highly sensitive because it was litigated during a pending grand jury investigation into alleged conduct by HJK in the construction of the nuclear power plant, including some of the allegations raised by the discharged employee. I was responsible for developing factual evidence, discovery, trial preparation, and drafting a pre-trial statement and post-trial brief. The case was tried before a Department of Labor administrative law judge in Cincinnati, Ohio. I personally tried half the case, with a Shaw, Pittman, Potts & Trowbridge partner trying the other half. The ALJ decided for HJK.

Principal Counsel:

Andrew B. Dennison
Current Contact Information Unknown

3. *Rapps v. United States, et al.*, Civil No. 78-0612 (D.D.C.) (Judge: Parker)

From October 1978 to March 1980, I defended a former high-level Consumer Product Safety Commission (“CPSC”) official (Dimcoff) in an action brought by another former CPSC official (Rapps) against the CPSC and several current and former CPSC officials for violations of constitutional, statutory, and common law rights. The other federal defendants were represented by the Department of Justice. The case, which involved numerous complex legal issues, settled on the eve of trial. I was responsible for the factual investigation, extensive legal research, conducting most discovery, and drafting numerous motions, including motions to dismiss, motions for summary judgment, and a pre-trial statement. During discovery, I successfully overcame a claim of newsman’s privilege by a journalist witness.

Principal Counsel:

Raymond Battocchi
Gabeler Battocchi and Powell PC
Madison Building
1320 Old Chain Bridge Road, Suite 200
McLean, Virginia 22101
(888) 399-8104

Lawrence Moloney
Current Contact Information Unknown

4. *Gutherz v. U.S. World & News Report*, 86 Civ. 2517 (GLG) (S.D.N.Y.)
(Judge: Goettel)

From February 1986 to March 1989, I was lead counsel defending U.S. News & World Report in a large, multi-plaintiff age discrimination suit under the Age Discrimination in Employment Act. The suit arose from the termination of half of U.S. News' advertising sales force after the magazine was taken over by a new owner. I conducted and defended extensive discovery, represented U.S. News & World Report in all court appearances, and drafted and argued a motion for summary judgment. The motion was denied.

Principal Counsel:

Judith Vladeck
Deceased

Anne Vladeck
Vladeck, Raskin & Clark, P.C.
565 5th Avenue
New York, New York 10017
(212) 403-7300

5. *Brecht v. Abrahamson*, 507 U.S. 619 (1993)

Certiorari was granted to review whether the *Chapman* harmless error standard applied on collateral review of *Doyle* violations. Todd Brecht was sentenced to life imprisonment after he was convicted of murder for shooting his brother-in-law. The state court of appeals overturned Brecht's conviction on the ground that the state's references to his post-Miranda silence violated due process under *Doyle*. The state supreme court reinstated the conviction finding that while the mention of post-Miranda silence was impermissible under *Doyle*, it was also harmless error under *Chapman*. Brecht sought a writ of habeas corpus, reasserting his *Doyle* claim. The district court set aside the conviction, and the

court of appeals reversed, holding that the *Chapman* harmless error standard did not apply in reviewing a *Doyle* error on federal habeas review. I argued the case before the Supreme Court on behalf of the United States as amicus curiae in support of Gordon A. Abrahamson, Superintendent of Dodge Correctional Institution. The Supreme Court affirmed the decision of the court of appeals, holding that the *Doyle* violation did not substantially influence the jury's verdict.

Principal Counsel:

Allen E. Shoenberger
Loyola University Chicago School of Law
Corboy Law Center
25 E. Pearson Street
Chicago, Illinois 60611
(312) 915-7141

Sally L. Wellman
Current Contact Information Unknown

6. *Republic of Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65 (3rd Cir. 1994) (Judges: Becker, Lewis, Pollak)

In 1988, the Republic of the Philippines and the National Power Corporation filed a complaint against a number of entities, including Westinghouse Electrical Corporation and Westinghouse International Projects Company (collectively "Westinghouse"), concerning the construction of a nuclear power plant in Bagac, Bataan. Following a lengthy trial, the jury returned a verdict for Westinghouse and the other entities on certain claims. The Republic of the Philippines sought to collaterally appeal the issues that had been adjudicated, but the district court adjudicated additional issues and ultimately issued an injunction against the Republic of the Philippines. It further directed that any settlement in the case must provide that the parties agree to the court's retention of jurisdiction. The Republic of the Philippines appealed. I argued the matter before the Third Circuit. The injunctive portions of the district court's order were vacated and the matter was remanded for a redetermination of sanctions.

Principal Counsel:

Richard W. Clary
Cravath, Swaine & Moore LLP
825 8th Avenue
New York, New York 10019
(212) 474-1227

Glenn A. Mitchell
Deceased

7. *GTE Corp. and Bell Atlantic Corp.*, Docket No. 98-184 (F.C.C. 1998 – 2000)

From 1998 to 2000, I served as lead antitrust counsel to GTE Corporation in seeking regulatory approval from the Department of Justice and the Federal Communications Commission for the company's merger with Bell Atlantic. I also served as GTE Corporation's lead counsel when the parties to the merger and AT&T Corporation litigated certain regulatory issues before the Federal Communications Commission.

Principal Counsel:

Paul Cappuccio
WarnerMedia
1 Time Warner Center
New York, NY 10019
(212) 484-8000

Steven G. Bradbury
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590
(202) 366-4702

Peter Keisler
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8027

John Thorne
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, D.C. 20036
(202) 326-7992

8. *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999)

From 1996 to 2002, I represented GTE Corporation and led an industry challenge to the Federal Communications Commission unbundling and pricing rules under the Telecommunications Act of 1996. This involved a suite of six court of appeals cases and two Supreme Court cases. I briefed and argued the following cases: *Iowa Utilities Bd. v. FCC*, 109 F. 3d 418 (8th Cir. 1996) (before Judges Bowman, Wollman and Hansen); *Iowa Utilities Bd. v. FCC*, 120 F. 3d 753 (8th Cir. 1997) (before Judges Bowman, Wollman and Hansen); *AT&T Corp. v. Iowa*

Utilities Bd., 525 U.S. 366 (1999); *Iowa Utilities Bd. v. FCC*, 219 F. 3d 744 (8th Cir. 2000) (before Judges Bowman, Wollman and Hansen); and *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002). In addition, I argued *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (before Smith, Dube, Garza), and briefed *US Telecom Ass'n v. FCC*, 290 F. 3d 415 (D.C. Cir. 2002) (before Judges Edwards, Randolph and Williams).

AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999) addressed, in consolidated cases, whether the Federal Communications Commission had authority to implement certain pricing and competition provisions set out in the 1996 Telecommunications Act, including an unbundling rule, setting forth the minimum number of network elements that local exchange carriers must make available to requesting providers. Local Exchange Carriers (“LECs”) and state commissions alleged that primary authority to implement local competition provisions belonged to the states rather than to the Federal Communications Commission. The Supreme Court held that notwithstanding the local nature of some of the LECs, the Federal Communications Commission had rulemaking authority to uphold the provisions in question. Citing the interconnectivity of LECs with regional and national carriers, the Supreme Court concluded the Federal Communications Commission could also reach LEC markets and regulate their business practices.

Principal Counsel:

Laurence Tribe
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Michael K. Kellogg
Kellogg, Hansen, Todd, Figel & Frederick
1615 M Street, NW
Suite 400
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Seth Waxman
WilmerHale
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Washington, D.C. 20006
(202) 663-6000

Donald B. Verrilli Jr.
Munger, Tolles & Olson LLP
1155 F Street, NW

Washington, D.C. 20004
(202) 220-1101

9. *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002)

The Telecommunications Act of 1996 entitled new companies seeking to enter local telephone service markets to lease elements of the incumbent carriers' local exchange networks and the Federal Communications Commission was authorized to prescribe methods for state utility commissions to use in setting rates for the sharing of those elements. Certiorari was granted to address whether, among other issues, the Federal Communications Commission could require state utility commissions to set the rates charged by the incumbents for leased elements on a forward-looking basis untied to the incumbents' investment. The Supreme Court held that the Federal Communications Commission prescribed methods were reasonably within the limits of statutory possibility.

Principal Counsel:

Theodore B. Olson
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
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(202) 955-8668

Donald B. Verrilli Jr.
Munger, Tolles & Olson LLP
1155 F Street, NW
Washington, D.C. 20004
(202) 220-1101

Peter Keisler
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8027

10. *WorldCom/MCI*, Commission Decision No. IV/M.1069 (1998)
(Commissioner: Miert)

As GTE General Counsel, I developed and brought an antitrust challenge in the European Commission against the proposed merger of MCI and WorldCom in 1998. I presented and argued the case before a competition panel of the European Commission, successfully obtaining the relief sought—divestiture of certain internet backbone assets.

Principal Counsel:

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1299 Pennsylvania Avenue, NW
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Washington, D.C. 20004
(202) 383-6890

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While at Shaw, Pittman, Potts & Trowbridge (1983 – 1989), I worked on the following significant legal matters where I was the sole associate, supervised by one partner.

Zimmer Grand Jury Investigation (1983 – 1984). I spent the substantial part of a year successfully defending Henry J. Kaiser Co. in connection with a grand jury investigation into possible violations of federal law in the construction of the William H. Zimmer nuclear power plant in Ohio. I also handled a parallel Nuclear Regulatory Commission investigation and three related whistleblower cases.

National Air Transportation Association (1985). I represented the National Air Transportation Association in connection with proposed IRS regulations on the use of employer-provided aircraft.

National Automobile Dealers Association (1985 – 1989). I represented the National Automobile Dealers Association on a variety of tax issues. In 1985 and 1986 I prepared and submitted a series of formal comments on proposed IRS regulations regarding the taxation of auto salesmen's demonstrators.

Knights of Columbus (1984 – 1989). I represented the Knights of Columbus in connection with preserving the tax exemption for "fraternal benefit societies" under Section 501(c)(8). During 1985 and 1986, I prepared and submitted numerous comments. I also assisted the Knights of Columbus in prevailing before the Administration and House Ways & Means Committee to preserve an exemption in "Treasure II" and subsequent Tax Reform legislation.

Sallie Mae (1988). I represented Sallie Mae in connection with Department of Education regulations relating to due diligence requirements under the Guaranteed Student Loan Program.

Taiwan Power (1986 – 1988). I represented the government-owned utility of Taiwan in connection with its pre-sanction, long-term supply contracts for Namibian uranium. I unsuccessfully sought from the Treasury Department an interpretation of sanctions legislation that would allow for "in transit" processing of Taiwan Power's uranium.

Equitable of Iowa (1987 – 1988). I represented a Des Moines-based company in opposing a Urban Development Action Grant for the development of a major shopping mall on the outskirts of Des Moines. I prepared extensive submissions to the Department of Housing and Urban Development. The grant was not awarded.

While at GTE Corporation (1994 – 2000) and Verizon Communications (2000 – 2008), I

was substantially and directly involved in planning and executing the following four major transactions.

GTE Corporation's Acquisition of BBN Technologies (1997). This transaction in which GTE Corporation acquired BBN Technologies, an internet backbone company, was valued at approximately \$616 million.

GTE Corporation's Merger with Bell Atlantic (1998 – 2000). This \$64 billion transaction formed Verizon Communications. Following the merger, I was appointed Executive Vice President and General Counsel of Verizon Communications, serving as the company's chief legal officer and overseeing its federal and state regulatory functions.

Verizon Communication's Acquisition of MCI Communications (2006). This involved an \$8.5 billion transaction in which I supervised the legal and regulatory work to acquire MCI Communications through an intense bidding war against Qwest Communications.

Verizon Communication's Acquisition of Alltel (2007). I supervised the legal and regulatory aspects of Verizon Communication's acquisition of Alltel in a \$28 billion transaction.

As part of my responsibilities as General Counsel at GTE Corp. and Verizon Communications, I occasionally engaged in lobbying activities. From 2005 to 2006, I was registered in Virginia for Verizon Communications.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

In the Fall of 1987, I assisted a Shaw, Pittman, Potts & Trowbridge colleague by teaching one of his Legal Research & Writing sections at the George Washington University Law School. I do not have a copy of the syllabus.

In the Spring of 2015, I co-taught a constitutional law seminar, Original Meaning Research, at the George Washington University Law School with Professor Gregory E. Maggs. A copy of the syllabus is supplied.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have vested unexercised AT&T stock options valued at approximately \$270,000.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

None.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

The Office of Government Ethics will deliver my 278-E directly to the Senate Judiciary Committee.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see the attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My daughter is a practicing lawyer and works for the Department of Justice in the Deputy Attorney General's Office. Both my son-in-laws are practicing lawyers—one works for the Department of Justice in the National Security Division and the other works in the U.S. Attorney's Office for the Eastern District of Virginia.

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.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

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.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar

Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional work load, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While at Shaw, Pittman, Potts & Trowbridge I engaged in approximately 111 hours of pro bono work between 1980 and 1987. In addition, the partnership made substantial contributions to support groups providing legal services to the indigent and those in need.

At GTE Corporation and Verizon Communications, I personally handled two pro bono matters. First, between 1997 and 2001, I spent approximately 80 hours organizing amici (including former Attorneys General) to support an FBI sniper in defending against criminal charges in connection with the Ruby Ridge incident in Idaho. I enlisted a law firm to work pro bono on the case and assisted in framing legal arguments advanced by the amici in the district court and the subsequent appeal to the Ninth Circuit. Second, from 1999 to approximately 2002, I represented a clerical employee with cerebral palsy who had been terminated from his job in a law school library. I represented him through the grievance process and he was reinstated. I also represented him in a subsequent dispute that ultimately led to his leaving the school. I spent over 50 hours on these matters.

During my tenure at Verizon Communications, I took on responsibility for supporting the company's historic relationship with the Archdiocese of New York. My particular charitable focus was, and remains, raising scholarship funds to pay the tuitions of inner-city children attending Catholic parochial schools in diocese. I joined the board of the Archdiocese's Inner-City Scholarship Fund and have spent considerable time fundraising.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	7	638	466	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	15	691	521	Notes payable to relatives			
Unlisted securities – see schedule	8	070	179	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		60	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – see schedule	4	200	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance	1	089	500				
Other assets itemize:							
				Total Liabilities			
				Net Worth	36	899	666
Total Assets	36	899	666	Total liabilities and net worth	36	899	666
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			No
On leases or contracts				Are you defendant in any suits or legal actions?			No
Legal Claims				Have you ever taken bankruptcy?			No
Provision for Federal Income Tax							
Other special debt							

Net Worth Schedule as of December 14th, 2018Listed Securities

Dominion Energy Stock (D)	\$	2,890,685
AT&T (T)	\$	1,174,719
BANK OF AMERICA CORP VAR RT 04/23/2166	\$	523,875
MORGAN STANLEY PFD 6.375%	\$	509,200
CITIGROUP INC VAR RT 05/15/2166 5.80%	\$	503,413
CITIGROUP INC VAR RT 05/15/2166 6.12%	\$	501,472
JPMORGAN CHASE & CO PFD 5.75%	\$	495,235
J.P. Morgan Global Bond Opportunities Fund (GBOSX)	\$	448,108
Altria (MO)	\$	435,181
VA ST CMWLTH TRANSPRTN BRD TRANSPRTN REV CAP	\$	428,236
SDPR Gold (GLD)	\$	399,760
Pfizer (PFE)	\$	363,365
JPMORGAN CHASE & CO VAR RT PFD STK 10/30/2167	\$	362,487
Merck (MRK)	\$	310,738
NISOURCE INC VAR RT PERP MAT	\$	285,862
NY ST ENVRNMTL FACS CORP ST CLEAN WTR & DRINKING WTR	\$	284,895
MA ST CLEAN WTR TR ST REVOLVING FD-GREEN BOND	\$	282,067
NORTH TX TWY AUTH REV SPL PROJS SYS 5 1/2% A SEP 01 2036 DTD	\$	277,921
DIST OF COLUMBIA SER C UNLIMITED TAX 5.000% 06/01/2038	\$	276,323
AT&T Stock (T) Options	\$	270,412
BANK OF AMERICA CORP 5.125%	\$	256,713
GENERAL MOTORS FINL CO	\$	250,049
PALM BEACH CNTY FL PUB IMPT REV REF 5.000% 05/01/2035	\$	227,824
FAIRFAX CNTY VA WTR AUTH WTR REV REF 5.000% 04/01/2028	\$	221,264
UNIV OF VA VA UNIV REVS REF-GEN-SER A 5.000% 06/01/2043	\$	219,748
MET TRANSPRTN AUTH NY REV TRANSPRTN-SUBSER A-1 5.000%	\$	216,305
FAIRFAX CNTY VA ECON DEV AUTHTRANSPRTN DIST IMPT REV	\$	215,487
UPPER OCCOQUAN VA SEW AUTHREGL SEW REV	\$	215,233
CHICAGO IL REF PROJS UNLIMITED TAX 5% A 01/01/2029	\$	204,328
JPMORGAN CHASE & CO VAR RT 01/01/2166	\$	204,135
NY CITY NY MUNI WTR FINAUTH WTR & SWR SYS REV	\$	201,410
Deutsche Bank Structured Equity Note (25155MHB0)	\$	184,176
NORTH CENTRAL TEXAS HEALTH FAC DEV REV BDS	\$	155,755
Selected American Shares (SLADX)	\$	117,704
FAIRFAX CNTY VA INDL DEV AUTHREV HLTH CARE	\$	105,503
J.P. Morgan Floating Rate Income Fund (JPHSX)	\$	101,694
J.P. Morgan High Yield Fund (OHYFX)	\$	100,607
J.P. Morgan Strategic Income Opportunities Fund (JSOSX)	\$	81,827
Bank of America (BAC)	\$	79,432
Bristol-Myers Squibb (BMY)	\$	69,580
Nuveen Municipal Credit Income Fund (NZF)	\$	45,236
GMAC 8% NOV 01 2031 DTD 12/31/2008	\$	29,131
Vector Group (VGR)	\$	27,595
REGIONS FINANCIAL CORP NT	\$	25,036
ROYAL BK SCOTLND GRP PLC 6.125% 12/15/2022	\$	23,451
CCO HLDGS LLC/CAP CORP 5.750% 01/15/2024	\$	22,672
UNITED RENTALS NORTH AM 5.500%	\$	22,397
EMC CORP 3.375% 06/01/2023	\$	21,727
ENERGY TRANSFER EQUITY 7 1/2% OCT 15 2020	\$	21,308
T-MOBILE USA INC 6.375% 03/01/2025	\$	21,051
MGM RESORTS INTL 6.625% 12/15/2021	\$	21,031
DISH DBS CORP 7 7/8% SEP 01 2019	\$	20,939

WM S HART CALIFORNIA UNION HIGH SCH DIST	\$	19,746
ARCONIC INC 5.125% 10/01/2024	\$	19,691
BALL CORP 4.000% 11/15/2023	\$	19,671
CENTURYLINK INC 5.8% MAR 15 2022	\$	18,997
EQUINIX INC 5.875% 01/15/2026	\$	18,852
TECK COMINCO LIMITED NOTES 6 1/8% OCT 1 2035	\$	17,050
L BRANDS INC 5.625% 10/15/2023	\$	17,037
CIT GROUP INC 5.000% 08/01/2023	\$	16,361
ICAHN ENTERPRISES/FIN 6.750% 02/01/2024	\$	15,513
CROWN AMER/CAP CORP IV 4.500% 01/15/2023 DTD	\$	15,116
VA ST RES AUTH INFRASTRUCTURE REV	\$	15,100
HCA INC 5.500% 06/15/2047	\$	14,667
PTC INC 6.000% 05/15/2024	\$	14,390
ADT CORP 4.125% 06/15/2023	\$	14,056
TENET HEALTHCARE CORPORATION 4.500%	\$	13,923
BLUE CUBE SPINCO INC 9.750% 10/15/2023	\$	12,463
CINEMARK USA INC 5.125% 12/15/2022	\$	11,883
SOUTHWESTERN ENERGY CO 4.950% 01/23/2025	\$	11,698
SPRINGLEAF FINANCE CORP 6.875% 03/15/2025	\$	11,401
CIT GROUP INC 5% AUG 15 2022	\$	11,255
GANNETT CO INC 5.125% 07/15/2020	\$	11,205
SERVICE CORP INTL 5.375% 05/15/2024	\$	11,163
CENTENE CORP 4.750% 05/15/2022	\$	11,088
SM ENERGY CO 5.625% 06/01/2025	\$	11,070
WELLCARE HEALTH PLANS 5.250% 04/01/2025	\$	11,039
MASTEC INC 4.875% 03/15/2023	\$	11,000
POLYONE CORP 5.250% 03/15/2023	\$	10,969
CDW LLC/CDW FINANCE 5.000% 09/01/2025	\$	10,950
AES CORPORATION 4.875% 05/15/2023	\$	10,931
NRG YIELD OPERATING LLC 5.375% 08/15/2024	\$	10,870
CHEMOURS CO 7.000% 05/15/2025	\$	10,337
LENNAR CORP 4.500% 06/15/2019	\$	10,015
TELECOM ITALIA CAPITAL 7.721% JUN 4 2038	\$	10,003
RANGE RESOURCES CORP 4.875% 05/15/2025	\$	10,003
UNIT CORP 6 5/8% MAY 15 2021	\$	9,671
FREEMONT-MCMORAN C & G 3.875% 03/15/2023	\$	9,424
MURPHY OIL CORP 6.875% 08/15/2024	\$	9,322
CLEAR CHANNEL WORLDWIDE 6.500% 11/15/2022	\$	9,176
EMBARQ CORP NOTES 7.995% JUN 1 2036	\$	8,424
NOKIA OYJ 4.375% 06/12/2027	\$	8,398
LAMAR MEDIA CORP 5.750% 02/01/2026	\$	8,394
TENET HEALTHCARE CORP 6.000%	\$	8,251
HCA INC 4.75% MAY 01 2023	\$	8,049
GLP CAPITAL LP / FIN II 5.375% 04/15/2026	\$	8,047
UNITED CONTINENTAL HLDGS 5.000% 02/01/2024	\$	7,991
WYNDHAM WORLDWIDE CORP 5.100% 10/01/2025	\$	7,966
SPECTRUM BRANDS INC 5.750% 07/15/2025	\$	7,854
TELEFLEX INC 4.875% 06/01/2026	\$	7,757
WESTERN DIGITAL CORP 4.750% 02/15/2026	\$	7,269
CDK GLOBAL INC SR NTS 5.875% 06/15/2026	\$	7,039
DIAMONDBACK ENERGY INC 5.375% 05/31/2025	\$	7,000
CF INDUSTRIES INC 5.150% 03/15/2034	\$	6,965
ICAHN ENTERPRISES/FIN 6.375% 12/15/2025	\$	6,854
CNO FINANCIAL GROUP INC 5.250% 05/30/2025	\$	6,825
GROUP 1 AUTOMOTIVE INC 5.000% 06/01/2022	\$	6,762

COMMERCIAL METALS CO 4.875% 05/15/2023	\$	6,698
RADIAN GROUP INC 4.500% 10/01/2024	\$	6,664
GOODYEAR TIRE & RUBBER 5.000% 05/31/2026	\$	6,369
CHOICE HOTELS INTL INC 5.75% JUL 01 2022	\$	6,324
ARAMARK SERVICES INC 5.125% 01/15/2024	\$	6,161
TRANSDIGM INC 6.000% 07/15/2022	\$	6,152
ANIXTER INC 5.125% 10/01/2021	\$	6,140
SCOTTS MIRACLE-GRO CO 6.000% 10/15/2023	\$	6,115
AECOM 5.875% 10/15/2024	\$	6,106
AMERICAN AXLE & MFG INC 6.625%	\$	6,093
HCA INC 4.250% 10/15/2019	\$	6,051
CENTENE CORP 4.750% 01/15/2025	\$	6,045
NIELSEN FINANCE LLC/CO 4.500% 10/01/2020	\$	6,045
TARGA RESOURCES PARTNERS 5.250% 05/01/2023	\$	6,018
CEDAR FAIR LP/CANADA'S W 5.375% 06/01/2024	\$	6,014
CYRUSONE LP/CYRUSONE FIN 5.000% 03/15/2024	\$	5,987
B&G FOODS INC 4.625% 06/01/2021	\$	5,936
ANTERO RESOURCES CORP 5.125% 12/01/2022	\$	5,871
FREEMONT-MCMORAN INC 4.000% 11/14/2021	\$	5,865
HILTON DOMESTIC OPERATIN 4.250% 09/01/2024	\$	5,813
NUANCE COMMUNICATIONS 5.625% 12/15/2026 DTD	\$	5,775
GRAPHIC PACKAGING INTL 4.125% 08/15/2024	\$	5,754
VIACOM INC VAR RT 02/28/2057	\$	5,707
ENLINK MIDSTREAM PARTNER 4.850% 07/15/2026	\$	5,671
CENOVUS ENERGY INC 4.45% SEP 15 2042	\$	5,619
CLEARWATER PAPER CORP 4.500% 02/01/2023	\$	5,562
GOODYEAR TIRE & RUBBER 4.875% 03/15/2027	\$	5,490
TELECOM ITALIA CAPITAL 6% 09/30/2034	\$	5,357
CHENIERE CORP CHRISTI HD 5.875% 03/31/2025	\$	5,305
TOLL BROS FINANCE CORP 5 7/8% FEB 15 2022	\$	5,218
VERISIGN INC 4.625% 05/01/2023	\$	5,042
HILTON GRAND VACA LLC/IN 6.125% 12/01/2024	\$	5,007
SPRINGLEAF FINANCE CORP 6.125% 05/15/2022	\$	5,002
ALCOA INC 5.9% FEB 01 2027	\$	4,999
CRESTWOOD MIDSTREAM PART 6.250% 04/01/2023	\$	4,978
FREEMONT-MCMORAN C & G 5.450% 03/15/2043	\$	4,865
WPX ENERGY INC SR NTS 5.75% 06/01/2026	\$	4,838
NABORS INDUSTRIES INC 4.625% SEP 15 2021	\$	4,701
M/I HOMES INC 5.625% 08/01/2025	\$	4,681
AMERIGAS PART/FIN CORP 5.500% 05/20/2025	\$	4,660
DYNEGY INC 7.625% 11/01/2024	\$	4,299
NEWFIELD EXPLORATION CO 5.625% JUL 01 2024	\$	4,234
ENLINK MIDSTREAM PARTNER 5.600% 04/01/2044	\$	4,103
RADIAN GROUP INC 5.250% 06/15/2020	\$	4,061
DELL INC 4 5/8% APR 01 2021	\$	3,999
COVANTA HOLDING CORP 5.875% 03/01/2024	\$	3,929
DCP MIDSTREAM OPERATING 3.875% 03/15/2023	\$	3,875
ALCOA INC NT DTD 01/25/2007 5.95%	\$	3,850
NRG ENERGY INC 6.625% 01/15/2027	\$	3,159
MERITAGE HOMES CORP 7% APR 01 2022	\$	3,149
CF INDUSTRIES INC 7 1/8% MAY 01 2020	\$	3,136
NETFLIX INC 5.875% 02/15/2025	\$	3,113
VERISIGN INC 5.250% 04/01/2025	\$	3,075
WPX ENERGY INC 6% JAN 15 2022	\$	3,069
LAMAR MEDIA CORP 5.000% 05/01/2023	\$	3,027

CARPENTER TECHNOLOGY 4.450% 03/01/2023	\$	3,018
AVIS BUDGET CAR/FINANCE 5.500% 04/01/2023	\$	2,982
REYNOLDS GRP ISS/REYNOLD 144A 5.75%	\$	2,932
TECK RESOURCES LIMITED 6% AUG 15 2040	\$	2,904
AMERIGAS FINANCE LLC/COR 5.875% 08/20/2026	\$	2,844
TRANSMONTAIGE PARTNERS 6.125% 02/15/2026	\$	2,755
NOKIA CORP 5 3/8% MAY 15 2019	\$	2,015
DISH DBS CORP 6 3/4% JUN 01 2021	\$	2,006
SPDR S&P 500 (SPY)	\$	1,849
CHICAGO IL O'HARE INTERNATIONA PREREFDED	\$	1,821
SPDR S&P 400 MidCap (MDY)	\$	1,708
CITIGROUP INC PFD 6.875%	\$	1,294
WELLS FARGO & COMPANY PFD 5.85%	\$	987
CHICAGO IL O'HARE INTERNATIONA UNREFDED-GEN	\$	380
Total Listed Securities	\$	15,891,521

Unlisted Securities

Global Access Hedge Fund	\$	1,861,005
Mackay Municipal Strategic Opportunities Fund	\$	1,144,383
CAP IV Private Investors	\$	592,296
Benefit Street Partners IV	\$	575,440
Watford Real Estate	\$	533,375
PEG Digital Growth Fund II	\$	513,788
Cerberus VI Private Investors	\$	451,422
Providence Debt III Private Investors	\$	421,813
BSREP II Private Investors	\$	415,353
BGP VI Private Investors	\$	361,682
HPS Mezzanine Private Investors III	\$	323,547
NDI Healthcare Fund	\$	263,752
Angelo Gordon Opportunistic Whole Loan Select	\$	186,941
SLA Private Investors	\$	132,914
Starwood SOF VIII Private Investors	\$	89,027
GIF IV Private Investors	\$	67,666
Blackstone GSO Private Investors	\$	57,878
Providence VII Private Investors	\$	46,213
Providence TMT Debt Opportunity Fund	\$	19,504
ILM Capital	\$	7,136
Apollo EPF Private Investors	\$	5,047
CAP V Private Investors	\$	-
Providence VIII Private Investors	\$	-
Total Unlisted Securities	\$	8,070,179

Real Estate Owned

McLean, VA	\$	2,200,000
White Stone, VA	\$	2,000,000
Total Real Estate Owned	\$	4,200,000

United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 12(a)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

With Edwin Meese III and Michael B. Mukasey, *Thank You for Your Work, Mr. Sessions*, Wash. Post, Nov. 8, 2018, at A17. Copy supplied.

Comey is Gone, the Russia Probe Isn't, Wash. Post, May 14, 2017, at A25. Copy supplied.

Trump Was Right To Fire Sally Yates; Her Action Must Go Down as a Serious Abuse of Office, Wash. Post, Feb. 1, 2017. Copy supplied.

The FBI Director Merely Corrected the Record, Wash. Post, Nov. 1, 2016, at A17. Copy supplied.

With Jamie S. Gorelick and Kenneth L. Wainstein, *Stop the Leaks*, N.Y. Times, May 21, 2013, at 25. Copy supplied.

With Edwin Meese III, *'Unseemly' and 'Dodgy' Maneuvers Would Invite Legal Challenges*, National Review, Mar. 19, 2010. Copy supplied.

With Henry Weissmann and John P. Frantz, *The Gild That is Killing the Lily: How Confusion Over Regulatory Takings Doctrine is Undermining the Core Protections of the Takings Clause*, 73 Geo. Wash. L. Rev. 429 (2005). Copy supplied.

High Court Clerks and Appellate Lawyers Decry Vanity Fair Article, Legal Times, Sept. 27, 2004. Copy supplied.

Tackling Terrorists, Quickly, Wash. Post, Oct. 8, 2003. Copy supplied.

With Barbara Hart, *Telecommunications: Are Class Actions Lawyers Systematically Targeting Regulated Industries?*, 4 Engage 143 (2003). Copy supplied.

With Andrew G. McBride, *Are Military Tribunals Appropriate? Yes, They Conform to Law*, Milwaukee J. Sentinel, Nov. 24, 2001, at 15A. Copy supplied.

With Andrew G. McBride, *Military Justice for al Qaeda*, Wash. Post, Nov. 18, 2001. Copy supplied.

With Griffin Bell, Edwin Meese III, and Richard Thornburgh, *Let Starr Do His Job*, Wall St. J., Mar. 11, 1998. Copy supplied.

Should Congress Refuse to Shorten Sentences for Crack?, Deseret News, Oct. 4, 1997. Copy supplied.

The Independent Counsel Process: Is It Broken and How Should It Be Fixed?, A five-panel program presented at the opening session of the Sixty-Seventh Judicial

Conference of the Fourth Circuit, Panel One, 54 Wash. & Lee L. Rev. 1515 (June 27, 1997). Copy supplied.

FEC Appears to Have Focused Its Attention on Conservative Groups, *Virginian Pilot*, Aug. 22, 1996. Copy supplied.

Rule of Law: The FEC's War Against the First Amendment, *Wall St. J.*, Aug. 14, 1996, at A13. Copy supplied.

A Practical Solution to Crime in our Communities, 1 *Mich. L. & Pol'y Rev.* 393 (1996). Copy supplied.

Regulatory Reform: Recognizing Market Realities. Telecommunications, Vol. V29, Issue 1, January 1, 1995. Copy supplied.

Legal Issues in a New Political Order, 36 *Cath. Law.* 1 (1995). Copy supplied.

Foreword, "Fighting Crime: A Question of Will and Priorities," in Report Card on Crime and Punishment, American Legislative Exchange Council, Oct. 20, 1994. Copy supplied.

With Richard Cullen, *Virginia Must Close the Revolving Door for Violent Criminals*, *Richmond Times-Dispatch*, Feb. 22, 1994. Copy supplied.

Culpability, Restitution, and the Environment: The Vitality of Common Law Rules, *Symposium: The Environment and the Law, Panel IV*, 21 *Ecology L.Q.* 549 (1994). Copy supplied.

With Ira H. Raphaelson, *Viewpoint: Punishment that Exceeds the Crime – The Crackdown on Corporate Fraud Threatens to Stifle the Financial System Warns Former US Attorney General William P. Barr*; *The Banker* Vol. 143, No. 813 (Nov. 1, 1993). Copy supplied.

With Gadi Weinreich, *The Science of Compliance US-Style*, 12 *Int'l Fin. L. Rev.* 32 (1993). Copy supplied.

Attorney General's Remarks, 15 *Cardozo L. Rev.* 31 (1993). Copy supplied.

Crime, Poverty, and the Family, Heritage Lecture No. 401, July 29, 1992. Copy supplied.

Should the Bill of Rights Fully Protect Fundamental Freedoms?, Three Levels of Human Decisionmaking and the Protection of Fundamental Rights, *Symposium: Bill of Rights after 200 Years, Panel I*, 15 *Harv. J. L. & Pub. Pol'y* 11 (1992). Copy supplied.

Foreword, Seventh Survey of White Collar Crime, 29 Am. Crim. L. Rev. 169 (1992). Copy supplied.

Bush's Crime Bill – This Time Pass It, N.Y. Times, Sept. 24, 1991, at A31. Copy supplied.

Death-Penalty Delay Doesn't Promote Justice, NY Times, Letter to the Editor, Oct. 5, 1990. Copy supplied.

Wolves Fighting Crime Go 'B-a-a-a', L.A. Times, Sept. 13, 1990, at 7. Copy supplied.

With Edwin Meese III, Louis Fisher, Geoffrey P. Miller, and Kate Stith, *Panel IV: The Appropriations Power and the Necessary and Proper Clause*, 68 Wash. U. L. Q. 623 (1990). Copy supplied.

United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 12(b)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

National Commission on the Separation of Powers, *The Separation of Powers: The Roles of Independent Counsels, Inspectors General, Executive Privilege and Executive Orders*, December 7, 1998. Copy supplied.

“The State of Violent Crime in America,” Council on Crime in America, Jan. 5, 1996. Copy supplied.

Governor’s Commission on Parole Abolition & Sentencing Reform, *Final Report*, August 1994. Copy supplied.

Campaign of George Allen for Governor, *Violent Crime in Virginia: The George Allen Plan for Abolishing Parole*, July 1993. Copy supplied.

U.S. Department of Justice, Office of Policy and Communications, Office of Policy Development, *The Case for More Incarceration*, October 28, 1992. Copy supplied.

U.S. Department of Energy, *Department of Energy Procedures for Intelligence Activities*, October 19, 1992. Copy supplied.

U.S. Department of Justice, *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice*, July 28, 1992. Copy supplied.

U.S. Department of Justice, *Project Triggerlock: Incarcerating the Armed Criminal, Year One – May 1991 – April 1992*, July 1992. Copy supplied.

U.S. Department of Justice, *1992 Annual Report of the Attorney General of the United States*, 1992. Copy supplied.

U.S. Department of Justice, *1991 Annual Report of the Attorney General of the United States*, 1991. Copy supplied.

United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 12(c)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

In my long career in the public and private sectors, there have been many instances in which I have testified, provided official statements, and made other communications relating to matters of public policy or legal interpretation to public bodies or public officials. I often have not kept records of many of these instances, and I lack any recollection of many of them. The following materials were compiled after a review of my own records and through searches of publicly available records by persons acting on my behalf. The materials include letters from my time at GTE Corporation and Verizon, during which time I signed my name on behalf of those corporations in numerous letters and communications with government entities. I did not keep copies of those documents. I have provided all such communications found through reviewing my own records, public records, and records requested from Verizon.

Letter to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, June 8, 2018. Copy supplied.

In 2017, I wrote a letter of support to the Senate Committee on Commerce, Science, and Transportation, supporting the nomination of Steven Bradbury to be General Counsel for the Department of Transportation. I have searched public records and my own files but have been unable to locate a copy.

Letter to President Donald J. Trump, Feb. 23, 2017. Copy supplied.

Letter to Chairman Grassley and Ranking Member Feinstein, Dec. 5, 2016. Copy supplied.

Letter to Mitch McConnell and Harry Reid regarding Sentencing Reform and Corrections Act of 2015, Dec. 10, 2015. Copy supplied.

Letter to Majority Leader Reid and Minority Leader McConnell, May 12, 2014. Copy supplied.

Letter to Chief Judge Reade, Apr. 26, 2010. Copy supplied.

Letter to Chairman Leahy and Ranking Member Sessions, Mar. 4, 2010. Copy supplied.

Letter to Chairman Leahy and Senator Specter, Jan. 7, 2009. Copy supplied.

Letter to Chairman of Distinguished Graduate Award, Nov. 5, 2008. Copy supplied.

Letter to Ambassador Sobel, Nov. 2, 2006. Copy supplied.

Letter to Chairman Arlen Specter, May 5, 2006. Copy supplied.

Letter to Speaker DiMasi, Feb. 10, 2006. Copy supplied.

Letter to Chairman Specter and Senator Leahy, Jan. 4, 2006. Copy Supplied.

Letter to Senate Judiciary Committee, Sept. 2005. I wrote a letter to the Committee regarding Chief Justice Roberts's confirmation. I have searched public records and my own files but have been unable to locate a copy.

Review of Department of Defense Detention and Interrogation Policy and Operations in the Global War on Terrorism, 109th Cong. (July 14, 2005). Video available at: <https://www.c-span.org/video/?187644-1/detention-policies-military-justice>. Copy supplied.

Detainees, 109th Cong. (June 15, 2005). Video available at: <https://www.c-span.org/video/?187193-1/guantanamo-detainees>. Copy supplied.

Letter to Chairman Arlen Specter, May 10, 2005. Copy supplied.

Meeting Minutes, William and Mary Board of Visitors, Apr. 21-22, 2005. Copy supplied.

Letter to Congress in support of the USA Patriot Act, Sept. 23, 2004. Copy supplied.

Letter to Chairman Powell, June 28, 2004. Copy supplied.

Letter to Chairman Powell and Commissioner Abernathy, June 1, 2004. Copy supplied.

In February 2004, I wrote a letter of support to the Senate Judiciary Committee supporting the nomination of William G. Myers III to the U.S. Court of Appeals for the Ninth Circuit. I have searched public records and my own files but have been unable to locate a copy.

Letter to Chairman Powell, Jan. 7, 2004. Copy supplied.

Hearing of the National Commission on Terrorist Attacks upon the United States, Sixth Public Hearing, 108th Cong. (Dec. 8, 2003). Video available at: <https://www.c-span.org/video/?179456-4/terrorism-domestic-intelligence>. Copy supplied.

Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration, 108th Cong. (Oct. 30, 2003). Copy supplied.

Consumer Privacy and Government Technology Mandates in the Digital Media

Marketplace, 108th Cong. (Sept. 17, 2003). Copy supplied.

Pornography on the Internet, 108th Cong. (Sept. 9, 2003). Copy supplied.

The WorldCom Case: Looking at Bankruptcy and Competition Issues, 108th Cong. (July 22, 2003). Copy supplied.

In July 2003, I wrote a letter to the General Services Administration on behalf of Verizon regarding MCI's bankruptcy. I have searched public records and my own files but have been unable to locate a copy.

Letter to U.S. Attorney Comey, May 2, 2003. Copy supplied.

Letter to Chairman Donaldson, Mar. 19, 2003. Copy supplied.

Letter to Secretary Dortch, Feb. 6, 2003. Copy supplied.

Letter to Chairman Powell, Jan. 30, 2003. Copy supplied.

Letter to Chairman Powell, Jan. 17, 2003. Copy supplied.

Letters to Chairman Powell and Commissioners Abernathy, Adelstein, Copps, and Martin, Dec. 17, 2002.

Letter to Chairman Powell, Nov. 22, 2002. Copy supplied.

Letter to Chairman Powell, Oct. 16, 2002. Copy supplied.

Letter to Chairman Powell, July 16, 2002. Copy supplied.

Letter to Chairman Powell, Jan. 9, 2002. Copy supplied.

Department of Justice Oversight: Preserving Our Freedoms While Defending Against Terrorism, 107th Cong. (Nov. 28, 2001). Video available at: <https://www.c-span.org/video/?167495-1/justice-department-civil-liberties>. Copy supplied.

American Broadband Competition Act of 2001 and the Broadband Competition and Incentives Act of 2001, 107th Cong. (May 22, 2001). Copy supplied.

Letter to Secretary Salas, Apr. 3, 2000. Copy supplied.

In February 2000, I wrote a letter to Congressman Charles Canady regarding bail bonds. I have searched public records and my own files but have been unable to locate a copy.

Letter to Chairman Strom Thurmond, July 22, 1999. Copy supplied.

Internet Freedom Act and Internet Growth and Development Act of 1999, 106th Cong. (June 30, 1999). Video available at: <https://www.c-span.org/video/?125922-1/internet-broadband-issues>. Copy supplied.

Reauthorization of the Independent Counsel Statute, Part I, 106th Cong. (Mar. 10, 1999). Video available at: <https://www.c-span.org/video/?121721-1/reauthorization-independent-counsel-law>. Copy supplied.

Letter to Attorney General Janet Reno, May 25, 1998. Copy supplied.

The 1996 Telecom Act: An Antitrust Perspective, 105th Cong. (Sept. 17, 1997). Copy supplied.

Universal Service Part I of III, 105th Cong. (Mar. 12, 1997). Copy supplied.

Letter from Edwin Meese and William Barr to Newt Gingrich and Robert Dole, Dec. 29, 1996. Copy supplied.

Mergers and Competition in the Telecommunications Industry, 104th Cong. (Sept. 11, 1996). Copy supplied.

Restructuring Intelligence Agencies, Commission on the Roles and Capabilities of the United States Intelligence Community, Jan. 19, 1996. Video available at <https://www.c-span.org/video/?69458-1/restructuring-intelligence-agencies-part-3>.

Prison Reform: Enhancing the Effectiveness of Incarceration, 104th Cong. (July 27, 1995). Copy supplied.

International Terrorism: Threats and Responses, 104th Cong. (June 12, 1995). Copy supplied.

Combating Domestic Terrorism, 104th Cong. (Mar. 3, 1995). Copy supplied.

Balanced Budget Constitutional Amendment, 104th Cong. (Jan. 9, 1995). Copy supplied.

The Balanced-Budget Amendment, 104th Cong. (Jan. 5, 1995). Video available at <https://www.c-span.org/video/?62572-1/balanced-budget-amendment-part-4>. Copy supplied.

On February 10, 1994, I joined a letter to the Chair of the ABA Standing Committee on Ethics and Professional Responsibility regarding ethical concerns relating to contingency fees. I have searched public records and my own files but

have been unable to locate a copy.

Federal Mandatory Minimum Sentencing, 103rd Cong. (July 28, 1993). Copy supplied.

Letter to Director William Sessions, Jan. 15, 1993. Copy supplied.

In August 1992, I wrote a letter to the American Bar Association opposing their decision to take a position on abortion. I have searched public records and my own files but have been unable to locate a copy.

Letter to House Committee on the Judiciary, Aug. 10, 1992. Copy supplied.

Letter to the Committee on Labor and Human Resources, July 1, 1992. Copy supplied.

Oversight of the Department of Justice, 102nd Cong. (June 30, 1992). Video available at <https://www.c-span.org/video/?26841-1/oversight-justice-department>. Copy supplied.

Role of the Department of Justice and the Drug War, Weed and Seed, 102nd Cong. (May 20, 1992). Copy supplied.

Letter to Chairman Henry B. Gonzalez, May 15, 1992. Copy supplied.

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for Fiscal Year 1993, 102nd Cong. (Mar. 19, 1992). Copy supplied.

Letter to Chairman Glenn, March 4, 1992. Copy supplied.

Letter to Congressman Henry J. Hyde, Mar. 2, 1992. Copy supplied.

In approximately February 1992, I wrote a letter to House Judiciary Committee regarding proposed legislation that would impose a moratorium on returning people to Haiti. I have searched public records and my own files but have been unable to locate a copy.

Letter to Congress, November 25, 1991. Copy supplied (as reproduced in the Congressional Record).

Confirmation Hearing before the Senate Committee on the Judiciary, 102nd Cong. (Nov. 12–13, 1991). The video of this two-day hearing is available at: <https://www.c-span.org/video/?22668-1/barr-confirmation-hearing-day-1> and <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2>. Written transcript attached.

Selected Crime Issues: Prevention and Punishment, 102nd Cong. (May 29, 1991). Copy supplied.

Letter to Senator Rudman, March 15, 1991. Copy supplied.

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1992, 102nd Cong. (Mar. 12, 1991). Copy supplied.

Letter to Speaker Thomas S. Foley, September 10, 1990. Copy supplied.

Letter to Richard G. Darman, Aug. 27, 1990. Copy supplied.

Letter to Sheldon Krantz, Aug. 2, 1990. Copy supplied.

Confirmation Hearing before the Senate Committee on the Judiciary, 101st Cong. (June 27, 1990). Copy supplied.

On May 11, 1990, I wrote a letter to Senator Arlen Specter regarding his request that a special prosecutor be appointed. I have searched public records and my own files but have been unable to locate a copy.

Oversight of the Operation of Inspector General Offices, 101st Cong. (Apr. 25, 1990). Copy supplied.

Federal Death Penalty Legislation, 101st Cong. (Mar. 14, 1990). Copy supplied.

Hearing Before the Committee on Rules and Administration Regarding S. 1727, The "Comprehensive Campaign Finance Reform Act of 1989," 101st Cong. (Feb. 27, 1990). Copy supplied.

Administrative Dispute Resolution Act, 101st Cong. (Jan. 31, 1990). Copy supplied.

FBI Authority to Seize Subjects Abroad, 101st Cong. (Nov. 8, 1989). Copy supplied.

Administrative Dispute Resolution Act of 1989, 101st Cong. (Sept. 19, 1989). Copy supplied.

Hearings on Measures to Protect the Physical Integrity of the American Flag, 101st Cong. (Aug. 1, 1989). Copy supplied.

H.R. 849, 101st Cong. (July 26, 1989). Copy supplied.

Statutory and Constitutional Responses to the Supreme Court Decision in Texas v.

Johnson, 101st Cong. (July 20, 1989). Copy supplied.

Confirmation Hearing before the Senate Committee on the Judiciary, 101st Cong. (April 5, 1989). Copy supplied.

In 1986, I wrote a letter to the Senate in support of the confirmation of Daniel Manion to the Seventh Circuit. I have searched public records and my own files but have been unable to locate a copy.

Office of Legal Counsel

The Attorney General has directed the Office of Legal Counsel (“Office”) to publish selected opinions for the convenience of the Executive, Legislative, and Judicial Branches of the government, and of the professional bar and the general public. All of the opinions that the Office has determined to be appropriate for publication, including those that I authored, are available at <https://www.justice.gov/olc/opinions-main>.

The Office’s remaining records are generally privileged. However, the Office sometimes waives privilege and releases additional records through FOIA or by other public disclosure. Although these records have been released to the public in some form, they have not been selected for official publication and thus they are not included among the Office’s formal published opinions. The Office has identified three such opinions that I authored during my tenure as the Assistant Attorney General for the Office of Legal Counsel, which I have supplied.

Memorandum Opinion for C. Boyden Gray, *Transportation for Spouse of Cabinet Members*, Apr. 4, 1990. Copy supplied.

Memorandum for Edith E. Holiday, *Sequestration Exemption for the Resolution Funding Corporation*, Oct. 3, 1989. Copy supplied.

Memorandum for Martin L. Allday, *Payment of Interest on Awards of Back Pay in Employment Discrimination Claims Brought by Federal Employees*, Sept. 18, 1989. Copy supplied.

United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 12(d)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

During my long career in the public and private sectors, I have had many opportunities to provide remarks, speak on panels, present awards, and engage in numerous other instances of public commentary. I have not kept detailed records of all such appearances. The following materials were compiled after a review of my own records and through searches of publicly available records by persons acting on my behalf. It includes those events for which I have either personal recollection or records of having spoken; it also includes some events that I cannot personally recall or verify attending, but for which there is some public indication that I may have spoken there. As requested, when I can recall the nature of my remarks at an event and have not provided notes, a transcript, or a recording, I have included a description of what my remarks were or would have been.

July 11, 2018: Panelist, "Agency and Outside Perspectives on Independent Oversight," Inspector General Act of 1978 Commemoration Conference, Council of the Inspectors General on Integrity and Efficiency, Washington DC. <https://www.youtube.com/watch?v=WHpnk5fISS0>. Press report supplied.

November 8, 2017: Speaker, "James F. Rill Fellowship Program," Department of Justice Antitrust Division, Washington, DC. I recounted Jim Rill's contributions to antitrust enforcement as Assistant Attorney General during my time at the Department. I have no notes, transcript, or recording. The address of the US Department of Justice is 950 Pennsylvania Avenue NW, Washington, DC 20530.

October 20, 2017: Panelist, "Practicing Law from the Top of the Public and Private Sectors," George Washington Law School, Washington, DC. I spoke on a panel and at a lunch reception about my experiences in government and in industry. I have no notes, transcript, or recording. The address of George Washington Law School is 2000 H Street NW, Washington, DC 20052.

March 30, 2017: Speaker, "The Role of Director in Reputation Risk," George Washington University Law School, Washington, DC. I spoke about the role that corporate directors play in reputation risk. I have no notes, transcript, or recording. The address of George Washington Law School is 2000 H Street NW, Washington, DC 20052.

March 20, 2012: Speaker, "Obamacare in Briefs: The Amicus Writers Preview the Key Questions," The Heritage Foundation, Washington, DC. I do not recall speaking at this event, but I would have spoken about my participation in briefing key issues on the Affordable Care Act. I have no notes, transcript, or recording. The address of The Heritage Foundation is 214 Massachusetts Ave NE, Washington, DC 20002. Press report supplied.

July 24, 2010: Panelist, Summer Meeting, Virginia Bar Association, Hot Springs, Virginia. I have no notes, transcript, or recording. I served on a panel discussion on whether terrorists should be tried in military tribunals or federal criminal

courts. I have no notes, transcript, or recording. The address of the Virginia Bar Association is 1111 East Main Street, Suite 905, Richmond, Virginia 23219. Press report supplied.

May 26, 2010: Panelist, "Permanent Injunctions in the District Courts and ITC: Effects on Competition and Innovation," U.S. Department of Justice, Alexandria, Virginia. I discussed the implications of seeking exclusion orders before the ITC to intellectual property and antitrust policy. I have no notes, transcript, or recording. The address of the US Department of Justice is 950 Pennsylvania Avenue NW, Washington, DC 20530.

July 31, 2009: Panelist, "Lessons from History: A Conversation with Former Attorneys General," American Bar Association, Chicago, Illinois. I served on a panel discussing the relationship between the White House and members of the Cabinet. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654. Press reports supplied.

September 17, 2007: Panelist, "Has America Kept the Founder's Faith?" World Forum on the Future of Democracy, College of William & Mary, Williamsburg, Virginia. Video recording supplied. Press report supplied.

January 16, 2007: Speaker, Law and Information Society Lecture, Fordham Center on Law and Information Policy, New York, New York. Notes supplied. Press report supplied.

Approximately Early 2007: Presenter, "President's Lecture Series," Dominican College, Orangeburg, New York. I spoke about the relationship between the President of the United States and members of the Cabinet. I have no notes, transcript, or recording. The address of Dominican College is 470 Western Highway, Orangeburg, New York 10962. Press report supplied.

November 16, 2006: Panelist, "Net Neutrality Debate," The Federalist Society 2006 National Lawyers Convention, Washington, DC. Recording available at <https://fedsoc.org/conferences/2006-national-lawyers-convention?#agenda-item-net-neutrality-battle-of-the-titans>. Press reports supplied.

November 11, 2006: Panelist, "White House Counsel: Views from the Justice Department," University of Virginia Miller Center, Charlottesville, Virginia. Copy supplied.

August 21, 2005: Speaker, "Aspen Summit 2005: Cyberspace and the American Dream," The Aspen Institute, Aspen, Colorado. I spoke about the importance of competition and deregulation to broadband innovation. I have no notes, transcript, or recording. The address of the Aspen Institute is 2300 North Street NW, Suite 700, Washington, DC 20037. Press report supplied.

July 18, 2005: Panelist, "Civil Liberties and Security," 9/11 Public Discourse Project, Washington, DC. Video available at: <https://www.c-span.org/video/?187714-1/civil-liberties-security>. Press report supplied.

November 12, 2004: Panelist, "Corporations, Securities & Antitrust: Current Developments in Business and Law," Federalist Society 2004 National Lawyers Convention, Washington, DC. Video available at: <https://www.c-span.org/video/?184419-1/government-business-regulation>. Press report supplied.

March 18, 2004: Speaker, "Matching the Regulatory Regime to the Realities of the Market," Cato Institute, Washington, DC. Notes supplied. Press report supplied.

November 15, 2002: Panelist, "Law Enforcement Post 9/11: Balancing Civil Liberties and Public Safety," The Federalist Society, Washington, DC. Transcript supplied.

October 30, 2002: Speaker, "Forum on Litigation and Regulation in Financial Services," Federalist Society, New York City, New York. I spoke about the importance of deregulation and competition for innovation in financial markets. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street NW, Suite 300, Washington, DC 20006.

October 15, 2002: Keynote Speaker, "Corporate Governance Seminar," Richmond Bar Association, Richmond, Virginia. I spoke on corporate governance issues. I have no notes, transcript, or recording. The address of the Richmond Bar Association is 707 East Main Street, Suite 1620, Richmond, Virginia 23219. Press report supplied.

June 28, 2001: Speaker, "FCC Regulation Luncheon," The Manhattan Institute for Policy Research, New York City, New York. I spoke about the importance of competition and deregulation to broadband innovation. I have no notes, transcript, or recording. The address of the Manhattan Institute is 52 Vanderbilt Avenue New York, New York 10017. Press report supplied.

September 28, 2000: Speaker, "Antitrust 2001," Fulcrum Information Services Inc., Washington, DC 20037. I do not recall speaking at this event, but I would have spoken about the importance of competition and deregulation to telecommunications innovation. I have no notes, transcript, or recording. The address of Fulcrum is 5870 Trinity Parkway, Suite 400, Centreville, Virginia 20120.

August 21, 2000: Speaker, "Cyberspace and the American Dream," Progress & Freedom Foundation, Aspen, Colorado. I spoke about the importance of competition and deregulation to telecommunications innovation. I have no notes,

transcript, or recording. The address of the Progress & Freedom Foundation is 1444 I Street NW, Suite 500, Washington, DC 20005. Press report supplied.

Early 2000s: Speaker, Benefit for St. Aloysius, New York, New York. Copy supplied.

September 22, 1999: Speaker, "Telecommunications Regulatory Reform," Information Technology Association of America, Arlington, Virginia. I spoke about the importance of competition and deregulation to telecommunications innovation. I have no notes, transcript, or recording. The Information Technology Association of America is no longer extant. Press report supplied.

September 22, 1999: Speaker, "Intellectual Property Rights: Constitutional Principles and Federalism," Heritage Foundation, Washington, DC. I spoke about intellectual property rights and the constitution. I have no notes, transcript, or recording. The address of the Heritage Foundation is 214 Massachusetts Ave NE, Washington, DC 20002.

August 9, 1999: Panelist, "Attorneys General Forum," American Bar Association, Atlanta, Georgia. Video available at: <https://www.c-span.org/video/?151507-1/attorneys-general-forum>. Press report supplied.

March 11, 1999: Panelist, Seminar, Legg Mason, Baltimore, Maryland. I spoke about mergers. I have no notes, transcript, or recording. The address of Legg Mason is 100 International Drive, Baltimore, Maryland 21202. Press report supplied.

December 10, 1998: Speaker, "Annual Institute on Telecommunications Policy and Regulation," Practicing Law Institute, Washington, DC. I spoke about the effects of the Federal Communications Commission's regulatory efforts. I have no notes, transcript, or recording. The address of the Practicing Law Institute is 1177 Avenue of the Americas, 2nd Floor, New York, New York 10036. Press report supplied.

August 28, 1998: Speaker, Convocation, College of William & Mary, Williamsburg, Virginia. Speech supplied. Press report supplied.

February 27, 1998: Speaker, Conference, Alliance for Public Technology. I spoke about competition policy in the telecommunications industry. I have no notes, transcript, or recording. The address of the Alliance for Public Technology appears no longer to be extant. Press report attached.

November 13, 1997: Speaker, "Damn the Torpedoes: Full Competition Ahead!" American Enterprise Institute, Washington, DC. I spoke about telecommunications policy. I have no notes, transcript, or recording. The address of the American Enterprise Institute is 789 Massachusetts Avenue, NW,

Washington, DC 20036. Press report supplied.

June 8, 1997: Panelist, Midwestern Governors Conference, Midwestern Governors Association, Overland Park, Kansas. I spoke about telecommunications. I have no notes, transcript, or recording. The address of the Midwestern Governors Association is 2025 M Street NW, Suite 800, Washington, DC 20036. Press report supplied.

December 12, 1996: Panelist, "Telecommunications Act," Practising Law Institute, Washington, DC. I spoke about the Telecommunications Act. I have no notes, transcript, or recording. The address of the Practising Law Institute is 1177 Avenue of the Americas, 2nd Floor, New York, New York 10036. Press report supplied.

October 19, 1996: Panelist, "Attorneys General Forum," University of California, Hastings College of Law, San Francisco, California. Video available at: <https://www.c-span.org/video/?76051-1/attorneys-general-forum>.

October 6, 1996: Speaker, St. Patrick Cathedral, Sixth Annual Red Mass, Norwich, Connecticut. I do not recall the topic of my remarks. I have no notes, transcript, or recording. The address of St. Patrick Cathedral is 213 Broadway, Norwich, Connecticut 06360. Press report supplied.

May 1996 (approximately): Speaker, Commencement Speech to the Class of 1996, Stone Ridge School of the Sacred Heart, Bethesda, Maryland. Notes supplied.

1995: Panelist, "The Bill of Rights, Community Policing, and Community Decorum," The Rights Revolution Symposium, The Federalist Society, Michigan. Transcript attached.

December 2, 1994: Keynote Speaker, "The Challenge and Opportunities We Face," The Middlesex Club, Boston, Massachusetts. I spoke about accountability and responsibility in government. I have no notes, transcript, or recording. The Middlesex Club appears not to have a physical address but can be reached at contact@themiddlesexclub.org. Press report supplied.

November 22, 1994: Speaker, Republican Governors Association, Williamsburg, Virginia. I spoke about the role states play through litigation. I have no notes, transcript, or recording. The address of the Republican Governors Association is 1747 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006. Press report supplied.

November 1994 (approximately): Speaker, Federalist Society, Federalist Society Chapter at Duquesne Law School, Pittsburgh, Pennsylvania. I spoke of my experiences at the Department and recounted notable enforcement operations. I

have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street NW, Suite 300, Washington, DC 20006. Press coverage supplied.

October 22, 1994: Panelist, "Crime Legislation," University of California, Hastings College of Law, San Francisco, California. Video available at <https://www.c-span.org/video/?61790-1/crime-legislation>.

October 22, 1994: Panelist, "Immigration Law," University of California, Hastings College of Law, San Francisco, California. Video available at: <https://www.c-span.org/video/?61172-1/immigration-law>.

August 6, 1994: Speaker, Twenty-First Annual Meeting, American Legislative Exchange Council, Tampa, Florida. I discussed legislative priorities in the criminal justice area. I have no notes, transcript, or recording. The address of the American Legislative Exchange Council is 2900 Crystal Drive, 6th Floor, Arlington, Virginia 22202.

June 26, 1994: Panelist, "Crime, Punishment, and the Criminal Justice System," the Independent Institute, Lawrence, Kansas. Video available at: <http://www.independent.org/multimedia/detail.asp?id=2610> and <http://www.independent.org/multimedia/detail.asp?id=2610&c=2717> and <http://www.independent.org/multimedia/detail.asp?id=2610&c=2718>.

June 22, 1994: Speaker, National Conference on Criminal Violence, National Rifle Association, Washington, DC. I discussed trends in crime statistics. I have no notes, transcript, or recording. The address of the National Rifle Association is 11250 Waples Mill Road, Fairfax, Virginia 22030. Press report supplied.

June 16, 1994: Speaker, Reception, Campaign of Republican Candidate John Greiber, Annapolis, Maryland. I spoke on the importance of law enforcement. I have no notes, transcript, or recording. The Campaign of Republican Candidate John Greiber is no longer extant.

May 25, 1994: Panelist, National Policy Forum on Violent Crime, California State University Fullerton, Fullerton, California. I discussed trends in crime statistics. I have no notes, transcript, or recording. The address of California State University Fullerton is 800 North State College Boulevard, Fullerton, California 92831. Press report supplied.

May 7, 1994: Recipient, Distinguished Alumni Award, George Washington University, Washington, DC. I have no notes, transcript, or recording. I gave comments on receiving the award. The address of George Washington University is 2000 H Street NW, Washington, DC 20052. Press report supplied.

April 5, 1994: Town Hall Host, "Listening to America," National Policy Forum, Columbus, Ohio. This event was a listening session on neighborhood safety. I

have no notes, transcript, or recording. The National Policy Forum was part of the Republican National Committee, the address of which is 310 First Street SE, Washington, DC 20003. Press coverage supplied.

March 28, 1994: Panelist, "A Spirited Discussion," College of William and Mary's Marshall-Wythe School of Law, Williamsburg, Virginia. Notes supplied. Press coverage supplied.

February 9, 1994: Speaker, "Reflections of an Attorney General," Federalist Society Milwaukee Lawyers Chapter, Milwaukee, Wisconsin. I shared anecdotes about the role of the Attorney General. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street NW #300, Washington, DC 20006.

October 23, 1993: Panelist, "Evolution of Attorney General Role," University of California, Hastings College of Law, San Francisco, California. Video available at <https://www.c-span.org/video/?53440-1/evolution-attorney-general-role>. Press coverage supplied.

October 14, 1993: Speaker, "Red Mass" Dinner, Roman Catholic Diocese of Galveston-Houston, Houston, Texas. I spoke about lawyers' contributions to the Catholic Church. I have no notes, transcript, or recording. The address of the Archdiocese of Galveston-Houston is 1700 San Jacinto, Houston, Texas 77002. Press coverage supplied.

September 29, 1993: Keynote Speaker, Appreciation Dinner for Oklahoma County District Attorney Robert H. Macy, Oklahoma City, Oklahoma. I spoke about Mr. Macy's contributions to law enforcement. I have no notes, transcript, or recording. I am unaware of the sponsoring organization. Press report supplied.

February 27, 1993: Speaker, "Congress of Tomorrow," Congressional Institute Inc., Plainsboro, New Jersey. I spoke about Republican politics. I have no notes, transcript, or recording. The address of Congressional Institute Inc. is 1700 Diagonal Road #730, Alexandria, Virginia 22314. Press report supplied.

January 11, 1993: Speaker, Annual Law Enforcement Officer of the Year Banquet, 100 Club of Jefferson County, Beaumont, Texas. I spoke on effective law enforcement programs. I have no notes, transcript, or recording. I have been unable to locate a mailing address for this organization. Press report supplied.

1993 (approximate): Speaker, Bar Association, Virginia. I spoke about criminal justice and my time in the Department of Justice. Notes supplied.

1993 (approximate): Speaker, "Corporate Ethics," Sony In-House Counsel. I do not recall the city and state where this event took place. Notes supplied.

December 17, 1992: Speaker, Presentation of the Portrait of the Honorable Malcolm R. Wilkey, United States Court of Appeals for the District of Columbia Circuit, Washington, DC. Transcript supplied.

December 14, 1992: Speaker, The Attorney General's 41st Annual Awards Ceremony, Department of Justice, Washington, DC. Transcript supplied.

November 15, 1992: Speaker, Attorney General's Remarks, Benjamin N. Cardozo School of Law, New York City, New York. Remarks supplied.

October 29, 1992: Speaker, "Civil Justice Reform," American Corporate Counsel Association, New Orleans, Louisiana. I spoke about matters of civil justice reform. I have no notes, transcript, or recording. The address of the renamed Association of Corporate Counsel is 1001 G Street NW, Suite 300W, Washington, DC 20001.

October 27, 1992: Speaker, 99th Conference of the International Chiefs of Police, Minneapolis, Minnesota. Notes supplied.

October 16, 1992: Speaker, Press Conference Announcing Judge Frederick B. Lacey's Appointment as Independent Counsel re: BNL, U.S. Department of Justice, Washington, DC. Document supplied. Press coverage supplied.

October 6, 1992: Speaker, Presentation at Catholic League for Religious and Civil Rights Dinner, Washington, DC. Document supplied. Press coverage supplied.

October 1992 (approximately): Speaker, St. Thomas More Award Acceptance, Catholic Lawyers Guild of New York, New York, New York. Speech supplied.

September 30, 1992: Speaker, Presentation to Pennsylvania State-Wide L.E.C.C. Conference, Camp Hill, Pennsylvania. Document supplied.

September 29, 1992: Speaker, Presentation to Commonwealth Club, San Francisco, California. Document supplied. Press coverage supplied.

September 26, 1992: Speaker, Presentation at Hispanic Bar Association Luncheon, Atlantic City, New Jersey. I do not recall the subject of my remarks. I have no notes, transcript, or recording. The address of the Hispanic Bar Association is 1020 19th Street NW #505, Washington, DC 20036.

September 25, 1992: Speaker, Presentation at Asian-Pacific American Bar Association Luncheon, Washington, DC. Document supplied.

September 18, 1992: Speaker, Swearing-in Ceremony for Henry Hudson as Director of U.S. Marshals Service, Arlington, Virginia. Document supplied.

September 17, 1992: Speaker, Presentation at Rotary Club Luncheon, Conyers, Georgia. Document supplied.

September 11, 1992: Speaker, Presentation to Society of Former Special Agents of the FBI, San Diego, California. Document supplied.

September 10, 1992: Speaker, Presentation to Michigan Crime Summit, Lansing, Michigan. Document supplied.

September 2, 1992: Speaker, Conference of the Organized Crime Drug Enforcement Task Force, U.S. Department of Justice, San Antonio, Texas. Document supplied. Press coverage supplied.

August 27, 1992: Speaker, Presentation to Sexual Assault Conference, New York, New York. Document supplied.

August 18, 1992: Speaker, Presentation to National Organization for Victim Assistance, Kansas City, Missouri. Document supplied. Press coverage supplied.

August 10, 1992: Speaker, 35th Annual Convention, Southern Christian Leadership Conference, Dayton, Ohio. Document supplied. Press coverage supplied.

August 5, 1992: Speaker, Presentation to Knights of Columbus, New York, New York. Document supplied.

August 3, 1992: Speaker, Presentation to Congress of Corrections, American Correctional Association, San Antonio, Texas. Document supplied.

July 29, 1992: Speaker, "Crime, Poverty, and the Family," Heritage Foundation, Washington, DC. Document supplied.

July 28, 1992: Speaker, "Combatting Violent Crime: 24 Recommendations to Strengthen Criminal Justice," Department of Justice, Washington, DC. Document supplied.

Mid-1992 (approximate): Speaker, Weed & Seed Steering Committee, Fort Worth, Texas. Notes supplied.

July 22, 1992: Speaker, Presentation to FBI National Academy Associates, Section II National Training Conference, Fort Worth, Texas. Document supplied.

July 20, 1992: Speaker, "Combatting Violent Crime in America," Presentation to Florida Sheriffs Association, Fort Meyers, Florida. Document supplied.

July 8, 1992: Speaker, Southeast Region Summit on Violent Crime, United States

Department of Justice, Charlotte, North Carolina. I spoke about the need to fund law enforcement. I have no notes, transcript, or recording. The address of the US Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530. Press coverage supplied.

June 23, 1992: Speaker, "Immigration and Violent Crime," Presentation at Town Hall of California Luncheon, Los Angeles, California. Document supplied. Video available at <https://www.c-span.org/video/?26762-1/immigration-violent-crime>.

June 21, 1992: Speaker, Presentation to National Sheriffs Association, San Diego, California. Transcript supplied.

June 7, 1992: Speaker, Remarks for Receiving the Humanitarian Award, Agudath Israel of America 70th Anniversary Dinner, New York, New York. Document supplied. Press report supplied.

May 31, 1992: Speaker, Commencement Speech, George Washington University National Law Center, Washington, DC. Document supplied.

May 24, 1992: Speaker, Commencement Speech, Catholic University of America Law School, Washington, DC. Copy supplied.

May 21, 1992: Speaker, Presentation at California Peace Officers' Association 72nd Annual Training Conference, Palm Springs, California. Document supplied.

May 20, 1992: Speaker, Brent Society Awards Dinner, Brent Society of the Roman Catholic Diocese of Arlington, Arlington, Virginia. Document supplied.

May 14, 1992: Speaker, Presentation at Citizens Crime Commission of the Delaware Valley Annual Law Enforcement Appreciation Day Luncheon, Philadelphia, Pennsylvania. Document supplied.

May 14, 1992: Speaker, Presentation at National Troopers Coalition Conference, Linthicum, Maryland. Document supplied.

May 11, 1992: Speaker, Swearing-In of Deputy Attorney General and Associate Attorney General, Department of Justice, Washington, DC. I made remarks at the swearing-in of Department of Justice officials. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Ave NW, Washington, DC 20530. Press coverage supplied.

May 8, 1992: Speaker, Presentation at Greater Dallas Crime Commission Luncheon, Dallas, Texas. Document supplied.

April 30, 1992: Speaker, Grand Rapids Rotary and Economics Club, Grand Rapids, Michigan. Notes supplied.

April 30, 1992: Speaker, Press Conference Re: Rodney King, U.S. Department of Justice, Washington, DC. Document supplied.

April 27, 1992, Speaker, "Expanding Capacity for Serious Offenders," Attorney General's Summit on Corrections, McLean, Virginia. Remarks supplied.

April 24, 1992: Speaker, Presentation at Victims Rights Week Ceremony in the Rose Garden, Washington, DC. Document supplied.

April 23, 1992: Speaker, Presentation to Leaders of Victims Groups, Philadelphia, Pennsylvania. Document supplied. Press coverage supplied.

April 22, 1992: Speaker, Presentation to Pittsburgh Rotary Club, Pittsburgh, Pennsylvania. Document supplied.

April 11, 1992: Speaker, Presentation at Baylor University School of Law 1992 Law Day Banquet, Waco, Texas. Document supplied.

April 9, 1992: Speaker, Press Conference Re: Noriega Verdict, U.S. Department of Justice, Washington, DC. Document supplied.

April 6, 1992: Speaker, "Weed & Seed," U.S. Department of Justice, Philadelphia, Pennsylvania. Notes supplied. Press report supplied.

April 6, 1992: Speaker, "Weed & Seed," U.S. Department of Justice, Richmond, Virginia. I spoke about the Department's "Weed & Seed" program. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Ave NW, Washington, DC 20530. Press coverage supplied in response to entry above.

April 1, 1992: Speaker, Governor's Conference on Juvenile Crime, Drugs and Gangs, Milwaukee, Wisconsin. Remarks and press coverage supplied.

March 27, 1992: Speaker, Presentation to International Brotherhood of Police Officers, Boston, Massachusetts. Document supplied.

March 25, 1992: Speaker, Presentation at Mid-America Committee Luncheon, Chicago, Illinois. Document supplied.

March 23, 1992: Speaker, Presentation at Economic Club of Detroit Luncheon, Detroit, Michigan. Document supplied.

March 19, 1992: Speaker, Maryland Summit on Violent Street Crime, Baltimore, Maryland. I discussed strategies for combating violent crime. I have no notes, transcript, or recording. I do not know the sponsoring organization, if any, for this

event. Press report supplied.

March 1, 1992: Speaker, Presentation at United States Attorneys' National Conference, U.S. Department of Justice, Orlando, Florida. Document supplied. Press coverage supplied.

February 11, 1992: Speaker, Greater Dallas Crime Commission, Dallas, Texas. I discussed crime policy. I have no notes, transcript, or recording. The address of the Greater Dallas Crime Commission is 400 South Zang Boulevard, Suite C60, Dallas, Texas 75208. Press coverage supplied.

February 10, 1992: Speaker, San Diego Chamber of Commerce, San Diego, California. Copy supplied. Press coverage supplied.

February 9, 1992: Speaker, Law Enforcement Leaders of the San Diego Community, San Diego, California. Notes supplied.

February 8, 1992: Speaker, Fifteenth Annual Law School Dinner, Pepperdine University School of Law, Biltmore Hotel, Los Angeles, California. I do not recall the topic of my remarks. I have no notes, transcript, or recording. The address of the Pepperdine University School of Law is 24255 Pacific Coast Highway, Malibu, California 90263.

February 8, 1992: Judge, 18th Annual Vincent S. Dalsimer Moot Court Competition, Pepperdine University School of Law, Malibu, California. I served as a judge at a moot court competition. I have no notes, transcript, or recording. The address of the Pepperdine University School of Law is 24255 Pacific Coast Highway, Malibu, California 90263.

February 7, 1992: Speaker, Executive Training Session, Federal Executive Institute Alumni Association, Washington, DC. I spoke at the Alumni Association's executive training session. I have no notes, transcript, or recording. The address of the U.S. Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530.

January 31, 1992: Speaker, Presentation at Attorney General's 40th Annual Awards Ceremony, U.S. Department of Justice, Washington, DC. Speech supplied.

January 30, 1992: Speaker, About Face Program, Memphis, Tennessee. I discussed the "About Face" program for young drug offenders. I have no notes, transcript, or recording. The address of the U.S. Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530. Press report supplied.

January 30, 1992: Presenter, Ceremony Presenting Check to Tennessee Highway Patrol, Memphis, Tennessee. I presented funds recovered from a cocaine-

smuggling operation. I have no notes, transcript, or recording. The address of the Tennessee Highway Patrol, District Four Headquarters, is 6348 Summer Avenue, Memphis, Tennessee 38134. Press coverage supplied.

January 15, 1992: Speaker, Address to the Law Enforcement Coordinating Committee, Houston, Texas. I discussed the Department's efforts to help states address court-imposed limits on prison populations. I have no notes, transcript, or recording. The address of the U.S. Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530. Representative press reports supplied.

January 14, 1992: Speaker, Presentation at 1992 Winter Conference, California District Attorneys Association, Palm Springs, California. Speech supplied. Representative press reports supplied.

December 23, 1991 (approximate): Speaker, Reception at Boys & Girls Clubs of America Honoring Nike, Beaverton, Oregon. I spoke at a luncheon honoring Nike in recognition of its support for children from disadvantaged circumstances. I have no notes, transcript, or recording. The address of the Boys & Girls Club of America is 1275 Peachtree Street Northeast, Atlanta, Georgia. Press report supplied.

December 18, 1991: Speaker, 1991 Winter Conference Luncheon, Illinois State's Attorneys Association, Chicago, Illinois. Speech supplied. Press reports supplied.

December 11, 1991: Speaker, Presentation at National Board Meeting and Recognition Luncheon, Boys and Girls Club of America, New York, New York. Speech supplied.

December 4, 1991: Speaker, Presentation of Proceeds of Drug Asset Forfeiture Program, London, United Kingdom. I delivered a check to the British government in recognition of British detective work in uncovering money-laundering networks. I have no notes, transcript, or recording. The address of the United States Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530. Press report supplied.

November 26, 1991: Speaker, Swearing-in Ceremony of William P. Barr as 77th Attorney General of the United States, United States Department of Justice, Washington, DC. Video available at: <https://www.c-span.org/video/?23005-1/attorney-general-swearing>. Press report supplied.

November 1, 1991: Presenter, Ceremony Honoring Justice Clarence Thomas, Supreme Court of the United States, Washington, DC. I presented a proclamation from President Bush appointing Justice Thomas to the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the Supreme Court of the United States is 1 First Street NE, Washington, DC 20543. Press report supplied.

October 16, 1991: Speaker, Attorney General Nomination Announcement, The White House, Washington, DC. Video available at: <https://www.c-span.org/video/?22079-1/attorney-general-nomination-announcement>. Press report supplied.

October 14, 1991: Speaker, Columbus Day Quincentenary Celebration, National Christopher Columbus Association, Washington DC. I made remarks commemorating Columbus Day. I have no notes, transcript, or recording. The address of the National Christopher Columbus Association is 5034 Wisconsin Avenue NW, Washington, DC 20016. Press coverage supplied.

October 7, 1991: Speaker, 98th Conference of the International Chiefs of Police, Minneapolis, Minnesota. Copy supplied.

October 4, 1991: Speaker, Presentation at CFC Campaign Kickoff, United States Department of Justice, Washington, DC. Speech supplied.

October 2, 1991: Speaker, Crime Stoppers International Annual Conference, Louisville, Kentucky. Speech supplied.

September 26, 1991: Speaker, Multinational Conference on Asian Organized Crime, San Francisco, California. Speech supplied. Press report supplied.

September 23, 1991: Speaker, Presentation at the Signing Ceremony of the United States-EC Antitrust Cooperation Agreement, Washington, DC. Speech supplied.

September 19, 1991: Speaker, Presentation at National Hispanic Heritage Ceremony, U.S. Department of Justice, Washington, DC. Speech supplied.

August 23, 1991: Speaker, Ground-Breaking Ceremony, FBI Identification Center, Clarksburg, West Virginia. Speech supplied.

August 15, 1991: Speaker, "Farewell Address to Department of Justice," Department of Justice, Washington, DC. Video available at: <https://www.c-span.org/video/?20587-1/farewell-address-department-justice>. Press reports supplied.

July 9, 1991: Speaker, Department of Justice Presentation of Drug Asset Forfeiture Funds to Pennsylvania and New Jersey Law Enforcement Agencies, Philadelphia, Pennsylvania. I presented funds seized in federal investigations to law enforcement agencies. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC. 20530. Press report supplied.

June 7, 1991: Panelist, "Crime in the Streets: Must it Produce Congestion in the

District Courts?” Judicial Conference of the District of Columbia Circuit, Williamsburg, Virginia. Transcript supplied.

May 2, 1991: Panelist, “First Amendment v. National Security,” Federal Communications Bar & American Bar Association, Washington, DC. Video available at: <https://www.c-span.org/video/?17804-1/amendment-v-national-security>.

March 20, 1991: Speaker, Department of Justice Presentation of Asset Forfeiture Funds to New England Law Enforcement Agencies, Boston, Massachusetts. I presented seized funds to local officials for use in financing drug investigations. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530. Press report supplied.

March 4, 1991: Panelist, “Preparing for Crime in the Future,” The 1991 Crime Summit, Washington, DC. Video available at: <https://www.c-span.org/video/?16940-1/preparing-crime-future>.

February 1991: Moderator, “Panel I: Should the Bill of Rights Fully Protect Fundamental Freedoms?” Federalist Society Symposium on Law and Public Policy, Federalist Society, New Haven, Connecticut. Published remarks supplied.

Late 1990: Speaker, “Strengthening the Rule of Law in the War Against Drugs and Narco-Terrorism,” American Bar Association Standing Committee on Law and National Security, Washington, DC. I spoke about possible measures in the global war on drugs. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654. Press report supplied.

January 20, 1990: Panelist, “The Appropriations Power and the Necessary and Proper Clause,” The Federalist Society. Video available at: <https://www.c-span.org/video/?10707-1/appropriation-power>.

United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 12(e)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

During my lifetime, I have given innumerable interviews to publications and have appeared on many radio and television programs. I have not kept records for almost any of those interviews or appearances. The following materials that appear to have involved an interview, press statement, or media appearance of mine were compiled after a review of my own records and through searches of publicly available records by persons acting on my behalf.

Carol D. Leonnig, *Trump Considering D.C. Lawyer to Replace McGahn*, Wash. Post, Sept. 2, 2018, at A4. Copy supplied.

Jeff D'Alessio, *Supreme Court Vacancy: Prepare for a Game-Changer, Experts Say*, News-Gazette (Champaign-Urbana, IL), July 8, 2018. Copy supplied.

Matt Zaptosky and Sari Horwitz, *'We Just Need to Keep Pushing on': Why Trump's Attacks Won't Make Jeff Sessions Quit*, Wash. Post, June 5, 2018. Copy supplied.

Kevin Johnson and David Jackson, *Under Fire, Attorney General Sessions Silent No Longer*, Daily Advertiser (Lafayette, LA), Mar. 2, 2018, at A4. Copy supplied. Reprinted in multiple outlets.

Jake Gibson, *Gillibrand, Said to Have Her Eye on 2020, Vows to Block Key Trump DOJ Appointee*, Fox News, Jan. 18, 2018. Copy supplied.

Matt Zaptosky, *No Sign Top Justice Dept. Jobs Will Be Filled Anytime Soon*, Wash. Post, Jan. 8, 2018, at A5. Copy supplied.

Peter Baker, *'Lock Her Up' Becomes More than a Slogan*, N.Y. Times, Nov. 14, 2017. Copy supplied.

Philip Rucker and Matt Zaptosky, *Trump Flouts Protocol, Pushes for Probe of Democratic Party*, Wash. Post, Nov. 5, 2017, at A1. Copy supplied. Reprinted in multiple outlets.

Kevin Johnson, *Trump's Demand Raises Ethical Issues; Sessions Resisted Notion of Reviving Clinton Inquiry*, Dem. & Chron. (Rochester, NY), July 26, 2017, at B2. Copy supplied.

Matt Zaptosky, *Mueller Team's Past Political Donations Under Microscope*, Wash. Post, July 6, 2017, at A4. Copy supplied.

Cavuto Coast to Coast, Fox Business Network, May 11, 2017. Available online at <https://www.youtube.com/watch?v=gH55oabkq40>.

Steven Nelson, *FBI Director Firing in Early '90s Had Some Similarities to Comey Ouster*, U.S. News & World Rep., May 10, 2017. Copy supplied.

Glenn Kessler, *Was it Appropriate for Trump and Comey to Discuss Whether Trump was Under Investigation?*, Wash. Post, May 10, 2017. Copy supplied.

Cavuto Coast to Coast, Fox Business, Feb. 2, 2017. Available online at <https://www.youtube.com/watch?v=q-yqoaTbJkw>.

Art Moore, *Black Leaders Rebut Sessions Racism Charges*, WorldNetDaily, Jan. 9, 2017. Copy supplied.

Cavuto Coast to Coast, Fox Business, Nov. 18, 2016. Available online at <https://www.youtube.com/watch?v=74pnXFQFEsE>.

Och-Ziff Appoints William P Barr to Board of Directors, U.S. Official News (Pakistan), Sept. 2, 2016. Copy supplied.

Kevin Diaz, *Baylor sex scandal blights Starr's image and legacy: From Whitewater to Waco, different picture emerges*, Houston Chron., June 4, 2016, at A1. Copy supplied.

Matt Apuzzo, *Attorney General Sets New Agenda*, N.Y. Times, Apr. 24, 2015. Copy supplied.

Bobbi Bowman, *Five Things to Know About Dominion Power*, McLean Patch, July 6, 2012. Copy supplied.

Helene Cooper and Peter Baker, *Administration Opens Inquiries into Oil Disaster*, N.Y. Times, June 2, 2010. Copy supplied.

Former U.S. Attorney General William P. Barr Joins Time Warner's Board of Directors, Bus. Wire, July 23, 2009. Copy supplied.

Joe Palazzolo, *Old Hands on Deck; Veteran Lawyers May Fill the top Two Legal Spots in the Obama Administration*, Corp. Counsel, Feb. 1, 2009, at 65. Copy supplied. Reprinted in multiple outlets.

Jeff Jeffrey, *Former AG William Barr Joins Kirkland & Ellis*, Corp. Counsel, Jan. 8, 2009. Copy supplied. Reprinted in multiple outlets.

Joe Palazzolo, *Obama Taps Washington's Legal Reserves*, Legal Times, Nov. 24, 2008. Copy supplied.

Amol Sharma, *Verizon's Barr Plans to Retire*, Wall Street J., Sept. 30, 2008. Copy supplied.

Verizon General Counsel William P. Barr Announces Retirement, PR Newswire,

Sept. 29, 2008. Copy supplied.

Drew Combs, *A Firm of Equals*, *The Am. Lawyer*, July 1, 2008. Copy supplied. Reprinted in multiple outlets.

McCain Endorsed by Former U.S. Attorney General Bill Barr, U.S. Federal News, Jan. 28, 2008. Copy supplied.

Amy Miller, *The GCs' Choice: Obama; Barack Obama is the favorite for campaign donations from the highest-paid general counsel*, *Corp. Counsel*, Jan. 4, 2008. Copy supplied.

Lara Jakes Jordan, *Mukasey Sworn In as Attorney General*, Associated Press, Nov. 10, 2007. Copy supplied.

Homework for Mukasey, *Legal Times*, Oct. 29, 2007. Copy supplied.

Jon Ward, *Legal Counsel Leadership a Bush Priority; Senate Approval a Roadblock*, *Wash. Times*, Sept. 20, 2007. Copy supplied.

Keith Ecker, *Manual Labor*, *Inside Counsel*, Sept. 1, 2007. Copy supplied.

Richard B. Schmidt, *Two-Year Sentence for Libby; Talk Turns to Pardon*, *L.A. Times*, June 6, 2007. Copy supplied.

Jason McLure and Emma Schwartz, *At DOJ, a Hard Job to Fill*, *Legal Times*, May 21, 2007. Copy supplied. Reprinted in multiple outlets.

Evan Perez, *Politics & Economics: Gonzalez Deputy, in Crossfire, Looks for Quiet Exit*, *Wall St. J.*, Apr. 16, 2007. Copy supplied.

Anna Palmer, *Stand By Me*, *Corp. Counsel*, Mar. 2007. Copy supplied. Reprinted in multiple outlets.

Businesses Blast Official's Detainee Spiel, *The Daily Report (Fulton County, GA)*, Jan. 24, 2007. Copy supplied.

Anna Palmer, *Unintended Consequences*, *Legal Times*, Jan. 22, 2007. Copy supplied. Reprinted in multiple outlets.

Keith Ecker, *Verizon Communications Inc. Discovering Solutions*, *Inside Counsel*, Sept. 1, 2006. Copy supplied.

Michael Aneiro, *Dick Thornburgh*, *The Am. Lawyer*, Sept. 2006. Copy supplied.

Tamara Loomis, *The Untouchables*, *The Am. Lawyer*, Sept. 2006. Copy supplied.

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Mark Sherman, *Gonzales Slated to Defend Bush Spy Program*, Associated Press, Feb. 5, 2006. Copy supplied.

Susan Beck, *The Right Size: At Munger, It's Not How Many, It's How Good*, The Am. Lawyer, Jan. 2006. Copy supplied. Reprinted in multiple outlets.

Peter Baker and Jim VandeHei, *Clash Is Latest Chapter in Bush Effort to Widen Executive Power*, Wash. Post, Dec. 21, 2005. Copy supplied.

Vanessa Blum, *Top Priority: His Company*, Corp. Counsel, Dec. 1, 2005. Copy supplied. Reprinted in multiple outlets.

Vanessa Blum, *McNulty's New Mission*, Legal Times, Oct. 31, 2005. Copy supplied. Reprinted in multiple outlets.

Emma Schwartz, *Government Lawyers Are in Demand; Corporations Find D.C. Veterans Useful for Navigating the Capital*, Nat'l L.J., Oct. 24, 2005. Copy supplied. Reprinted in multiple outlets.

Vanessa Blum, *Delay Reaction*, Legal Times, Oct. 17, 2005. Copy supplied. Reprinted in multiple outlets.

Kimberly Palmer, *Fraud Squad*, Gov't Exec., Oct. 15, 2005. Copy supplied.

Emma Schwartz, *Capital Hires; In the News*, Corp. Counsel, Oct. 2005. Copy supplied. Reprinted in multiple outlets.

David Hechler, *A Cherished Experience; Corporate Counsels Rarely Argue Before U.S. Supreme Court*, N.Y. L.J., Sept. 15, 2005, at 17. Copy supplied. Reprinted in multiple outlets.

David Hechler, *GCs Before High Court Are a Rarity*, National Law Journal, Aug. 29, 2005. Copy supplied. Reprinted in multiple outlets.

Emma Schwartz, *Companies Chase Exiting Officials*, Legal Times, Aug. 22, 2005. Copy supplied. Reprinted in multiple outlets.

Tom Brune and John Riley, *Roberts' Role in '91 Abortion Case Again Under Scrutiny*, Newsday, Aug. 15, 2005. Copy supplied.

Nancy Benac, *Nominee's Lineage: Part Plainspoken Hoosier, Part Creature of Washington*, Associated Press, July 21, 2005. Copy supplied.

The Charlie Rose Show, PBS, July 19, 2005. Copy supplied.

Vanessa Blum, *The Quiet Man*, Legal Times, July 18, 2005. Copy supplied.

Charles Lane and Jerry Markon, *Similar Appeal; Different Styles; Two Judges Seen as Potential Supreme Court Nominees Share Conservatives' Approval*, Wash. Post, July 17, 2005. Copy supplied.

Brit Hume, *Interview with William Barr*, Fox Special Report, June 20, 2005. Transcript supplied.

Siobhan Gorman et al., *Justice Department*, Nat'l Journal, June 18, 2005. Copy supplied. Reprinted in multiple outlets.

Verizon Authorized to Create Trust in Connection with Purchase of 43.4 Million MCI Shares, PR Newswire, May 13, 2005. Copy supplied.

Leigh Jones, *Kirkland & Ellis Gets a Black Eye – For Now*, National Law Journal, Apr. 4, 2005. Copy supplied. Reprinted in multiple outlets.

Charles Lane, *To Some, 'Chief Justice Scalia' Has a Certain Ring*, Wash. Post, Jan. 30, 2005. Copy supplied.

Tim Golden, *After Terror, a Secret Rewriting of Military Law*, N.Y. Times, Oct. 24, 2004. Copy supplied.

Verizon Calls FCC Action on CALEA Positive Step, PR Newswire, Aug. 4, 2004. Copy supplied.

Kathleen Kocks, *Good Shepherds*, GWU Law School Alumni Magazine, Summer 2004. Copy supplied.

Verizon Encouraged by New York Proposal, PR Newswire, Mar. 30, 2004. Copy supplied.

Appeals Judge Upholds FCC's Broadband Rules, Rider Research, Mar. 6, 2004. Copy supplied.

Susan Beck, *How O'Melveny and Myers Built a Litigation Powerhouse*, Legal Times, Jan. 12, 2004. Copy supplied. Reprinted in multiple outlets.

Shawn Young and Dennis K. Berman, *MCI's Re-Emergence Portends Tougher Telecom Competition*, Nov. 3, 2003, at B4. Copy supplied.

Christopher Stern, *Judge Clears WorldCom's Reorganization*, Wash. Post, Nov. 2, 2003. Copy supplied.

Griff Witte, *Federal Ban Doesn't Hurt WorldCom Much*, Wash. Post, Oct. 24, 2003. Copy supplied.

Chris Mondics, *Portrait of a Corporate Debacle*, Philadelphia Inquirer, Oct. 19, 2003. Copy supplied.

Robert D. Novak, *Ground the Flying Diplomats*, Wash. Post, Sept. 25, 2003. Copy supplied.

Bell Asks D.C. Appeals Court to Force FCC to Change UNE Order, Communications Daily, Aug. 29, 2003. Copy supplied.

Siobhan Roth, *Searching for a New Number Two*, Legal Times, Aug. 18, 2003. Copy supplied.

I appeared on *John McLaughlin's One on One* on August 3, 2003. I have no recording or transcript of this interview.

Almar Latour, Dennis K. Berman and Yochi J. Dreazen, *Getting Through: How Rivals' Long Campaign Against MCI Gained Traction – Drive by Verizon's Barr Leads to Probes, Delay of Bankruptcy Hearing – Seeking the 'Death Penalty'*, Wall St. J., Aug. 1, 2003, at A1. Copy supplied.

Criminal Investigation Focuses on MCI Avoiding Access Charges, Associated Press, July 28, 2003. Copy supplied.

Almar Latour, Yochi J. Dreazen, and Laurie Hays, *MCI, Hoping to Exit Bankruptcy, Faces New Investigation of Fraud*, Wall St. J., July 28, 2003, at A1. Copy supplied.

Christopher Stern, *WorldCom and Verizon Settle Dispute*, Wash. Post, July 22, 2003. Copy supplied.

David Crawford and Jess Bravin, *Terrorist Suspects Found Not Guilty in Key Dutch Case*, Wall St. J., June 6, 2003, at A8. Copy supplied.

Christopher Stern, *Senator Probing WorldCom's Federal Contracts*, Wash. Post, May 22, 2003. Copy supplied.

Matthew Barakat, *WorldCom Deal Angers Competitors*, Oklahoman, May 21, 2003. Copy supplied.

Rebecca Blumenstein and Almar Latour, *Chapter 11: Laundering Fraud?*, Wall St. J., May 15, 2003. Copy supplied.

Angie Cannon, *Taking Liberties*, U.S. News & World Report, May 12, 2003.

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WorldCom Announced Monday It Was Changing Its Name to MCI, Communications Daily, Apr. 15, 2003. Copy supplied.

Christopher Sterns, *New MCI Greeted by Skepticism*, Wash. Post, Apr. 15, 2003. Copy supplied.

Michael Isikoff and Mark Hosenball, *Terror Watch: Here Comes the Judge*, Newsweek, Mar. 5, 2003. Copy supplied.

Adam Liptak, *Under Ashcroft, Judicial Power Flows Back to Washington*, N.Y. Times, Feb. 16, 2003. Copy supplied.

Seth Schiesel, *No Shortage of Opinions on Salvaging WorldCom*, N.Y. Times, Jan. 20, 2003. Copy supplied.

Ashby Jones, *Spreading the Wealth*, The Am. Lawyer, Jan. 2003. Copy supplied.

Jonathan Groner, *Leitch: A Conservative Choice for Deputy*, Legal Times, Dec. 16, 2002. Copy supplied.

Siobhan Roth, *Walking a Thin Line in Terror War*, Legal Times, Nov. 18, 2002. Copy supplied.

Charles Lane, *Debate Crystallizes on War, Rights; Courts Struggle Over Fighting Terror vs. Defending Liberties*, Wash. Post, Sept. 2, 2002. Copy supplied.

Verizon Proposes Plan to Protect Customer Service, PR Newswire, July 24, 2002. Copy supplied.

Siobhan Roth, *Padilla: Why U.S. Shunned Federal Court*, Legal Times, June 17, 2002. Copy supplied.

William Neikirk, *Some Skeptical FBI Can Prevent Terror*, Chicago Trib., June 1, 2002. Copy supplied.

Margery Gordon, *AOL Time Warner GC Enters the Ring*, Law.com, Apr. 22, 2002. Copy supplied.

Laurie P. Cohen and Jess Bravin, *Officials Reach Compromise on Tribunals*, Wall St. J., Dec. 6, 2001, at A3. Copy supplied.

Congress to Put Tribunals on Trial, UPI News, Dec. 3, 2001. Copy supplied.

David Westphal, *Anti-Terror Plans Face Challenges*, Sacramento Bee, Dec. 3,

2001. Copy supplied.

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Dan Eggen, *Ashcroft Undaunted as Criticism Grows; Higher Profile Brings Controversy*, Wash. Post, Nov. 29, 2001. Copy supplied.

Edward Helmore, *"It's a Show Trial without the Show,"* The Guardian, Nov. 28, 2001. Copy supplied. Reprinted in multiple outlets.

Michael Isikoff and Stuart Taylor Jr., *Justice in the Shadows*, Newsweek, Nov. 26, 2001. Copy supplied.

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David G. Savage, *Response to Terror: Historical Perspective*, L.A. Times, Nov. 18, 2001. Copy supplied.

Robin Toner, *A Nation Challenged: The Terrorism Fight*, N.Y. Times, Nov. 18, 2001. Copy supplied.

Elisabeth Bumiller and Steven Lee Myers, *A Nation Challenged: The Presidential Order*, N.Y. Times, Nov. 15, 2001. Copy supplied.

Amy Goldstein, *A Deliberate Strategy of Disruption; Massive, Secretive Detention Effort Aimed Mainly at Preventing More Terror*, Wash. Post, Nov. 4, 2001. Copy supplied.

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Deborah Soloman, *Regional Bells Win Partial Court Victory – FCC Rules Are Overturned on What Rivals Pay for Access to Networks*, Wall St. J., July 19, 2000. Copy supplied.

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Byron York, *Restoring Justice: If Bush Wins, A Great and Urgent Task*, National Review, June 5, 2000. Copy supplied.

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Margaret A. Jacobs, *Boom Times Continue to Fuel Law-Firm Billings*, Wall St. J., Mar. 13, 2000, at B17. Copy supplied.

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United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 14(e)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

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Written Testimony of William P. Barr

United States Senate

Committee on the Judiciary

**Hearing on the Nomination of the Honorable William Pelham Barr to be Attorney General
of the United States**

Tuesday, January 15, 2019

9:30 A.M.

Good morning, Chairman Graham, Ranking Member Feinstein, and members of the Committee:

It is a privilege to come before you today. I am honored that President Trump has nominated me for the position of Attorney General. I regret that I come before this Committee at a time when much of our government is shut down. My thoughts today are with the dedicated men and women of the Department of Justice, and other federal workers, many of whom continue to perform their critical jobs.

As you know, if the Senate confirms me, this would be the second time I would have the honor of serving in this office. During the four years I served under President George H.W. Bush, he nominated me for three successive positions in the Department – Assistant Attorney General for the Office of Legal Counsel; Deputy Attorney General; and, finally, Attorney General. This Committee unanimously approved me for each of those offices.

Twenty-seven years ago, at my confirmation hearing, I explained that the office of Attorney General is not like any other cabinet post; it is unique and has a critical role to play under our constitutional system. I said then:

The Attorney General has very special obligations, unique obligations. He holds in trust the fair and impartial administration of justice. It is the Attorney General's responsibility to enforce the law evenhandedly and with integrity. The Attorney General must ensure that the administration of justice – the enforcement of the law – is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of the law.

I believe this as strongly today as I did 27 years ago – indeed, more strongly. We live in time when the country is deeply divided. In the current environment, the American people have to know that there are places in the government where the rule of law – not politics – holds sway, and where they will be treated fairly based solely on the facts and an even-handed application of the law. The Department of Justice must be such a place.

I did not pursue this position. When my name was first raised, I was reluctant to be considered. I am 68 years old, partially retired, and nearing the end of a long legal career. My wife and I were looking forward to a peaceful and cherished time with our daughters and grandchildren. And I have had this job before. But ultimately, I agreed to serve because I believe strongly in public service, I revere the law, and I love the Department of Justice and the dedicated professionals who serve there. I believe I can do a good job leading the Department in these times.

If confirmed, I will serve with the same independence as in 1991. At that time, when President George H.W. Bush chose me, he sought no promises and asked only that his Attorney General act with professionalism and integrity. Likewise, President Trump has sought no assurances, promises, or commitments from me of any kind, either express or implied, and I have not given him any, other than that I would run the Department with professionalism and integrity. As Attorney General, my allegiance will be to the rule of law, the Constitution, and the American people. That is how it should be. That is how it must be. And, if you confirm me, that is how it will be.

Let me address a few matters I know are on the minds of some of the members of this Committee.

First, I believe it is vitally important that the Special Counsel be allowed to complete his investigation. I have known Bob Mueller personally and professionally for 30 years. We worked closely together throughout my previous tenure at the Department of Justice under President Bush. We've been friends since. I have the utmost respect for Bob and his distinguished record of public service. When he was named special counsel, I said that his selection was "good news" and that, knowing him, I had confidence he would handle the matter properly. I still have that confidence today.

Given his public actions to date, I expect that the Special Counsel is well along in his investigation. At the same time, the President has been steadfast that he was not involved in any collusion with Russian interference in the election. I believe it is in the best interest of everyone – the President, Congress, and, most importantly, the American people – that this matter be resolved by allowing the Special Counsel to complete his work. The country needs a credible resolution of these issues. If confirmed, I will not permit partisan politics, personal interests, or any other improper consideration to interfere with this or any other investigation. I will follow the Special Counsel regulations scrupulously and in good faith, and on my watch, Bob will be allowed to complete his work.

Second, I also believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law. I can assure you that, where judgments are to be made by me, I will make those judgments based solely on the law and will let no personal, political, or other improper interests influence my decision.

Third, I would like to briefly address the memorandum that I wrote last June. I wrote the memo as a former Attorney General who has often weighed in on legal issues of public importance, and

I distributed it broadly so that other lawyers would have the benefit of my views. As I explained in a recent letter to Ranking Member Feinstein, my memo was narrow in scope, explaining my thinking on a specific obstruction-of-justice theory under a single statute that I thought, based on media reports, the Special Counsel might be considering. The memo did not address – or in any way question – the Special Counsel’s core investigation into Russian interference in the 2016 election. Nor did it address other potential obstruction-of-justice theories or argue, as some have erroneously suggested, that a President can never obstruct justice. I wrote it myself, on my own initiative, without assistance, and based solely on public information.

I would also like to offer a few brief comments about what my priorities will be as Attorney General if I am confirmed.

First, we must continue the progress we have made on violent crime while, at the same time, recognizing the changes that have occurred since I last served as Attorney General. Then, the Nation was suffering from the highest violent crime rate in our history. My priority was to protect the public and attack those soaring crime rates by targeting chronic violent offenders and gangs. The crime rate has substantially fallen since 1992. The recently passed First Step Act, which I intend to diligently implement if confirmed, recognizes the progress we have made over the past three decades. Like Attorney General Sessions, I believe we must keep up the pressure on chronic, violent criminals. We cannot allow the progress we have made to be reversed. As Attorney General, I will continue to give priority to the joint efforts with our state and local partners to combat violent crime.

In the past, I was focused on predatory violence. But today I am also concerned about another kind of violent crime. We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. But we can only survive and thrive as Nation if we are mutually tolerant of each other’s differences – whether they be differences based on race, ethnicity, religion, sexual orientation, or political thinking. Each of us treasures our own freedom, but that freedom is most secure when we respect everyone else’s freedom. And yet we see some people violently attacking others simply because of their differences. We must have zero tolerance for such crimes. I am concerned that violence is also rearing its head in the political realm. In our system, political differences are to be mediated by free speech and elections. We must not allow political violence to supplant our political discourse, and I will make this a priority as Attorney General if confirmed.

Next, the Department will continue to prioritize enforcing and improving our immigration laws. As a Nation, we have the most liberal and expansive immigration laws in the world. We attempt to take in huge numbers equitably from all around the world. Legal immigration has historically been a huge benefit for our country. But most of the world’s population lives well below our own poverty level, and we cannot possibly accommodate the many millions more who would want to come here if we had no restrictions. As we open our front door, and try to admit people in an orderly way, we cannot allow others to flout our legal system by crashing in through the back door. Countenancing this lawlessness would be grossly unfair to those abiding by the rules. It would create unsafe conditions on our borders for all involved. It would permit an avenue for criminals and terrorists to gain access to our country. And, it would invite ever-greater and unsustainable influxes of those who enter our country illegally. In short, in order to ensure that

our immigration system works properly, we must secure our Nation's borders, and we must ensure that our laws allow us to process, hold, and remove those who unlawfully enter.

Finally, in a democracy like ours, the right to vote is paramount. In a period of great political division, one of the foundations of our Nation is our enduring commitment to the peaceful transition of power through elections. It is imperative that people have confidence in the outcome of elections. If confirmed, I will give priority to protecting the integrity of elections. I will build on the work already done by Special Counsel Mueller and current Department of Justice leadership and ensure that the full might of our resources are brought to bear against foreign persons who unlawfully interfere in our elections. I believe that our country must respond to any foreign interference with the strongest measures, and we must work with partners at the state level to ensure that our election infrastructure is completely protected. Fostering confidence in the outcome of elections also means ensuring that the right to vote is fully protected, as well as ensuring the integrity of elections.

Let me conclude by making the point that, over the long run, the course of justice in our country has more to do with the character of the Department of Justice as an enduring institution than with the tenure of any particular Attorney General. Above all else, if confirmed, I will work diligently to protect the professionalism and integrity of the Department as an institution, and I will strive to leave it, and the Nation, a stronger and better place.

Thank you very much for your time today. I look forward to answering your questions.



CHUCK CANTERBURY
NATIONAL PRESIDENT

**NATIONAL
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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

TESTIMONY

of

Chuck Canterbury

National President

Grand Lodge, Fraternal Order of Police

on the

**Nomination of William P. Barr to be the next
Attorney General of the United States**

before the Senate Committee on the Judiciary

16 January 2019

—BUILDING ON A PROUD TRADITION—



Good morning, Mr. Chairman, Ranking Member Feinstein, and distinguished Members of the Committee on the Judiciary. My name is Chuck Canterbury, National President of the Fraternal Order of Police. I am the elected spokesperson of more than 345,000 rank-and-file police officers—the largest law enforcement labor organization in the United States.

I am very pleased to have the opportunity to offer the strong and unequivocal support of the Fraternal Order of Police for the nomination of William P. Barr to be the next Attorney General of the United States.

In my previous appearances before this Committee, I have been proud to offer the FOP's support for a number of nominees with the expectation that they would be good leaders that would serve our country honorably and effectively. In this case, however, there is no need to speculate whether or not Mr. Barr would make a good Attorney General because he already was a good Attorney General in the Administration of President George H.W. Bush. He had the experience, the knowledge and the ability to lead the U.S.

Department of Justice then and he certainly does now.

Mr. Barr's career of public service began as a clerk for a judge on the U.S. Court of Appeals for the District of Columbia and a short tenure in the Reagan White House. He then joined the Bush (41) Administration as Assistant Attorney General for the Office of Legal Counsel in 1989. President Bush took note of his leadership, integrity and commitment to law enforcement and promoted him to Deputy Attorney General in 1990.

In 1991, Mr. Barr was named Acting Attorney General and was immediately faced with a public safety crisis. At the Talledega Federal prison, more than 100 Cuban inmates, awaiting transportation back to their country, staged a riot and took seven Bureau of Prisons and three Immigration and Naturalization employees hostage. In the first hours of the standoff, General Barr ordered the Federal Bureau of Investigation to plan a hostage rescue effort.

The Cuban inmates demanded that they be allowed to stay in the United States and released one of the hostages. Over the course of

the nine-day siege, it was clear the negotiations were not progressing and the inmates threatened to begin killing their hostages. General Barr ordered the FBI to breach the prison and rescue the hostages. The hostages were freed without any loss of life and incident was ended because of General Barr's decisive action.

Following the successful resolution of this incident, President Bush nominated him to be U.S. Attorney General. The Committee on the Judiciary reported his nomination unanimously and the Senate confirmed him as the 77th Attorney General on a voice vote. Through his service and his actions, he demonstrated that he was the right man for the job. The FOP believe he is the right man for the job again today.

Two years ago, just days after his inauguration, President Trump issued three Executive Orders on law enforcement and public safety. The first directed that the Federal government develop strategies to "enhance the protection and safety" of our officers on the beat. The others created a Task Force on Crime Reduction and Public Safety and for the development of a national strategy to combat

transnational criminal organizations trafficking in human beings, weapons and illicit drugs.

Mr. Chairman, during his tenure as Attorney General, he directed and oversaw a similar transformation at the Justice Department by refocusing its resources by making crimes of violence—particularly gang violence—a top priority for Federal law enforcement. I submit to this Committee that Mr. Barr is the perfect person to complete the work begun by General Sessions with respect to focusing Federal resources to fight violent crime because he not only has done it before, he has done it before as the Attorney General of the United States.

President Trump has clearly made law enforcement and public safety a top priority. His nomination of William Barr to be the next Attorney General demonstrates that these priorities have not changed. We know Mr. Barr's record and abilities, as well as his prior experience in the office. The FOP shares his views and we are confident that Mr. Barr will, once again, be a stellar "top cop."

We believe the President has made an outstanding choice in Mr. William P. Barr to return to public service as the Attorney General of the United States. The FOP proudly offers our full and vigorous support for this nominee and we urge the Judiciary Committee to favorably report his nomination just as they did in 1991.

Thank you again of the opportunity to testify and I am happy to answer any of your questions.

**Testimony of Mary Kate Cary at a Senate Judiciary Committee Hearing
on the Nomination of William P. Barr to be U.S. Attorney General
January 16, 2019**

Chairman Graham, Senator Feinstein, and members of the Committee:

Thank you for the invitation to testify today. I am here to give my enthusiastic support to the nomination of William P. Barr as our next Attorney General.

My name is Mary Kate Cary. I was a White House speechwriter for President George H.W. Bush from 1989 to 1992. In January of 1992, I moved to the Justice Department for the final year of the Bush 41 Administration, to serve as Deputy Director of Policy and Communications, overseeing the speechwriters and the policy shop, and serving as one of two spokesmen for the then-new Attorney General, William Barr.

When I first started working for General Barr, I was 28 years old. I got to know him very well, as speechwriters do, and very quickly learned the way he thinks. I found that Bill Barr has a brilliant legal mind, knows Mandarin Chinese and plays the bagpipes. He's got a great sense of humor and an easy laugh. He is a kind and decent man, a dedicated public servant and one of the best bosses I've ever had. He is always a gentleman.

Bill and I flew thousands of miles that year in a four-seater prop plane to towns and cities all over America, where he met with local law enforcement leaders, small town mayors, city council members, victims rights advocates, criminal justice reform leaders, prison wardens, residents of public housing, federal prosecutors, religious leaders — really all kinds of people from every walk of life.

We were often traveling in support of Bill's visionary initiative, Operation Weed and Seed, which sought to remove violent criminals and drug gangs from underserved neighborhoods and then allow grass-roots organizations and programs to flourish, bringing hope of a better life to residents through education, opportunity, and stronger civil rights.

As we met with people in communities all over America, I saw that Bill was a good listener. He was masterful at drawing out people's concerns — and he had a knack for finding the best solutions on the ground, figuring out what worked in a neighborhood and then putting the right policies in place. He made sure politics never entered into it.

Bill Barr treated everyone with the same respect, whether they were an up-and-coming chief of police, a receptionist at the Department of Justice or an 80 year-old resident of public housing. I believe this is why Bill Barr continues to be held in high esteem by the career staff and civil servants at the Department of Justice, and why he was such a successful Attorney General. I also believe that in addition to being good policy, Bill Barr's leadership style is why Operation Weed and Seed continued on for many years after he left office.

Everywhere we went that year, we were accompanied by rank-and-file FBI agents, and he was admired by every one of them that I met. More than once I can remember being in very dangerous situations where the agents were concerned for his physical security. Every time, he was more concerned about my safety. The fact that the Attorney General of the United States was more concerned about the safety of a 28-year old staffer than his own tells you volumes about him.

Despite his top-notch education and stunning intellect, Bill Barr is not an Ivory Tower kind of guy. He went out of his way to build friendships, at the Department and across the United States — checking in when someone was sick, helping people get jobs, just staying in touch. He and his wife came to my wedding and we have stayed friends for the 27 years since we worked together. Like President Bush 41 did, Bill Barr has a devoted and wide collection of friends, each of whom think of him as a really good friend.

I remember when he was Attorney General — at the age of 42 — and his three daughters were young girls. Despite the long hours he kept, the tremendous amount of travel, and the time spent away from his family, his daughters admired his devotion to the law so much that each of them later went to law school in order to follow in his footsteps. As a mother myself, that, too, tells me volumes about the way he has lived his life, and the example he has given to young people, especially women.

It is no surprise to me that he's one of the few people in American history to be asked to be Attorney General of the United States *twice*. It's an honor for me to highly recommend William P. Barr to you for confirmation.

Thank you.



NAACP

Derrick Johnson
*President and
Chief Executive Officer*

Leon W. Russell
*Chairman
National Board of Directors*

**TESTIMONY OF DERRICK JOHNSON,
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE
NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE (NAACP)
before the
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
on the
NOMINATION OF WILLIAM P. BARR
FOR ATTORNEY GENERAL OF THE UNITED STATES
Wednesday, January 16, 2019
Hart Senate Office Building, Room 216**

INTRODUCTION

Good morning. My name is Derrick Johnson and since October, 2017, I have had the honor of serving as the President and Chief Executive Officer of the National Association for the Advancement of Colored People, the NAACP. Prior to my current position, I served as the Vice Chair of the NAACP's Board of Directors, and I was the President of the Mississippi State Conference of NAACP Branches. Founded in February, 1909, the NAACP is our nation's oldest, largest and most widely-recognized grassroots civil rights organization. Thank you for allowing me to testify on the nomination of William P. Barr to be the 85th Attorney General of the United States.

The Senate considers the Barr nomination in extraordinary times. The public's faith and confidence in our nation's most cherished institutions have been tested as never before, and for good reason. The presidency itself is teetering on the brink, with news breaking daily about actions by Donald Trump and top officials to undermine the rule of law. Under Trump, we have witnessed the worst erosion of civil rights in recent history, not only for the African-American community but for each and every community protected by our federal civil rights laws. Now more than ever, the country needs a guardian of justice to restore the integrity of the Justice Department and to demonstrate fealty to the rule of law and equal justice.

The standard for confirmation of the Attorney General is exceedingly high. The Attorney General is the nation's chief law enforcement officer and is charged with enforcing our civil rights laws. The Senate should resist comparing Mr. Barr's qualifications to those of Trump's other appointees, acting Attorney General Matthew Whitaker or Senate-confirmed Attorney General Jeff Sessions. The bar has not lowered merely because Trump occupies the Oval Office. Instead, the nominee bears the burden of demonstrating he possesses the integrity, independence and commitment to justice required of a position once held by Robert F. Kennedy and Nicholas Katzenbach, who first enforced the nation's modern civil rights laws.

As a threshold matter, the Attorney General must be dedicated to equal justice and have a demonstrated record of support for civil rights. Jeff Sessions, whose nomination for Attorney General we strongly opposed, failed that test miserably. During his two-year tenure, Sessions decimated the Civil Rights Division, known as the crown jewel of the Department. Sessions reversed longstanding policies and positions which enjoyed bipartisan support and protected the civil rights of our most vulnerable communities. This Department has supported voter suppression, questioned the longstanding "disparate impact" method for proving discrimination, and dramatically curtailed use of consent decrees in discrimination cases, including those addressing civil rights abuses by local police agencies. Trump's aggressive assault on civil rights and the rule of law itself should mean he is entitled to none of the deference usually reserved for executive nominations. Instead, the Senate should thoroughly vet and carefully consider anyone Trump wants to appoint to this position.

William Barr's record provides little comfort to overcome the presumption he was selected to protect Donald Trump. He has defended Trump's trampling of the rule of law involving the Russia investigation that would be within his purview at the Department. Disturbingly, Barr

endorsed Jeff Session's "outstanding" leadership of the Department, lavishing praise for precisely those actions that have undermined the rights and protections of communities of color.¹ His 40-year record reflects hostility to the progress our nation has made in civil rights and civil liberties and he does not possess the commitment required by a position entrusted with the solemn duty of promoting equal justice for all. We urge the Senate to vote against his confirmation.

RULE OF LAW

The Attorney General must serve with independence and fealty to the rule of law. William Barr's record raises grave concerns about both of these requirements. Barr submitted an extraordinary unsolicited 20-page memorandum to the Justice Department attempting to exonerate Donald Trump of obstruction of justice related to the Russia investigation.² It came after strong evidence suggesting that Trump selected his fist Attorney General, Jeff Sessions, in order to protect him from the investigation by Special Counsel Robert Mueller.³ Barr wrote that the Mueller's investigation is "fatally misconceived" and that his reasoning was "grossly irresponsible."⁴ The memorandum calls into stark relief Mr. Barr's integrity and bias at a time when the Department's independence is paramount. Barr also advanced an expansive view of presidential power, which he previously supported in resisting congressional oversight.⁵ This is troubling given the House of Representatives' intent to exercise its oversight authority over the Justice Department.

This was not the first time Barr publicly supported Trump in connection with the Russia investigation. In Spring 2017, Trump abruptly fired FBI Director James Comey who was leading the FBI's investigation into whether Russian interfered with the presidential election and had connections to the Trump campaign.⁶ Three days later, Barr vigorously defended Trump in an op-ed, titled "Trump Made the Right Call on Comey."⁷ Importantly, Barr vehemently denied that Trump's action could interfere with the Russian investigation: "The notion that the integrity of this investigation depends on Comey's presence just does not hold water."⁸ Shortly thereafter, Barr met with Trump to discuss serving as his personal counsel in the Russia investigation. According to reports, it was Barr's aggressive defense of Trump's firing of Comey that caught

¹ W. Barr, E. Meese, M. Mukasey, *We are Former Attorneys General. We Salute Jeff Sessions*, WASHINGTON POST, Nov. 7, 2018.

² Memorandum from William Barr to Deputy Attorney General Rod Rosenstein & Assistant Attorney General Steve Engle, June 8, 2018, <https://www.justsecurity.org/wp-content/uploads/2018/12/June-2018-Barr-Memo-to-DOJ-Muellers-Obstruction-Theory-1.2.pdf>

³ Trump admitted he would have not appointed Sessions if he had known Sessions would recuse himself from overseeing the Russia investigation and he blamed Session to the appointment of special counsel Mueller. P. Baker, M. Schmidt, M. Haberman, *Citing Recusal, Trump Says He Wouldn't Have Hired Sessions*, NYT, July 19, 2017.

⁴ Memorandum from William Barr to Deputy Attorney General Rod Rosenstein & Assistant Attorney General Steve Engle, June 8, 2018, <https://www.justsecurity.org/wp-content/uploads/2018/12/June-2018-Barr-Memo-to-DOJ-Muellers-Obstruction-Theory-1.2.pdf>

⁵ Common Legislative Encroachments on Executive Branch Authority, Memorandum Opinion for the General Counsel's Consultative Group, July 27, 1989, <https://www.justice.gov/file/24286/download>

⁶ A. Zurcher, *Did President Trump Fire James Comey as Part of a Cover-Up?*, BBC NEWS, May 10, 2017.

⁷ W. Barr, *Trump Made Right Call on Comey*, WASHINGTON POST, May 12, 2017.

⁸ *Id.*

his attention.⁹ Although Barr rejected Trump's offer, this communication that continued for months should disqualify Barr from overseeing the investigation into Russia.

Additional problematic comments by Barr about the Mueller and other DOJ investigations warrant scrutiny by the Judiciary Committee. Barr echoed Trump's complaints about political donations by members of the Mueller investigation team to Democratic campaigns: "In my view, prosecutors who make political contributions are identifying fairly strongly with a political party. I would have like to see him have more balance on this group."¹⁰ Barr also endorsed Trump's call for a new criminal investigation into Hillary Clinton in connection to a uranium mining firm that benefited from a State Department decision during her tenure as Secretary: "There is nothing inherently wrong about a president calling for an investigation."¹¹

An Attorney General must be beyond reproach. The public must have confidence that the duties of the office will be discharged lawfully and independently, without bias or favor. No one is above the law, including the president. William Barr's statements and actions in defense of Trump should disqualify him from leading the Department. Recusal from the Russia investigation is not the solution. Barr can never overcome the public perception that he endorsed Trump's efforts to hold himself above the law. This lack of trust would erode the credibility and integrity of the Department. William Barr simply cannot serve as the independent leader our country needs at this critical time.

VOTING RIGHTS

The Justice Department's mission is to protect our democracy. Its enforcement of our voting rights laws is of paramount importance. As the Supreme Court has noted, the right to vote is "preservative of all rights."¹² When President Johnson signed the Voting Rights Act in 1965, he reported that the Justice Department would file a lawsuit the next day challenging the constitutionality of the poll tax in Mississippi.¹³ President Johnson continued: "And I pledge you that we will not delay, or we will not hesitate, or we will not turn aside until Americans of every race and color and origin in this country have the same right as all others to share in the process of democracy."¹⁴

The Department's commitment and fealty to protecting our democracy must persist, regardless of who occupies the Oval Office. More than any other time in history, the Justice Department requires a leader dedicated to ensuring full political participation for all. The Senate should refuse to confirm anyone who will not commit to reversing the deplorable actions of Jeff

⁹ M. Isikoff & D. Klaidman, *Trump First Tapped William Barr for Another Job – Defense Lawyer*, HUFFINGTON POST, Dec. 19, 2017.

¹⁰ M. Zapotosky, *As Mueller Builds His Russia Special-Counsel Team, Every Hire is Under Scrutiny*, WASHINGTON POST, July 5, 2017.

¹¹ P. Baker, *'Lock Her Up,' Becomes More Than a Slogan*, NEW YORK TIMES, Nov. 14, 2017.

¹² *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

¹³ Lyndon B. Johnson, Remarks on the Signing of Voting Rights Act, Aug. 6, 1965, <https://millercenter.org/the-presidency/presidential-speeches/august-6-1965-remarks-signing-voting-rights-act>.

¹⁴ *Id.*

Sessions to restrict democracy. Anything less than complete support for the franchise is unacceptable.

Under Jeff Sessions, the Justice Department completely abandoned its duty to protect the voting rights of all citizens. This is exactly what we feared when Trump nominated Jeff Sessions, whose own judicial nomination was defeated by this Committee because he had wrongly prosecuted African Americans in Alabama's Black Belt for voting fraud. Once confirmed, Sessions acted true to form in jettisoning protections for the right to vote. The Department reversed positions in lawsuits to support voter suppression measures¹⁵ and to purge voters from rolls.¹⁶ Because the *Shelby County v. Holder* ruling eliminated safeguards under Section 5 of the Voting Rights Act, litigation under Section 2 of the Act is all the more important. But Sessions filed no Section 2 litigation whatsoever. As the nation experienced rampant voter suppression leading up to and through the 2018 midterm elections, the Justice Department stood by silently as communities of color were denied access to the polls. The Department's actions are consistent with this administration's full-scale attack on voting rights. This administration stood up a sham voting commission to propagate the myth of voter fraud only to be shamed into closing it down.¹⁷ Overriding longstanding practice, it added a citizenship question to the 2020 Census, eliciting at least seven lawsuits.¹⁸ A federal court recently found that Trump's own actions during the 2016 campaign constituted voter suppression.¹⁹

Just as the Justice Department has abandoned voting rights, the need for federal enforcement of voting rights laws has never been greater. In a recent report, the U.S. Commission on Civil Rights found that voter suppression is at an all-time high.²⁰ Since the Supreme Court's decision in *Shelby County v. Holder*, twenty-three states have enacted "newly restrictive statewide voter laws," which impose voter ID requirements, require documentary proof of citizenship to register to vote, allow voter purging, reduce or close polling places, and eliminate early voting.²¹ All of these measures disproportionately limit the right to vote by communities of color. The Civil Rights Commission "unanimously call[ed] on the United States Department of Justice to pursue more Voting Rights Act enforcement in order to address the aggressive efforts by state and local officials to limit the vote of citizens of color, citizens with disabilities, and limited English proficient citizens."²²

CRIMINAL JUSTICE

¹⁵ S. Horwitz, *Justice Department Changes Its Position in High-Profile Texas Voter-ID Case*, WASHINGTON POST, Feb. 27, 2017.

¹⁶ S. Levine, *DOJ Reverses Position in Big Voting Case Before Supreme Court*, HUFFINGTON POST, Aug. 8, 2017.

¹⁷ M. Tackett & M. Wines, *Trump Disbands Commission on Voter Fraud*, NEW YORK TIMES, Jan. 3, 2018.

¹⁸ H. Wang, *Hurdles Remain as Final Countdown Begins for 2020 Census*, WGBR, Jan. 10, 2019.

¹⁹ R. Hasen, *Donald Trump Was Just Handled a Chance to Supercharge Voter Suppression in 2020*, SLATE, Jan. 8, 2019.

²⁰ U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, 2018 Statutory Report, Sept. 12, 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf

²¹ *Id.*

²² *Id.*

The Attorney General is responsible for guaranteeing constitutional safeguards and ensuring equality in the criminal justice system. William Barr's record on criminal justice falls woefully short on both accounts. His leadership in the Justice Department was marked by extraordinarily aggressive policies that harmed people of color in particular. He was a general in the War on Drugs that was rooted in racism and relied on ineffective policies that still have devastating consequences for communities of color today. That Mr. Barr would be entrusted with the solemn duty of ensuring fairness in our justice system under a Trump administration is extremely alarming.

As Attorney General, Barr championed mass incarceration that deprived countless persons of color first of their liberty and then of their rights after release. It was William Barr who issued the Justice Department report, "The Case for More Incarceration,"²³ precisely when incarceration rates were highest.²⁴ Barr did not equivocate: "First, prisons work. Second, we need more of them."²⁵ In announcing his Department would assist states in lifting court-imposed restrictions on prison populations, Barr stated: "The choice is clear. More prison space or more crime."²⁶

Barr sought to turn the Justice Department into an "agenda-setting agency from a reactive institution."²⁷ In a 1992 interview, he stated: "Violent crime is a high priority, the role of gangs, the problem we have in the juvenile justice system. These are things that obviously were related to the riots in Los Angeles and the whole problem we have in the inner cities. The importance of prosecuting the war on drugs, similarly, I think, is responsive to one of the real problems we have in our cities in the United States."²⁸ Amazingly, Barr denied that his policies had a racially discriminatory impact: "I think our system is fair and does not treat people differently."²⁹

Shortly after leaving the Justice Department, Barr authored an article titled "Legal Issues in a New World Order," in which he lamented "lowering the cost of misconduct."

When past societies had deviated too far from sound moral principles regarding how to conduct themselves, they ended up paying a very high price.... Dis-spirited children, violent crime, and poverty are the price we pay for the breakdown of the family structure. Today, there is something new. The state no longer sees itself as a moral institution, but a secular one. The state is called upon to remove the inconvenience and the costs associated with personal misconduct. Thus, the reaction to disease and illegitimacy is not sexual responsibility, but the distribution of condoms; our approach to the decomposition of the family is to substitute the

²³ The Case for More Incarceration, Office of Policy Development, Department of Justice, Report 1992 NCJ-139583, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>

²⁴ S. Galai, *William Barr Was an Ardent Champion of Mass Incarceration*, ACLU BLOG, Jan. 10, 2019, <https://www.aclu.org/blog/smart-justice/mass-incarceration/william-barr-was-ardent-champion-mass-incarceration>

²⁵ The Case for More Incarceration, Office of Policy Development, Department of Justice, Report 1992 NCJ-139583, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>

²⁶ S. LaFraniere, *U.S. Shifts on Prison Crowding*, WASHINGTON POST, Jan. 15, 1992.

²⁷ R. Ostrow, *William Barr, A 'Caretaker' Attorney General Proves Agenda-Setting Conservative*, LOS ANGELES TIMES, June 21, 1992.

²⁸ *Id.*

²⁹ *Id.*

government as the "breadwinner;" the reaction to drug addiction is to pass out needles. While we think we are solving problems, we are actually subsidizing them. By lowering the cost of misconduct, the government serves to perpetuate it.³⁰

There is scant evidence that William Barr has changed or evolved in his views on criminal justice. This is despite universal rejection of his harsh approach, most recently manifested in passage of the First Step Act which the NAACP strongly supported. Barr opposed earlier bipartisan sentencing reform by criticizing reductions in mandatory minimums and retroactivity.³¹ He began his recent praise of Jeff Sessions by falsely charging that "the [Obama] administration's policies had undermined police morale, with the spreading 'Ferguson effect' causing officers to shy away from proactive policing out of fear of prosecution."³² He stated that the decline in violent crime since his own tenure was reversed by the Obama administration, remarking, "Many people were concerned that the hard-won progress of earlier years would be lost."³³ He lauded Sessions for reinstating charging practices against drug dealers and for prosecuting the highest number of violent offenders since his own tenure.³⁴ Given his longstanding and strident support for incarcerating persons as the only effective way to reduce crime, the Senate should approach any attempt by Barr at his hearing to moderate his criminal justice views with skepticism and doubt.

IMMIGRANT RIGHTS

The Trump administration has done more to undermine the rights of immigrants and to harm individuals and families seeking entry into the United States than any other administration. The administration imposed a Muslim ban, rescinded eligibility for current immigration programs, adopted viciously cruel family separation policies, and erected other obstacles to asylum. Currently, Trump has shut down the federal government, effectively holding our public servants hostage, in order to secure funding to construct a hate-filled wall at our southern border.

This government-sponsored inhumanity is inconsistent with our laws and our values. Many of the worst actions have targeted immigrants of color. The NAACP has filed important litigation to protect the rights of young, undocumented immigrants of color eligible for the Deferred Action for Children Arrivals (DACA) program. There are approximately 800,000 DACA recipients nationwide. The vast majority—approximately 95 percent—are people of color. We sued Donald Trump, the Attorney General, and other federal agencies for constitutional and statutory violations in renegeing on their promise to DACA recipients that they could build lives for themselves in the United States without fear of prosecution or deportation.³⁵ The NAACP also sued the Department of Homeland Security for its 2017 decision to rescind the Temporary Protected Status (TPS) of Haitian immigrants. This program allowed Haitians who were in this

³⁰ W. Barr, *Legal Issues in a New Political Order*, THE CATHOLIC LAWYER, Vol. 36: No. 1, Article 2 (1995), available at <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=icl>

³¹ Letter on Sentencing Reform and Corrections Act of 2015, <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>

³² Barr, *supra* n.1.

³³ *Id.*

³⁴ *Id.*

³⁵ *NAACP v. Donald J. Trump et al.*, Case No. 1:17-cv-01907, U.S. District Court, District of Columbia.

country when Haiti suffered its 2010 earthquake to remain here, particularly after the ensuing cholera epidemic and hurricane in Haiti, without risking deportation and to obtain work authorization. Our lawsuit alleges that the decision to rescind their status was based on race and ethnicity in violation of the Constitution.³⁶

Unfortunately, William Barr's record indicates he will only perpetuate these hateful policies and decisions. Barr praised Sessions for "attack[ing] the rampant illegality that riddled our immigration system, breaking the record for prosecution of illegal-entry cases and increasing by 38 percent the prosecution of deported immigrants who reentered the country illegally."³⁷ Remarkably, Barr defended the legality of Trump's first Muslim ban. Although numerous federal courts rejected it as unconstitutional, Barr declared it was "squarely within both the president's constitutional authority and his explicit statutory immigration powers."³⁸

As Attorney General under President George H.W. Bush, Barr oversaw the government's illegal response to tens of thousands of Haitian refugees fleeing a military coup. His program intercepted refugees on the high seas, detained them at Guantanamo Bay, and denied them access to lawyers.³⁹ Barr even established a separate detention center for HIV-positive refugees, creating the "world's first HIV detention camp."⁴⁰ A court disbanded the detention system in 1993. The ACLU has called Barr "a strong advocate for a policy that set the stage for the treatment of Guantanamo detainees during the war on terror."⁴¹

REPRODUCTIVE RIGHTS

The Attorney General must respect the rights and liberties guaranteed by our Constitution and our federal laws. Given the Attorney General's responsibility for enforcing the laws, overseeing the Solicitor General's litigation before the Supreme Court, and helping to select judicial nominees, William Barr's record on reproductive rights is extremely troubling.

During his 1991 Senate confirmation hearing for Attorney General, Mr. Barr stated that "*Roe v. Wade* was wrongly decided and should be overruled."⁴² Once confirmed, he sent a letter to the Senate opposing the Freedom of Choice Act that would have banned states from imposing certain restrictions on abortion.⁴³ After the Supreme Court's 1992 ruling in *Planned Parenthood v. Casey*, Barr publicly expressed disappointment in the decision and vowed that the Justice Department would "call for overturning *Roe v. Wade* in future litigation."⁴⁴ He predicted that

³⁶ *NAACP et al. v. Department of Homeland Security et al.*, Case No. 1:18-cv-00239, U.S. District Court, Maryland

³⁷ Barr, *supra* n.1.

³⁸ W. Barr, *Trump Was Right to Fire Sally Yates*, WASHINGTON POST, Feb. 1, 2017.

³⁹ Transcript, William P. Barr Oral History, University of Virginia Miller Center, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

⁴⁰ K. Smith, "A Stain on U.S. History," *Trump's Attorney General Pick Used Guantanamo Bay to Hold Thousands of Haitian Refugees*, CBS NEWS, Dec. 10, 2018.

⁴¹ D. Cole, *No Relief, William Barr is as Bad as Jeff Sessions—If Not Worse*, ACLU BLOG, Dec. 7, 2018.

⁴² <https://www.c-span.org/video/?c4765758/barr-roe>

⁴³ S. LaFraniere, *Barr Attacks Abortion-Rights Bill*, WASHINGTON POST, Mar. 4, 1992.

⁴⁴ M. Alfaro, *William Barr, Trump's Attorney General Nominee, Said Roe v. Wade 'Will Fall' in Unearthed CNN Interview from 1992*, BUSINESS INSIDER, Jan. 11, 2019.

Roe would “ultimately be overturned” due to “further appointments to the Supreme Court.”⁴⁵ Barr continued speaking against *Roe* after leaving the Department, writing in his 1995 article that *Roe* was a “secularist” effort to “eliminate laws that reflect traditional moral norms.”⁴⁶ More recently, he applauded Sessions for participating in litigation “protecting the right not to have the religious beliefs of business owners burdened by a mandate to provide funding for contraceptives.”⁴⁷

LGBTQ EQUALITY

The Trump administration’s relentless attacks on the rights of the LGBTQ community constitute some of its most aggressive and hateful actions. The Justice Department must defend and enforce civil rights laws that reflect our country’s most cherished values and principles of equal opportunity for all. The Attorney General must lead on civil rights, in both word and deed.

William Barr’s record on LGBTQ issues provides great cause for concern. In his 1995 article, Barr lamented the “breakdown of traditional morality,” sounding a dog whistle for discrimination against LGBTQ communities.⁴⁸ He criticized a Washington, DC law that prohibited Georgetown University from discriminating against LGBTQ student groups, calling their conduct “immoral.”⁴⁹ Remarkably, he questioned the degree of attention afforded the LGBTQ community: “It is no accident that the homosexual movement, at one or two percent of the population, gets treated with such solicitude while the Catholic population, which is over a quarter of this country, is given the back of the hand. How has that come to be?”⁵⁰

Recently, Barr applauded Jeff Sessions for withdrawing what he called “policies that expanded statutory protections based on gender identity that Congress had not provided for in law.”⁵¹ Indeed, Sessions reversed the Department’s position in litigation to deny protections for transgender persons under Title VII’s ban on sex discrimination, in a widely criticized action that conflicted with the Equal Opportunity Employment Opportunity Commission,⁵² and the rulings of several courts. Barr also praised Sessions’ guidance for “protecting religious expression,”⁵³ which condones discrimination against LGBTQ persons by misinterpreting the First Amendment and the Religious Freedom Restoration Act.

CONCLUSION

The hearing on William Barr’s nomination represents an opportunity to reverse course and place the Justice Department back on track to fulfill its historic role in safeguarding our civil and

⁴⁵ *Id.*

⁴⁶ W. Barr, *Legal Issues in a New Political Order*, THE CATHOLIC LAWYER, Vol. 36: No. 1, Article 2 (1995), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=icj>

⁴⁷ Barr, *supra* n.1.

⁴⁸ W. Barr, *Legal Issues in a New Political Order*, THE CATHOLIC LAWYER, Vol. 36: No. 1, Article 2 (1995), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=icj>

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Barr, *supra* n.1.

⁵² C. Savage, *In Shift, Justice Says Law Does Not Bar Transgender Discrimination*, *New York Times*, Oct. 5, 2017.

⁵³ Barr, *supra* n.1.

constitutional rights. Jeff Sessions caused untold damage to the integrity and reputation of the U.S. Department of Justice. The Senate must seize this second chance for justice and insist upon an Attorney General capable of independence and willing to enforce our nation's civil rights laws with vigor and resolve. From many perspectives, William Barr is not that candidate. His affirmative support for President Trump in the Russia investigation has jeopardized public confidence in his integrity and independence. Even more importantly, Mr. Barr lacks a record of strong commitment to civil rights in which communities of color could place their trust. We urge the Senate to vote against his confirmation.

Thank you again for the opportunity to testify.

Statement of Neil J. Kinkopf
Professor of Law, Georgia State University, College of Law*
Before the Committee on the Judiciary
United States Senate
Hearing on the Nomination of
William P. Barr to be Attorney General of the United States
January 16, 2019

I

I want to thank the Committee for the privilege of presenting testimony on the nomination of William P. Barr to be the Attorney General of the United States. Mr. Barr enjoys a reputation as a skilled and intelligent lawyer and as a committed public servant – a reputation earned in part through his previous service within the Department of Justice, including as Attorney General under President George H.W. Bush. I do not mean to challenge this reputation. Nonetheless, I oppose this nomination.

It is the job of the Attorney General to lead the Department of Justice in providing legal counsel to the President and the entire executive branch. The object of that counsel is to ensure that President pursues the great objectives entrusted to him – national security, economic prosperity, liberty, and justice – within the constraints of the rule of law. I oppose the nomination of William Barr to be Attorney General because I have no doubt that he will unflinchingly apply his understanding of the Constitution – and that understanding is dangerously mistaken. As I elaborate below, William Barr’s view of the Constitution exalts presidential power, ignores Congress’s legitimate legislative powers, and minimizes the role of the judiciary. What remains is an executive power of breathtaking scope, subject to negligible limits. This is not the presidency our founders contemplated; this is not the presidency our Constitution meant to embody.

William Barr’s vision of executive power should be deeply alarming to every member of this Committee, regardless of party. In every Administration, the practice and the formal opinions of the Justice Department establish precedents that are used and relied upon by future Administrations. The edifice of presidential power is built on the precedents of Administrations of both political parties. It appears that, if confirmed, William Barr will establish precedents that adopt an enduring vision of presidential power; one that in future Administrations can be deployed to justify the exercise of power for very different ends. This vision of presidential power is contrary to the constitutional system of checks and balances that lies at the heart of our Constitution. It is contrary to the Supreme Court’s consistent understanding of that system. It is too dangerous for any President of any political party to wield.

II

* Affiliation is listed for identification purposes only. The views expressed are the author’s own and do not reflect the position of Georgia State University.

As head of the Office of Legal Counsel, William Barr issued opinions propounding an extreme view of the so-called Unitary Executive theory of presidential power.¹ At its core, that theory regards as unconstitutional any law that limits the President's authority to supervise the work of officers and other subordinates in the executive branch. It is principally concerned with maintaining a clear, unfettered chain of command within the Administration.² In a recent memorandum, Barr has gone beyond these chain-of-command concerns and propounded a novel theory of presidential power that holds unconstitutional any law that limits the way the President, or his subordinates, exercise their executive powers.³ Where the Unitary Executive theory is concerned with preserving the President's ability to supervise subordinates, Barr's recently elaborated theory holds that statutes may not limit or regulate the ways in which the President exercises his executive powers. In Barr's own words,

Constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He alone *is* the Executive branch. As such, he is the sole repository of all Executive powers conferred by the Constitution.⁴

With this formulation, the Barr Memo transforms the Unitary Executive into an Imperial Executive.

Under this Imperial Theory of presidential power, the President is free to exercise his vast constitutional authority as he sees fit during his term. The only checks on his exercise of executive power are Congress's power to hold oversight hearings,⁵ impeachment, and political considerations.⁶ Under this vision, the President and the Administration may exercise their executive powers as they see fit, free from any legal constraint. Here is how the Barr Memo expresses its vision:

In framing a Constitution that entrusts broad discretion to the President, the Framers chose the means they thought best to police the exercise of that discretion. The Framers'

¹ See, e.g., *Common Legislative Encroachments on Executive Branch Constitutional Authority*, 13 Op. O.L.C. 248 (1989).

² The unitary executive theory is a deeply flawed interpretation of the Constitution. It is contrary to virtually every relevant Supreme Court decision of the last 80 years and is irreconcilable with such leading rulings as *Morrison v. Olson*, 487 U.S. 654 (1988) (upholding limits on the President's authority to remove the Independent Counsel); *Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (upholding the independence of the Federal Trade Commission); and *Wiener v. United States*, 357 U.S. 349 (1958) (inferring and upholding limits on the President's authority to remove members of the War Claims Commission).

³ See Memorandum from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, re: *Mueller's "Obstruction" Theory* (June 8, 2018) (hereinafter, The Barr Memo).

⁴ The Barr Memo at 9 (emphasis in the original) (*n.b.* The Barr Memo is not paginated. Pin cites are therefore estimates).

⁵ It bears noting that Barr's longstanding view is that Congress's oversight authority is extremely limited. See, e.g., *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 160 (1989).

⁶ At least, these are the only checks recognized in the Barr Memo. In discussing checks on presidential power, the Barr Memo never mentions the judiciary. It is therefore unclear to what extent, if any, judicially enforceable limits – such as individual constitutional rights – might operate as a constraint on presidential power. In this connection, it is relevant to note that the Barr Memo frequently refers to the President's constitutional executive powers as “illimitable,” a description that would appear to run against the judiciary as well. It is also relevant that the Barr Memo regards it as inappropriate (presumably for courts as well as investigators) to look behind facially-legitimate exercises of power. *E.g., id.* at 9-12.

idea was that, by placing all discretionary law enforcement authority in the hands of a single "Chief Magistrate" elected by all the People, and by making him politically accountable for all exercises of that discretion by himself or his agents, they were providing the best way of ensuring the "faithful exercise" of these powers. Every four years the people as a whole make a solemn national decision as to the person whom they trust to make these prudential judgments. In the interim, the people's representatives stand watch and have the tools to oversee, discipline, and, if they deem appropriate, remove the President from office. Thus, under the Framers' plan, the decision whether the President is making decisions based on "improper" motives or whether he is "faithfully" discharging his responsibilities is left to the People, through the election process, and the Congress, through the Impeachment process.⁷

This passage purports to describe the Framers' design for the constitutional allocation of powers between the President and Congress. It is not surprising that it does not cite any actual Framers, because it is difficult to imagine a more fundamentally mistaken interpretation of our Constitution. In *The Federalist* nos. 47, 48, and 51, James Madison offers a comprehensive account of the Constitution's structure and distribution of power within the federal government. In *The Federalist* no. 47, Madison explains that each branch is accorded "a partial agency" in, meaning a "control over, the acts of each other."⁸ In numbers 48 and 51, Madison explains that the reason for granting overlapping and coordinated, rather than exclusive and distinct, powers was to establish the system of checks and balances that is so familiar to us. Within this system, Madison regarded Congress as the most powerful branch. "The legislative department derives [its] superiority in our government[] from ... [the fact of i]ts constitutional powers being at once more extensive, and less susceptible of precise limits"⁹ By contrast, "the executive power [is] restrained within a narrower compass"¹⁰ Madison's account of the Constitution's design would be obviously wrong if the Barr Memo's description, quoted above, were accurate.

The fundamental flaw in the Barr Memo's description of the constitutional system of checks and balances is that it completely ignores Congress's most important power – the power to legislate. To take federal criminal law as an example, the Constitution vests Congress with an array of substantive powers that authorize it to enact the vast expanse of federal criminal law contained in the U.S. Code. In addition, Congress is empowered to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof."¹¹ Congress, therefore, clearly holds the authority to establish a Department of Justice to investigate and prosecute violations of those criminal laws. It also has the authority to confer investigative and prosecutorial authorities upon particular officers, such as the Attorney General, and to establish the rules that anyone who prosecutes and investigates must follow.

The Barr Memo's Imperial Executive theory, however, ignores the existence of these legislative powers. Instead, it extols "[t]he illimitable nature of the President's law enforcement

⁷ The Barr Memo at 11.

⁸ *The Federalist Papers* No. 47, at 302 (Madison)(Clinton Rossiter ed. 1961).

⁹ *Id.* no. 48, at 310.

¹⁰ *Id.* at 309.

¹¹ U.S. Const. art I, §8, cl. 18.

discretion"¹² and claims "the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the cases subject to his control and supervision."¹³ The Memo takes the view that the President and his subordinates in the Department of Justice are at liberty to investigate and prosecute as they see fit, subject only to the (vanishingly small) possibility of impeachment or the inconvenience of legislative oversight hearings. This is not the system our Constitution adopts or our Founders envisioned.

III

In his prepared statement, Mr. Barr has characterized his memo as "narrow in scope," addressing only "a specific obstruction-of-justice theory under a single statute." But in order to answer the specific issue, the Barr Memo offers a comprehensive theory of the President's constitutional power. That theory has momentous ramifications throughout the executive branch, as well as implications for aspects of the Special Counsel's investigation that reach beyond the specific obstruction-of-justice theory discussed in the Barr Memo. In this section, I will first address some of the portent of Mr. Barr's views for the Administration. Next, I will consider the ways in which those views could be used to undermine the Special Counsel's investigation.

A. Implications of the Imperial Executive Theory for the Administration

The independent agencies are unconstitutional. William Barr's view of presidential power would hold independent agencies unconstitutional, overturning nearly a century of Supreme Court precedent and upending dozens of regulatory agencies. It would be shocking enough for the Barr Memo to assert that the Supreme Court's most foundational decisions relating to the constitutionality of the regulatory state have been consistently wrong for nearly a century. The Barr Memo does not even note that it is irreconcilable with these decisions, let alone attempt to explain why they should be disregarded.

The Supreme Court has held that Congress may establish independent agencies – that is, agencies that exercise their power subject to the policies set forth in law and not subject to the President's political oversight.¹⁴ The mechanism that renders an agency independent in this sense is a limit on the President's removal authority; the President may only remove the head(s) of an independent agency "for cause" rather than "at will." As then-Assistant Attorney General for the Office of Legal Counsel William Barr put it, "Because the power to remove is the power to control, restrictions on removal power strike at the heart of the President's power to direct the Executive Branch and to perform his constitutional duties."¹⁵ The Barr Memo does not mince words, the President "has illimitable discretion to remove principal officers carrying out his Executive functions."¹⁶ On this theory, the President may, for example, order the Chairman of the Federal Reserve to raise interest rates (or not) and then may fire the Fed chairman if he refuses to heed the President's order. The President may order the Securities Exchange

¹² The Barr Memo at 11.

¹³ *Id.* at 10.

¹⁴ See *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935).

¹⁵ *Common Legislative Encroachments*, *supra* note 1, at 252-253 (1989).

¹⁶ The Barr Memo at 9.

Commission to undertake certain enforcement actions, or to drop certain actions, and remove any commissioner who objects. The result would be a dramatic re-working of the administrative state, and a massive aggrandizement of the President's power.

The *Qui Tam* provisions of the False Claims Act are unconstitutional. Then-Assistant Attorney General Barr composed a lengthy legal opinion expressing precisely this view in 1989.¹⁷ He asserted, “the authority to enforce the laws is a core power vested in the Executive. The False Claims Act effectively strips this power away from the Executive and vests it in private individuals, depriving the Executive of sufficient supervision and control over the exercise of these sovereign powers. The Act thus impermissibly infringes on the President's authority to ensure faithful execution of the laws.”¹⁸ He also argued that the *qui tam* provisions violate the Appointments Clause.¹⁹ The Barr Memo's commitment to the President holding “illimitable” power over all law enforcement actions on behalf of the United States makes it clear that he continues to view these provisions of the False Claims Act as violations of both the Appointments Clause and the clause vesting the executive power in the President.

The President may prohibit executive branch agencies from sharing information and reports with Congress. Mr. Barr, in 1989, castigated legislation that required executive officials to submit reports concurrently to Congress. Such requirements, he claimed, “prevent[] the President from exercising his constitutionally guaranteed right of supervision and control over executive branch officials. Moreover, such provisions infringe on the President's authority as head of a unitary executive to control the presentation of the executive branch's views to Congress.”²⁰ Under this view, the President may order executive branch officials to withhold information or reports that do not support or otherwise accord with the President's position on a range of issues, from military and foreign affairs policy to climate change.

The President, acting as Commander in Chief, may order the use of torture as an interrogation technique notwithstanding federal law prohibiting it. The Barr Memo repeatedly asserts that the President's constitutional powers are illimitable. One of the President's most significant constitutional powers is his authority to act as Commander in Chief. Under the Imperial Executive theory, then, no statute may limit the President's discretion as Commander in Chief to determine by what means to interrogate enemy combatants. This is, in fact, precisely the legal theory of the infamous Torture Memo.²¹

¹⁷ The *qui tam* provisions authorize private individuals, whistleblowers, with knowledge of fraud being perpetrated against the United States to bring claims against these perpetrators on behalf of the United States. This program has been remarkably successful in helping the federal government combat fraud.

¹⁸ *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 Op. O.L.C. 207, 210 (1989).

¹⁹ *Id.* at 209-210.

²⁰ *Common Legislative Encroachments*, *supra* note 1, at 255.

²¹ Memorandum for Alberto R. Gonzales, Counsel to the President, from Jay S. Bybee, Assistant Attorney General, Office of Legal Counsel, Re: Standards of Conduct for Interrogations under 18 U.S.C. §§2340-2340A (August 1, 2002). The Torture Memo was wrong for many reasons. The one most relevant here is that it ignored the existence of numerous powers authorizing Congress to enact the Anti-Torture Act, including Congress's power to make rules for the government and regulation of the land and naval forces, to make rules regarding captures, and to define and punish offenses against the law of nations, as well as the Necessary and Proper Clause.

The President, acting as Commander in Chief, may order warrantless domestic surveillance despite statutory warrant requirements such as the Foreign Intelligence Surveillance Act. As with torture, the President’s Commander-in-Chief power includes the authority to engage in surveillance of the enemy. If this power is illimitable, as the theory of the Barr Memo holds, then Congress may not dictate how the President exercises it, even if that dictate is the protection that before engaging in electronic surveillance the executive first secure a warrant.

The President may initiate and prosecute a full-scale war without first receiving a declaration or authorization from Congress. The view of illimitable executive power expressed throughout the Barr Memo has been taken to support the claim that Congress’s power to declare war is irrelevant to the President’s power as Commander in Chief to order U.S. troops into combat, including foreign invasions that clearly constitute war in the constitutional sense.²² On this view, the function of a formal declaration of war is limited to technical international law consequences and has nothing to do with the President’s power to go to war.

The President alone may determine the nation’s foreign policy. Since the founding, it has been understood that the President holds extensive power relating to the nation’s foreign affairs. Future Chief Justice John Marshall’s description of the President’s role, offered during a House of Representatives debate, endures, “The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.”²³ This expresses the broad consensus that the President speaks for the nation and serves as our chief diplomat. It does not, however, follow that the President is exclusively authorized to determine the content of the nation’s foreign policy. Indeed, numerous powers assigned specifically to Congress²⁴ appear plainly to contemplate a significant legislative role in this area. In a 1989 memorandum, Mr. Barr opined that “[i]t has long been recognized that the President, both personally and through his subordinates in the executive branch, *determines* and articulates the Nation’s foreign policy.”²⁵ This claim was based on broad dicta²⁶ that the Supreme Court has since repudiated.²⁷ As the views expressed in the 1989 Memo are consistent with the approach of the 2018 Barr memo – insofar as each minimizes or ignores the existence of relevant legislative powers – Mr. Barr should be asked whether he continues to adhere to the position he expressed in 1989.

Statutes should be read to relieve the President of statutory obligations. The Barr Memo applies the so-called clear statement rule in a manner that grants the President a broad exemption from the obstruction-of-justice statute. According to the Barr Memo, “statutes that do not *expressly* apply to the President must be construed as not applying to the President if such application would involve a possible conflict with the President’s constitutional prerogatives.”²⁸

²² See, e.g., Memorandum for Timothy E. Flanigan, Deputy Counsel to the President, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, Re: The President’s Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them (Sep. 25, 2001).

²³ 10 Annals of Cong. 813 (1800).

²⁴ See, e.g., U.S. Const. art. I, §8, cl. 3 (regulate foreign commerce); *id.* cl. 10 (define and punish offenses against the law of nations).

²⁵ Common Legislative encroachments at 256 (emphasis added).

²⁶ See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

²⁷ See *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2079 (2015).

²⁸ The Barr Memo at 6.

The Barr Memo ignores two predicates for the application of the clear statement rule: first, the statute must be reasonably susceptible of an interpretation that does not include the President; and second, the application of the statute must involve more than a hypothetical or “possible” constitutional conflict, it must create a serious and unavoidable constitutional conflict. Application of the obstruction of justice statute to the President satisfies neither of these predicates. Even more troubling is what this loose application of the clear statement rule would mean across the spectrum of federal statutes. The President would be exempt from broad swaths of federal criminal laws, not to mention civil and administrative statutory requirements.²⁹ As I have explained elsewhere, applied without rigorous application of its predicates, the clear statement rule “is a sort of magic wand that allows the lawyer wielding it to make laws (and legal constraints on the President) disappear.”³⁰

This is not an academic concern. President Trump has made it clear that he plans to explore pursuing to their utmost his statutory emergency powers to deal with issues such as the government shutdown and the construction of a wall along the southern border. It is crucial that the Attorney General be committed to facilitating the President’s policy agenda in a manner that fully complies with federal law – both constitutional and statutory.

B. The Investigation of Russian Interference in the 2016 Election

The Department of Justice is investigating serious allegations of attempted interference with the 2016 election. The investigation involves allegations regarding involvement relating to the campaign of President Donald Trump. As a result of the investigation, several members of the President’s campaign have been convicted of or plead guilty to violating federal law. In keeping with Department of Justice tradition of how to proceed when allegations are made against the President, the Department has appointed a Special Counsel, Robert Mueller, to conduct the investigation and related prosecutions. The Imperial Executive theory set forth in the Barr Memo would have grave consequences for this investigation were it accepted by the Department of Justice.³¹ Below, I set forth several of those consequences.

The President may effect the firing of the Special Counsel. The Barr Memo makes this declaration quite straightforwardly: [The President] “has ‘illimitable’ discretion to remove principal officers carrying out his Executive functions.”³² Special Counsel Mueller is an inferior, not a principal, officer.³³ Nonetheless, the Barr Memo is clear throughout that anyone who exercises prosecutorial discretion does so on the President’s behalf and acts “merely [as] his hand,” subject to his continuing supervision and control.³⁴ As a result, the President may

²⁹ See, e.g., Daniel Hemel and Eric Posner, *The President Is Still Subject to Generally Applicable Criminal Laws: A Response to Barr and Goldsmith*, Lawfareblog (Jan. 8, 2019).

³⁰ See *Clear Statement: The Barr Memo is Disqualifying*, Take Care Blog (Jan. 14, 2019). See also H. Jefferson Powell, *The Executive and the Avoidance Canon*, 81 Ind. L.J. 1313 (2006).

³¹ There is no small irony in this, given the extraordinary weight the Barr Memo places on “the solemn national decision” the people make in electing the President. The Barr Memo at 11. Given that this is one of the few checks on executive power that the Barr Memo recognizes, it should be all the more important that this solemn decision be protected from corruption, especially at the hands of a foreign power.

³² *Id.* at 9.

³³ See *Morrison v. Olson* (concluding the Independent Counsel was an inferior officer).

³⁴ The Barr Memo at 11 (internal quotes and citation omitted).

remove, or order the removal of, any prosecutor or investigator from any matter, and for any reason he wishes.³⁵ Since the Special Counsel has jurisdiction over only one matter, removing him from that matter is the functional equivalent of an unqualified removal.

The President may terminate the investigation into Russian interference with the 2016 election. President Trump has declared that he has authority to take over the investigation from Special Counsel Mueller. The Barr Memo would vindicate that position. Again, the Barr memo’s Imperial Executive theory holds that all federal prosecutors and investigators serve on behalf of and in the place of the President. The President retains complete authority to supervise and control their prosecutions and investigations, without any limit. The Barr Memo expressly includes the investigation currently being conducted by Special Counsel Mueller in that category and asserts the President’s “illimitable” power “to start or stop a law enforcement proceeding
....”³⁶

The President may manipulate the investigation into Russian interference with the 2016 election. One of the more alarming passages of the Barr Memo is the following:

[I]n commenting to Comey about Flynn’s situation – to the extent it is taken as the President having placed his thumb on the scale in favor of lenity – the President was plainly within his plenary discretion over the prosecution function. The Constitution vests *all Federal law enforcement power*, and hence prosecutorial discretion, in the President. The President’s discretion in these areas has long been considered “absolute,” and his decisions exercising this discretion are presumed to be regular and are generally deemed non-reviewable.³⁷

The President’s complete control over prosecutorial discretion, according to the Barr Memo, includes the power to “place[] his thumb on the scale” in favor a particular outcome – even in a case where the President has obvious conflicts of interest. And, making the power truly imperial, it may not be reviewed.

The President cannot be required to testify. Again, the Barr Memo is straightforward: “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.”³⁸ The statement refers only to testimony regarding obstruction. Nonetheless, the Barr Memo’s theory that the President may control the investigation means that the President can step in and withdraw any subpoena emanating from the investigation. Any decision by the President to testify, then, would be completely voluntary and subject to terms that the President is constitutionally empowered to dictate.³⁹

³⁵ See, e.g., *id.*

³⁶ *Id.* at 2.

³⁷ *Id.* at 9 (emphasis in the original).

³⁸ *Id.* at 1.

³⁹ I do not mean to suggest that the unique position of the President is irrelevant to the question of whether and under what conditions the President may be compelled to testify. Taken together, *United States v. Nixon*, 418 U.S. 683 (1974) and *Clinton v. Jones*, 520 U.S. 681 (1997), strongly suggest both that the President is subject to compulsory process to testify and that such process will apply differently to the President than it does to other individuals.

The President cannot commit obstruction of justice. The Barr Memo concludes that the obstruction of justice statute may not constitutionally be applied to reach “facially-lawful actions taken by the President in exercising the discretion vested in him by the Constitution.”⁴⁰ In other words, a statute may not make the President’s exercise of a constitutional executive power the *actus reus* of a crime. Thus, it is not a crime for the President to issue a pardon as the result of receiving a bribe, nor could it be obstruction of justice for the President to issue a pardon to someone who agrees to commit perjury in return. The Barr Memo asserts that this is not a blanket immunity for the President because a President may still commit obstruction of justice if the *actus reus* involves an “inherently subversive ‘bad act’” such as tampering with a witness or destroying evidence.⁴¹ Facially-lawful and inherently bad acts are not, however, distinct categories. Particularly under the Imperial Executive theory, the President may make orders for the management and disposal of federal records. Is an order to destroy a document, then, the facially lawful exercise of the constitutional executive power to manage federal records or an inherently bad act of evidence destruction? The answer could well be “yes,” which is to say, the proffered distinction reduces to characterization and meaningless word play.⁴²

The President can likely pardon himself. The Barr Memo does not directly address the validity of a self-pardon. It includes the claim that

The authority to decide whether or not to bring prosecutions, as well as the authority to appoint and remove principal Executive officers, and to grant pardons, are quintessentially Executive in character and among the discretionary powers vested exclusively in the President by the Constitution. When the President exercises these discretionary powers, it is presumed he does so lawfully, and his decisions are generally non-reviewable.⁴³

On this theory, a self-pardon would be presumptively valid and, in general, not subject to review. It is unclear whether Mr. Barr would find an exception to the general bar on reviewability.

IV

We live in troubled times, marked by deep political divisions. In such times, it is especially crucial that our legal institutions remain anchored to sound legal principles. Our President has declared “I have [the] absolute right to do what I want to do with the Justice Department.”⁴⁴ Public confidence in the rule of law depends on there being an Attorney General who will not allow the President to do whatever he wants with the Justice Department. William Barr’s views of presidential power are so radically mistaken that he is simply the wrong man, at the wrong time to be Attorney General of the United States.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 1.

⁴² A full consideration of this aspect of the Barr Memo is would take this statement beyond the allotted page limit. I have posted a fuller examination here: <https://takecareblog.com/blog/clear-statement-the-barr-memo-is-disqualifying>.

⁴³ *Id.* at 13.

⁴⁴ Michael S. Schmidt and Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. “Look Very Bad,”* N.Y. Times (Dec. 28, 2017).



**National
Urban League**

*Empowering Communities.
Changing Lives.*

TESTIMONY OF

**MARC H. MORIAL
President and CEO
National Urban League**

Before the

Senate Committee on the Judiciary

On

The Nomination of William Pelham Barr to be Attorney General of the United States

January 16, 2019

Chairman Graham and Members of the Committee, thank you for the opportunity to testify on the nomination of William Barr to be Attorney General of the United States.

Founded in 1910, the National Urban League, headquartered in New York City, is a 109-year-old historic civil rights and urban advocacy organization. Driven to secure economic self-reliance, parity, power and civil rights for our nation's marginalized populations, the National Urban League works towards economic empowerment and the elevation of the standard of living in historically underserved urban communities.

The National Urban League has improved the lives of more than two million people annually through direct service programs that are run by 90 local affiliates in 36 states and the District of Columbia. The National Urban League also conducts public policy research and advocacy work from its Washington, D.C. bureau. The Urban League is a BBB-accredited organization and has earned a 4-star rating from Charity Navigator, placing it in the top 10 percent of all U.S. charities for adhering to good governance, fiscal responsibility and other best practices.

Mr. Chairman, on behalf of our entire Urban League Movement across the country, I urge the committee and the entire Senate to soundly reject the nomination of William Barr as the next Attorney General of the United States.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice, the Attorney General is responsible for safeguarding our civil and constitutional rights. That is a core and enduring mission of the Justice Department. In light of this Administration's relentless attacks on the enforcement of our civil rights laws, our nation desperately needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality. The Attorney General must also operate with integrity and complete independence in service to the people, not the president.

For the past two years, the Justice Department has been led by an Attorney General intent on restricting civil and human rights at every turn. From rolling back voting rights enforcement to failed and harmful criminal justice policies, Attorney General Jeff Sessions used his office to carry out the extreme, anti-civil rights agenda he had advanced for decades in the U.S. Senate. Under Jeff Sessions, we also witnessed extreme anti-immigrant policies and rollbacks in LGBTQ rights.

The nation needs an Attorney General who will dramatically change course and enforce federal civil rights laws with vigor and independence. Based on his alarming record, we are convinced that William Barr will not do so. Indeed, in a recent op-ed, Mr. Barr called Jeff Sessions "an outstanding attorney general"¹ and offered praise for his anti-civil rights policies. It's clear Mr. Barr intends to follow the same regressive roadmap Jeff Sessions has drawn.

As a civil rights and human service organization, we are in a unique position to see how egregiously this Administration not only fails to protect, but aggressively has rolled back, civil and voting rights laws that took years to achieve, at tremendous cost in blood and lives lost. We direct you to the extensive timeline, compiled by the Leadership Conference on Civil and Human Rights (LCCR), of rollbacks by this Administration over the last two years as strong evidence of what we face going forward.²

We strongly believe that the confirmation of William Barr as Attorney General, who espouses former Attorney General Sessions' policies, would enormously exacerbate our nation's current civil rights crisis.

On December 11, 2018, the National Urban League submitted comprehensive comments³ to the U.S. Commission on Civil Rights on evaluating the federal role in civil rights enforcement since 2016. Drawing on LCCR's rollback timeline, we raised the following concerns relative to Sessions' actions on various civil rights issues:

- Overturning a memo from former Attorney General Eric Holder aimed at reducing mass incarceration by avoiding mandatory sentencing. Sessions instead ordered federal prosecutors to begin seeking the maximum criminal charges possible.⁴ This rollback once again disproportionately places African Americans and other minorities in the path of harsh mandatory minimum sentences leading to long term incarceration.

- Abandoning the Department of Justice's Smart on Crime initiative that had been hailed as a positive step forward in rehabilitating drug users and reducing costs of warehousing inmates.
- Ending the Community Oriented Policing Services' Collaborative Reform Initiative, a Justice Department program that helped to build trust between police officers and the communities they serve.
- Proposing to eliminate the Community Relations Service – a Justice Department office established by the Civil Rights Act of 1964 – a key tool that addresses discrimination, conflicts, and tensions in communities around the country.
- Announcing the Justice Department's 'school safety' plan – a plan that militarizes schools, overpolices children, and harms students, disproportionately students of color.
- Reversing a Justice Department policy clarifying that transgender workers are protected from discrimination under Title VII of the Civil Rights Act of 1964. This has major implications for Black transgender workers, 20% of whom were unemployed according to a 2015 U.S. Transgender Survey.⁹
- Ordering a sweeping review of consent decrees with law enforcement agencies relating to police conduct – a crucial tool in the Justice Department's efforts to ensure constitutional and accountable policing. The department also tried, unsuccessfully, to block a federal court in Baltimore from approving a consent decree between the city and the Baltimore Police Department to rein in discriminatory police practices that the department itself had negotiated over a multi-year period.
- Filing a brief in the Supreme Court in *Husted v. A. Philip Randolph Institute* arguing that it should be easier for states to purge registered voters from their rolls – reversing not only its longstanding legal interpretation, but also the position it had taken in the lower courts in that case.

Mr. Barr has a troubling record that tells us that there will be no redress of the Sessions' blunders on civil rights. Of special concern to the National Urban League and our constituents is his record on criminal justice. African Americans face racial bias at every stage of the justice process. Therefore, federal civil rights enforcement in our justice system is critical to families and communities of color. Studies have found that Blacks are more likely to be stopped by the police, more likely to be detained while awaiting trial, are charged with more serious crimes for the same offenses, and sentenced more harshly than white people.

In 2018, after years of arduous work, we finally saw enactment of bipartisan legislation that finally begins to reform our criminal justice system through the First Step Act. We also achieved the long overdue reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974 through the Juvenile Justice Reform Act of 2018. *William Barr's record on criminal justice places these achievements at serious risk and gives us no confidence that these hard-fought reforms would be implemented:*

- As Attorney General under George H.W. Bush, Barr pursued harsh criminal justice policies that escalated mass incarceration and the foundering "war on drugs".¹⁰

More recently and alarmingly, he has supported mandatory minimum sentences and latitude for abusive police officers.

- In 1992, Barr published a book by the Department of Justice called "The Case for More Incarceration," which argued that the country was "incarcerating too few criminals."
- After serving as attorney general, Barr led efforts in Virginia to abolish parole in the state, build more prisons, and increase prison sentences by as much as 700 percent.

Attorney General is one of the most important positions in the entire Federal government. The Justice Department has a duty to vigorously enforce some of our nation's most critical laws: to protect the rights and liberties of all Americans; and to serve as an essential independent check on the excesses of an Administration. The evidence is overwhelmingly clear that William Barr is unfit to serve as chief enforcer of our civil rights laws. We therefore strongly urge the Senate Judiciary Committee and the entire United States Senate to reject the nomination of William Barr as our next Attorney General.

Thank you for the opportunity to testify and I look forward to your questions.

¹See, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347148762_story.html?utm_term=.6996b10fe367.

²Trump Administration Civil and Human Rights Rollbacks, 2017, 2018, The Leadership Conference on Civil and Human Rights, Accessed at <https://civilrights.org/trump-rollbacks/>

³U.S. Commission on Civil Rights Briefing Are Rights a Reality? Evaluating Federal Civil Rights Enforcement, November 2, 2018, Written Comment Submitted by Marc H. Morial President and CEO National Urban League December 11, 2018.

⁴MEMORANDUM FOR ALL FEDERAL PROSECUTORS, FROM THE ATTORNEY GENERAL, Department Charging and Sentencing Policy, Accessed at <https://www.justice.gov/opa/press-release/file/965896/download>

⁵2015 U.S. Transgender Survey, Report on the Experiences of Black Respondents, Accessed at <http://www.transequality.org/sites/default/files/docs/usts/USTSBlackRespondentsReport-Nov17.pdf>

**WITNESS STATEMENT OF MICHAEL B. MUKASEY ON NOMINATION OF
WILLIAM P. BARR – 1/16/19**

Chairman Graham, Ranking Member Feinstein, and Members of the Judiciary Committee – It is an honor and a pleasure for me to appear before this Committee in support of the nomination of William P. Barr to serve as Attorney General.

My personal acquaintance with Mr. Barr began after my own service at DOJ ended, in connection with one or two private practice matters. I am not free to discuss the detail of those matters, but he showed the best qualities of a lawyer in private practice. He was rigorously grounded in both the facts and the applicable law, and thoroughly practical. On a personal level, he was utterly free of the kind of self-importance that occasionally afflicts people who have held high office.

His history of government service is simply without equal in suiting him to serve as Attorney General. He worked for the CIA for six years, including work in the Intelligence Directorate, which means he has a grasp of the national security issues that DOJ must deal with and for which the Attorney General must help set policy for the administration. These issues arise in settings as diverse as terrorism, immigration and enforcement of criminal laws.

He served as well as the head of the office within DOJ – the Office of Legal Counsel – that is charged with setting the governing legal position on all issues for all departments within the Executive. Quite simply, OLC is the government's -- certainly the Executive's -- principal source of legal authority. By virtue of having headed OLC,

he will be able not only to receive the advice of that Office, but also to engage actively on the most difficult issues.

After his service at OLC, Bill Barr served as Deputy Attorney General –the chief operating officer of DOJ. This means that he starts out completely knowledgeable in how the Department works. That, of course, adds immeasurably to the efficiency with which he will be able to take up his duties.

Unlike any prior nominee to be Attorney General, he has served as well in that position.

It is not only the jobs he has had, but also what he has done in them and how he has done it that makes him a superbly qualified nominee. He has successfully managed a hostage crisis at a federal prison; he has helped implement the Americans With Disabilities Act; he has led in active civil rights law enforcement; he has overseen crime initiatives aimed at combating violent gangs and drug dealers; he has given advice to the White House even when it was not necessarily the advice the White House wanted to hear.

I would like to pick just two examples from that list simply to show what sort of person Bill Barr is. The hostage crisis was precipitated by an uprising at a federal prison by prisoners who had been released from Cuban jails and were being held at an American prison before they could be shipped back to Cuba. They seized hostages and were obviously prepared to risk their own lives rather than be returned to Cuba. Bill Barr was

Acting Attorney General, and had the level headedness and good judgment to resist suggestions for an immediate storming of the prison in a military-style operation. Instead, he used negotiation techniques to get FBI agents masquerading as food service staff inside the prison to determine where the hostages were being held, and then focused a rescue effort on that area. There were two notable results of that effort: (i) all the hostages were freed with no loss of life on either side; and (ii) Bill Barr took absolutely no public credit for that outcome.

The second example involved a request from the White House that he try to find legal authority to support a line item veto. Bill Barr believed at the time, as did the president under whom he served, that asserting a presidential power when it was doubtful at best weakened rather than strengthened the presidency. He reported to the President that he had good news and bad news. The good news was that although there was no U.S. law that seemed relevant, there was one instance in common law, involving a Scottish king in around the 15th century, who had done something that looked like a line item veto; the bad news was that that king was suffering from advanced syphilis at the time and was quite insane, so if the President chose to follow that example he would have to refer to it as the syphilitic prerogative. The line item veto was not asserted.

Both of these examples show that he has good judgment, and the will to exercise it under pressure from whatever source.

To be sure, the problems that confront DOJ today are not the same as the ones that existed during his tenure, or mine. Nonetheless, the diversity of his history at DOJ means that he has both the experience and the stature to serve effectively.

As important as experience and background are in evaluating a nominee, personal qualities are at least equally important. I think another measure of his character, in addition to the instances mentioned above, may be found in my most recent interaction with him, which involved op-ed an article we worked on that paid tribute to the dedicated service of Attorney General Jeff Sessions. The article was published in the Washington Post on November 7, 2018, as Mr. Sessions was leaving office and exactly a month before Mr. Barr's own selection as his successor was announced on December 7. When I asked whether he would join in such an article, he did not hesitate to say he would. Although an article praising the service of someone who had incurred the criticism of the White House could well displease those involved in choosing who would succeed him, Mr. Barr reiterated more than once his belief that offering that praise was simply the right and honorable thing to do, and he was grateful to have been asked to join.

In sum, both his professional history and his personal qualities are such that I believe he is ideally qualified to be Attorney General. I urge the Committee to approve his nomination.

Testimony of Rev. Sharon Risher

On the Nomination of William Barr to be Attorney General

United States Senate Judiciary Committee

January 16, 2019

Good morning Chairman Graham, Ranking Member Feinstein and members of the Senate Judiciary Committee. It is an honor to appear before you to testify on the nomination of William Barr to be Attorney General of the United States.

My name is Reverend Sharon Risher and I live in Charlotte, North Carolina. My life, like so many other people's throughout our nation, has been forever changed by gun violence - gun violence that is preventable with effective enforcement and common sense gun safety laws.

Wednesday, June 17, 2015, is the day that my life changed. As a hospital trauma chaplain I have experienced grief, tragedy, pain and loss as I worked to comfort patients and families in their time of need. But that night, I was the person in need of comforting when I received a telephone call that no American deserves to get: My mother and two of my cousins had been shot and killed in church along with 6 other parishioners at the Emanuel AME Methodist Church in Charleston, South Carolina.

In the Charleston community in which I was raised, when the church doors were open, my family was in the pews. That Wednesday was no different.

A young white man entered the church in the middle of Bible Study. In the spirit of our faith, he was welcomed by the congregation and sat near the Pastor. After studying the Gospel of Mark, attendees bowed their heads, closed their eyes, and held hands in prayer. That was the final moment for many in church that day because the young man pulled out his gun and started firing. Some hid under tables. Others tried to flee but were gunned down.

A House of worship is supposed to be a refuge from the storms of everyday life. But that young man robbed my family, and eight other families, of their loved ones. Five people survived and they must live with that tragedy in their hearts every day.

After the massacre in Charleston, I struggled to answer why my loved ones and so many others had been killed. I was disturbed to learn that the shooting was premeditated and driven by hatred. The shooter targeted parishioners at Emanuel simply because of the color of their skin.

Along with so many Americans, I was baffled at how such a hate filled man was able to get his hands on a gun. We later discovered that a loophole in our gun laws allowed the shooter to obtain the gun used to murder my mother, two of my cousins, and the six other worshipers in Charleston. That loophole allowed hatred to be armed to kill.

The person who killed my family members should not have been able to buy that gun. The National Instant Criminal Background Check System was designed to keep guns out of the wrong hands--including criminals, domestic abusers, and unlawful users of controlled substances. The Charleston shooter had previously been arrested for drug possession - something that should have blocked him from obtaining a gun under existing law. Yet, he was able to legally purchase one because of a loophole in federal law. You see, if the FBI does not finish a background check within 3 business days, the sale can proceed regardless of whether the check has been completed--and that's exactly how the man who killed my family exploited a loophole and got his gun. And he's not the only one: the FBI reported that in 2017 alone, gun dealers sold at least 4,864 guns to prohibited people before the background checks had been completed. These nearly 5,000 sales were primarily made to felons, domestic abusers, or like the man who killed my family, unlawful users of controlled substances.

A strong background check system is the foundation for common sense gun safety laws that keep guns out of the wrong hands. We can stop hate from being armed, but we need background checks on all gun sales, and law enforcement needs enough time to complete the background check. Keeping guns out of the wrong hands must be a priority for the next Attorney General, federal law enforcement, and Congress. To break this pattern of senseless gun violence we need stronger gun laws and an Attorney General committed to protecting Americans from gun violence and hatred.

Each day, I wake up motivated to ensure that hate will not win. As a member of the Everytown Survivor Network, I share my story to put a human face on our nation's gun violence crisis. Our community of survivors advocates for change to help ensure that no other family faces the type of tragedy we have experienced.

If he is confirmed as our nation's next Attorney General, Mr. Barr will serve as our nation's top law enforcement officer in a position of great power and influence. I hope he will make it a priority to prevent gun violence and work with Congress to update our laws and close loopholes that enable guns to get into the wrong hands--like those of the young man filled with hate that murdered my family.

Nine lives were cut short in Charleston. Today, I say the names of my mother, my two cousins and the other six people to honor them:

- My mother: Mrs. Ethel Lance
- My two cousins, Mrs. Susie Jackson and Tywanza Sanders
- A childhood friend, Myra Thompson
- The Pastor of the church, Rev. Clementa Pinckney
- Rev. Daniel Simmons
- Rev. Sharonda Coleman-Singleton
- Mrs. Cynthia Hurd
- Rev. Depayne Middleton-Doctor.

I pray that whenever you hear their names, you feel empowered to help bring about needed change.

Thank you for listening. I will answer any questions that you have.

**Testimony by former Deputy Attorney General Larry
Thompson at a Senate Judiciary Committee hearing on the
Nomination of William P. Barr to be Attorney General of
the United States
January 16, 2019**

Chairman Graham, Ranking Member Feinstein, and Members of
the Committee:

It is my great honor to appear before you this morning in support of Bill Barr's nomination to serve our country once again as Attorney General of the United States. I have known Bill since 1992. I can tell you that Bill Barr has deep, deep respect for, and fidelity to, the Department of Justice. He served with great distinction as Attorney General and is highly respected and admired, on a bipartisan basis, by the career prosecutors and investigators he oversaw in the Department. Importantly, Bill knows how to develop much needed partnerships with state and local law enforcement. He was very successful at this during his tenure as Attorney General and created strong and effective joint task forces across the country to combat white collar and violent crime.

I will be brief this morning but let me share with you how Bill Barr's leadership of one program when he was Attorney General so impressed me. Bill passionately led the anti-crime, community-based program called Weed & Seed started by President George H.W. Bush. Under the program, law enforcement, working with the community would "weed out" violent offenders and groups. At the same time, a broad range of federal, state, local and private community revitalization programs would plant in communities the "seeds" of long-term stability and growth. In other words, law enforcement and community groups, working together, would attempt to reclaim crime ridden neighborhoods.

Bill Barr believes that every citizen – no matter where he or she lives – deserves the full protection of the law.

Bill also understands that federal law enforcement cannot do the job alone. In 1992 Bill visited my home town of Atlanta, Georgia and spoke with members of the Southern Christian Leadership Conference. He said then that cleaning up crime infested neighborhoods cannot be a "Washington, bureaucratic project. It must be a project where the solutions are found in the community itself." He acknowledged to the Reverend Joseph

Lowery that in the past decade the federal government's anti-crime efforts have relied too heavily on prison construction and not enough on crime prevention.

As a former General Counsel of a large public company myself, I also appreciate and admire Bill's approach to his work in the private sector. Bill was very supportive of the lawyers who worked with him. He created opportunities for everyone he oversaw to develop and grow in their careers, including many female lawyers and lawyers of color. He was supportive of diversity in the legal profession.

In 2002, the company Bill served as General Counsel received the Northeast Region Employer of Choice award from the Minority Corporate Counsel Association for successfully creating a more inclusive work environment. The award cited the exceptional leadership, innovative initiatives, and dedicated people in Bill's Law Department.

Finally, I think the most important point I can share with this committee is that Bill Barr is a person of very high integrity. He led the Department of Justice as Attorney General with an unbending respect for the rule of law. As General Counsel of a large public company, he emphasized the importance of

complying with all laws, rules and regulations and he stood up for his client, a world class corporate compliance program.

Bill Barr's integrity is rock solid. He will not – I repeat – will not simply go along to get along. Last January he resigned from his position as a director of a public company board. The news reports at the time cited disagreements with management over business and governance plans.

As a citizen, I thank Bill Barr for his willingness to return to public service. He is needed, and I look forward to his tenure again in service to our country as Attorney General.

Thank you.

Written Statement
Professor Jonathan Turley
J.B. & Maurice C. Shapiro Professor of Public Interest Law

Confirmation Hearing For Attorney General Nominee
The Honorable William Pelham Barr
United States Senate Committee on the Judiciary
United States Senate
January 16, 2019

I. INTRODUCTION

Thank you Chairman Graham, Ranking Member Feinstein, and members of the Senate Judiciary Committee for the honor of appearing before you today.

It is indeed a great honor to appear before this Committee at such a historic moment: the confirmation hearing of William Pelham Barr to serve as the 85th Attorney General of the United States. I have known General Barr for many years in my work as both an academic and a litigator, including my representation of Barr with other former Attorneys General during the litigation leading up to the Clinton impeachment. As I have stated publicly, I can think of no person better suited to lead the Justice Department at this critical period in history. Bill Barr is a brilliant and honorable lawyer who can ensure stability and integrity in these turbulent times. While we seem to be living in an age of rage, the Barr nomination should be an opportunity for both sides to find a common ground in our commitment to the rule of law and equal justice. Those are the values that define Bill Barr and I have no doubt that those are the values that he would bring every day to the office of the Attorney General of the United States.

For the purposes of introduction, I write, teach, and litigate cases concerning constitutional law and legal theory, with a particular emphasis on the separation of powers.¹ As my writings indicate, I tend to view the

¹ I have been asked to include some of my prior relevant academic publications. The most relevant include Jonathan Turley, *A Fox In The Hedges: Vermeule's Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. 517 (2015); Jonathan Turley, *Madisonian Tectonics: How Form Follows Function in Constitutional and Architectural Interpretation*, 83 GEO. WASH. L. REV. 305 (2015); Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Constitutional Adverse Possession: Recess Appointments and the Role of Historical Practice in Constitutional Interpretation*, 2013 WIS. L.

constitutional system through a Madisonian lens. As such, I view the legislative branch as the thumping heart of the tripartite system due to its role in converting factional disputes into majoritarian compromise. Accordingly, I admit to favoring the Legislative Branch in many conflicts with the Executive Branch; indeed, I represented the House of Representatives in its successful assertion of both standing and inherent powers in *House of Representatives v. Burwell*, 185 F. Supp. 3d 165 (D.D.C. 2016). Bill Barr represents the other major school of thought. Whereas my natural default position in separation-of-powers fights is to Article I, Barr's default is to Article II. He is the product of a lifetime of Executive Branch service and holds a robust view of executive power. His views on such inherent powers are in accord with the positions taken in court by all of the modern Administrations, including the Obama Administration. Despite our respective default positions, I have always found Barr to be one of the most knowledgeable and circumspect leaders on constitutional history and theory. He has a deep love and respect for our constitutional traditions that has been evident in his many years of service at the highest levels of our government.

I appreciate the careful attention that senators on both sides of this Committee have given to this nomination. As I discussed in my testimony in the confirmation of former Attorney General Loretta Lynch² and Supreme Court Justice Neil Gorsuch³, confirmation hearings play a critical

REV. 965 (2013); Jonathan Turley, United States House of Representatives, Committee on the Judiciary, "Reckless Justice: Did the Saturday Night Raid of Congress Trample the Constitution," May 30, 2006; Jonathan Turley, *Paradise Lost: The Clinton Administration and the Erosion of Presidential Privilege*, 60 MD. L. REV. 205 (2000) (Symposium); Jonathan Turley, "From Pillar to Post": *The Prosecution of Sitting Presidents*, 37 AM. CRIM. L. REV. 1049 (2000); Jonathan Turley, *A Crisis of Faith: Congress and The Federal Tobacco Litigation*, 37 HARV. J. ON LEGIS. 433 (2000); Jonathan Turley, *Through a Looking Glass Darkly: National Security and Statutory Interpretation*, 53 SMU L. REV. 205 (2000) (Symposium); Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999); Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999); Jonathan Turley, *Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President*, 67 GEO. WASH. L. REV. 735-790 (1999) (Symposium); Jonathan Turley, *Reflections on Murder, Misdemeanors, and Madison*, 28 HOFSTRA L. REV. 439 (1999) (Symposium); Jonathan Turley, *Dualistic Values in the Age of International Legisprudence* 44 HASTINGS L.J. 145 (1992).

² United States Senate, *Confirmation Hearing For Attorney General Nominee*

³ United States Senate, *Confirmation Hearing For Judge Neil M. Gorsuch To Be Associate Justice of the United States*, United States Senate Committee on the Judiciary, March 21, 2017 (testimony of Professor Jonathan Turley).

dialogic role in our system. They allow us not only to explore the credentials and views of nominees, but also to honor their service and more fully appreciate the high offices that they will assume in our government. The Attorney General of the United States holds a unique position in that system, carrying the responsibility of enforcing our laws equally and fairly, while defining the limits and powers of a federal authority that extends broadly across agencies and departments. For that reason, the Attorney General must be a person with unquestioned integrity and proven intellect. Bill Barr is precisely that type of nominee.

There is much that I could say about Barr's character and intellect. However, there are ample witnesses who have already written or will testify on those issues. Instead, I will focus on Barr's legal views and why, even when we reach different conclusions, I consider him one of the finest legal minds in our profession. I will also address two areas that have drawn significant attention since the announcement of Barr's nomination: his public statements about the Russian investigation and his memorandum to Deputy Attorney General Rod Rosenstein. Far from being any liability, I view Barr's stated opinions to be an insight into his concerns for the Department and the professionalism that he would bring again to the office of United States Attorney General.

First, however, I would like to discuss a rather esoteric subject: the curious matter of the Attorney General's seal. While most of the Justice Department's history is extensively documented in statutes and publications, there remains a rather interesting anomaly—one that has been on prominent display for decades with little attention. The seal of the Justice Department remains one of the most recognized symbols of federal authority. On a shield is a commanding eagle rising with an olive branch in its *dexter* talon (right side from the shield bearer's perspective) and thirteen leaves and berries and thirteen arrows in its *sinister* talon (left from the perspective of the shield bearer). The meaning of the symbolism is obvious and well known. However, there is also a legend that appears on the seal and flag reading: "*Qui Pro Domina Justitia Sequitur.*" The origin of this phrase on the seal remains a matter of debate.⁴ It is not clear who selected the phrase or when it was first adopted. It is believed that the phrase is a derivation of how the British Attorney General was introduced to Queen

⁴ See Justice Department Is Puzzled by Motto, Nearly Century Old, Sunday Star (Wash., D.C.), Feb. 7, 1937, at B5 ("even Attorney General Cummings can't say exactly what it means ... [and] won't even attempt to translate it.").

Elizabeth with the words, “madam, here is your Attorney General.” The words, which are difficult to translate, were “*qui pro domina regina sequitur*” or, loosely, here is “one who prosecutes for our Lady the Queen” or “He Who Does Justice in the Name of the Queen.” Variations existed but the British Attorney General was customarily announced as “Now comes [blank], Attorney-General, who prosecutes on behalf of our Lord, the King.” That phraseology would not do for the United States, however. Despite beginning as an adviser to the President, the authority of the Attorney General is based in the law, not the President. More importantly, the Attorney General does not litigate in the name of the President. Thus, *Domina Justitia*, or “our Lady Justice,” was substituted to identify the Attorney General and his or her subordinates as those who work for justice.

Time and again, this Committee has had to struggle to determine whether a nominee understood the difference between representing justice and representing a President. Every Attorney General who stands under that seal must first and foremost understand that difference and swear to uphold their allegiance of *Domina Justitia*. I believe that William Barr not only understands the distinction but defines himself and the Justice Department by it.

II. WILLIAM BARR AND THE SEAL OF THE ATTORNEY GENERAL

When the Congress created the Office of the Attorney General in the Judiciary Act of 1789, the Attorney General was defined primarily as an adviser and litigator: “to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments.” The position however gradually changed after the first Attorney General Edmund Randolph took office. With the establishment of the Department of Justice in 1870 and the expansion of federal jurisdiction, the Department soon became the bulwark of due process and the symbol of fair and blind justice in America.

It is often challenging for a Committee to predict how a nominee will perform in a high office, even with an otherwise stellar career. But here, for only the second time in history, the Senate will consider a nominee who has previously held this office. (The first being John Crittenden who had the added distinction of serving three presidents—William Henry Harrison, John Tyler, and Millard Fillmore.) That gives the Senate a record not merely of

leadership, but of specific leadership of this very department. Any review of Barr's service in both public office and private practice will reveal a person of the greatest integrity and intellect. Bill Barr is a lawyer's lawyer—someone who honestly enjoys the details and practice of law. He was extremely popular with the rank-and-file of the FBI and Justice Department because he was a strong and direct and honest leader.

Bill Barr has always had the insatiable intellectual appetite befitting what my colleagues and I affectionately refer to as a "Fac Brat." He is the son of two Columbia professors, Mary Margaret Ahern Barr and Donald Barr. Barr would earn a B.A. in government as well as a Master's degree in government and Chinese studies from Columbia. He then attended George Washington University Law School where he received his J.D. degree in 1977. His father (who was a well-known writer and English professor) had served in the Office of Strategic Services (OSS) in World War II. Barr followed in that tradition and worked at the Central Intelligence Agency from 1973 to 1977. After graduating from GW, Barr clerked for the widely respected Judge Malcolm Wilkey of the United States Court of Appeals for the District of Columbia. He then joined the Reagan Administration as Deputy Assistant Director for Legal Policy and followed with almost a decade of private practice with the leading firm of Shaw, Pittman, Potts & Trowbridge. He then returned to the Executive Branch as the Assistant Attorney General for the Office of Legal Counsel under President George H.W. Bush. In 1990, he was appointed Deputy Attorney General and then, with the resignation of Attorney General Richard Thornburgh, he was nominated as Attorney General.

Barr was only 41 when he was made Attorney General by President George Bush, one of the youngest individuals to hold that office in history. In his testimony in 1991, Barr took special efforts to articulate his duty to resist political influence, stating "Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of the law." Barr was approved on a voice vote and received the support of then-Sens. Joseph R. Biden and Edward M. Kennedy. It was the third time that Barr was confirmed unanimously by this body. He would proceed to serve with great distinction and was highly regarded both within the Justice Department and on Capitol Hill. During his tenure, Barr appointed and supervised three special counsels and specifically authorized an independent counsel under the Ethics in Government Act. As Attorney General, Barr was a staunch defender of executive authority and tough law-and-order policies.

Barr followed his government career with almost 15 years as a

corporate executive, including serving as Executive Vice President and General Counsel for GTE Corporation (later Verizon). In that capacity, he continued to argue cases, including litigation before the United States Supreme Court.

Each nominee brings his or her own style and priorities to this position. For example, Attorney General Eric Holder proudly called himself “an activist attorney general” and maintained that “any attorney general who is not an activist is not doing his or her job.”⁵ Loretta Lynch was widely viewed as less of an activist and more of a traditional Attorney General in style and substance.⁶ I admired that about Lynch. Barr has followed the same traditional view of an attorney general as someone who, like Lynch, is more of an institutionalist. Barr is unquestionably conservative and an ardent defender of executive power. However, he identifies deeply with the Justice Department as an institution and will presumably work to restore the morale to the Department. He has the background and reputation to do exactly that.

To put it simply, there are few nominees in history with Barr’s range of prior leadership in top legal and business positions—and only one who can claim prior experience in this position. Most importantly, it is the experience and leadership that the Justice Department desperately needs at this time. The Justice Department under the current Administration has been battered with controversies, with both sides causing damage to its morale and standing. It began with Acting Attorney General Sally Yates ordering the Justice Department not to assist a president in the defense of a major policy—an act that I have previously denounced as without historical, ethical, or professional support. At the same time, the President continually attacked his own Attorney General, Jeff Sessions, as well as FBI leadership in an unprecedented rift within the Executive Branch. This is all damage below the waterline for a Department that has worked to maintain its reputation for integrity and independence. Barr has worked outside of the Department to try to reinforce those traditions and independence, as evidenced by his defense of Attorney General Jeff Sessions and his offering of advice to Deputy Attorney General Rod Rosenstein during recent controversies. In November 2018, Barr joined former attorneys general Edwin Meese III and Michael B. Mukasey in publishing a Washington Post

⁵ Juan Williams, *Holder Exclusive: Proud To Be An Activist*, The Hill, August 4, 2014.

⁶ Matt Apuzzo, *Nominee for Attorney General Less Of An Activist Than Holder*, New York Magazine, Jan. 12, 2017.

editorial entitled “We are former attorneys general. We salute Jeff Sessions.” The editorial stated that Sessions “has acted always out of concern not for his personal legacy but rather for the legacy of the Justice Department and the rule of law.” That is precisely what this position demands at this time.

III. THE SIGNIFICANCE OF PRIOR COMMENTS AND CONNECTIONS RELATED TO THE SPECIAL COUNSEL

One of the issues raised before these hearings concerns public comments made by General Barr as a private citizen that relate to the Special Counsel’s investigation. As I have said publicly, I fail to see the barrier that any of these comments would present to either Barr’s confirmation or function as Attorney General. Like most leaders in the bar, a former Attorney General is often called upon to give speeches and interviews on matters related to the justice system. Barr is someone who has continued to offer advice and insights on controversies related to the Department. None of those comments have been out of the mainstream. None raise ethical disqualifications to assuming full responsibility over all aspects of his office. None show bias that would undermine Barr’s ability to make decisions related to the Russian investigation or any report issued by the Special Counsel. Finally, there have been suggestions that Barr’s friendship and connections to the Mueller family or his discussion of representing President Trump would create conflicts of interest. In my view, they do not but it is entirely appropriate for this Committee to explore such issues. I would like to address them and the controlling legal and ethical standards.

As a threshold matter, it is important for the Attorney General to remain above not only conflicts of interest but also the appearance of such conflicts as the chief legal enforcement officer in the United States. At the same time, it is equally important not to manufacture conflicts that penalize those leaders who continue to contribute their views and time to help resolve controversies. Past Attorneys General have come from politics or prior campaign roles where they have made partisan statements in those capacities. The point is that they are in a different capacity when speaking as an Attorney General and most have taken that distinction seriously in carrying out their sworn constitutional functions.

In reference to the Uranium One controversy, Barr previously told The New York Times that there was “nothing inherently wrong about a president calling for an investigation.” In making this statement, Barr stressed that an investigation “shouldn’t be launched just because a president

wants it.” That is a correct statement of the law and the lines of authority between the White House and the Justice Department. Like many, I have been highly critical of President Trump’s public comments on investigations as well as his criticism of judges, journalists, and witnesses. While ill-advised and unsettling, those statements are protected under the First Amendment and do not constitute criminal interference or obstruction in my view. Other presidents have weighed in on pending criminal matters or investigations. However, Barr was correct to draw the critical legal distinction that the Justice Department should not launch an investigation due to such statements. While critics have focused on Barr’s first comment, they ignore the import of his second comment: that there must be separation of a President from the Justice Department on the basis or need for any investigation. Indeed, one of Barr’s public writings is an opinion editorial praising Attorney General Jeff Sessions for his integrity and independence. That opinion editorial with two other former attorneys general was a badly needed defense of not just Sessions but his office after almost two years of unrelenting and unjustified criticism by President Trump.

Many critics have focused on Barr’s observation that there was sufficient reason for an investigation into the Uranium One deal and that “to the extent it is not pursuing these matters, the department is abdicating its responsibility.” Barr’s view is shared by many, though I would view the evidence as less compelling for a formal investigation. There is ample evidence of foreign contributions to the Clinton Foundation as well as speaking fees worth millions of dollars. As the Washington Post has acknowledged, “There can be little doubt that Russians who donated to the Clinton Foundation were trying to curry favor with the secretary of state.” However, the proper focus should be not on the merits of, but rather the propriety in making, such an observation. Barr was not stating that the Clintons are implicated in criminal conduct, but only that these facts raise a sufficient basis for investigation. The statement does not prejudice any evidence or predetermine any outcome in a potential investigation.

Barr has also publicly discussed the actions of former FBI Director James Comey in informing Congress that he had reopened the Clinton investigation (which Barr viewed as appropriate) as well as his press conference on the Clinton probe in 2016 (which Barr criticized). Barr also publicly commented that he was troubled by political donations to Democrats made by members of the Special Counsel team and said that he “would have liked to see him have more balance” in the group. Barr criticized leaks in the investigation and said that “leaks by any investigation are deplorable and raise questions as to whether there is an agenda.” He also

co-authored an op-ed praising Attorney Jeff Sessions as an “outstanding attorney general” despite the attacks by President Trump on Sessions. These comments were virtually identical to those voiced by other experts and former Justice officials on both sides of the debate. Indeed, in terms of the criticism of Comey, Deputy Attorney General Rod Rosenstein detailed how he had spoken with a variety of former Attorneys General and justice officials who viewed Comey’s actions as far outside the range of acceptable conduct and worthy of termination. Such comments reflect the continuing interest of former justice officials in maintaining standards of professional conduct and decorum.

Finally, there have been questions raised over the fact that Bill Barr and Robert Mueller and their wives are friends, including spouses who reportedly go to Bible study together.⁷ Mueller reportedly went to Barr’s daughter’s wedding. Such connections are not disqualifying. There is nothing strange that these two men with such shared history in the same Department would be friends.

We should want leaders like Barr to speak on contemporary issues, not penalize them for sharing such knowledge and expertise. Many former attorneys general are called to Congress or the media to help gain insights into decisions being made. Barr’s comments were thoughtful and honest and direct—all characteristics that have made him a respected leader in the legal field. If such comments are disqualifying, we would be left with a list of senior candidates who have spent decades without uttering a single interesting or provocative thought. In his first confirmation, Barr was praised for his refreshing honesty and openness. Senate Judiciary Committee Chair Joe Biden did not agree with Barr’s views but valued his “candid” answers and said that the Barr confirmation was “a throwback to the days when we actually had attorneys general that would talk to you.”

IV. THE 1989 BARR MEMORANDUM AND THE SCOPE OF EXECUTIVE POWER

For decades, General Barr has been a passionate defender of the powers of Article II. That view was captured in his 1989 memo as head of the Office of Legal Counsel. The 10-page memo offered a detailed account of intrusions into executive authority and encouraged a more organized and vigilant opposition to such legislative and judicial encroachments. Barr

⁷ Steven Nelson, *Recusal Redux: Attorney General Might Have To Cede Oversight Of Mueller Investigation If Confirmed*, Washington Times, Jan. 11, 2019.

methodically identified ten types of legislative provisions commonly included in legislation that he viewed as draining authority from the Presidency.

The memorandum presents a familiar theme for those of us who favor legislative authority and have spent years calling on Congress to more vigorously defend legislative authority from executive over-reach.⁸ Barr was a highly influential voice in defending the unitary executive theory and the prerogatives and powers of Article II. The position that he laid out twenty years ago is commonly held by many scholars and jurists. It includes a defense of the power over executive appointments and terminations as well as control of classified and privileged information. Barr is correct in raising concerns over “hybrid” commissions, independent agencies, and positions that seem to mix executive and legislative elements, including commissions with congressional members. Many of these issues have vexed academics for years in how certain bodies fit into the tripartite constitutional scheme. It is precisely the type of concern that led the Supreme Court to strike down the one-house legislative veto in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). Barr saw the rise of bodies exercising executive powers without executive appointments. To the extent that such bodies or functions involve the exercise of executive powers, Barr argues that “[a]ny proposal to establish a new Commission should be reviewed carefully to determine if its duties include executive functions. If they do, the members of the Commission must be appointed pursuant to the Appointments Clause.”

Separation of powers does require such clarity in separation. In *Federalist No. 51*, James Madison explained the essence of the separation of powers—and the expected defense of each branch of its constitutional prerogatives and privileges:

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.⁹

⁸ See generally Jonathan Turley, *A Fox In The Hedges: Vermeule’s Optimizing Constitutionalism For A Suboptimal World*, 82 *University of Chicago Law Review* 517 (2015)

⁹ THE FEDERALIST NO. 51, at 257 (James Madison) (Lawrence Goldman ed., 2008).

Barr has called for the Executive Branch to assert such institutional ambitions in pushing back on both the legislative and judicial branches when Article II powers are implicated. As I have testified previously,¹⁰ the consistent element running throughout the constitutional debates and the language of the Constitution is a single and defining danger for the Framers: the aggrandizement or aggregation of power in any one branch or any one's hands. The Framers actively sought to deny the respective branches enough power to govern alone. Our government requires consent and compromise to function.

Barr prefers clarity and so do many of us on the Article I side. We simply believe that this struggle has been one-sided with the Executive Branch encroaching more and more into legislative areas and Congress relenting to such encroachments. Barr has questioned provisions like “qui tam” actions that undermine the position of the Justice Department as the proper institution to litigate fraud actions against the United States. Notably, Barr does not argue that such laws are unconstitutional per se, but should be opposed as inimical to executive authority. Barr also opposed what he saw as “an unabashed willingness by Congress to micromanage foreign affairs and executive branch internal deliberations.” This is another issue that has continued to divide courts and commentators alike. For the most part, courts have supported the view in the memorandum on the inherent powers governing foreign affairs. Moreover, the Obama Administration asserted the same basic position in taking unilateral action in places like Syria and Libya.

The memorandum is a comprehensive and prophetic account of areas of potential encroachment and controversies over executive authority. The OLC has long been the intellectual hub of the Justice Department—an office that is supposed to look beyond insular cases to a broader legal horizon. Barr was advocating for a unified and single position of the Executive Branch in resisting proposals and legislation counter to Article II authority.

¹⁰ See, e.g., Jonathan Turley, United States House of Representatives, “Authorization to Initiate Litigation for Actions by the President Inconsistent with His Duties Under the Constitution of The United States” Before the H. Comm. On Rules, 113th Cong., July 16, 2014; Jonathan Turley, United States House of Representatives, “Enforcing the President's Constitutional Duty to Faithfully Execute the Laws” Before the H. Comm. on the Judiciary, 113th Cong., Feb. 26, 2014; Jonathan Turley, United States House of Representatives, *The President's Constitutional Duty to Faithfully Execute the Laws Before the H. Comm. on the Judiciary*, 113th Cong., Dec. 2, 2013; Jonathan Turley, United States House of Representatives, Committee on the Judiciary, “Executive Overreach: The President's Unprecedented “Recess” Appointments,” Feb. 15, 2012.

That is what the OLC is supposed to do and Barr was reminding all general counsels (who composed the General Counsels' Consultative Group) of the position of the Bush Administration on the maintenance of the unitary executive principles.

The memorandum may have proven too successful. For the last twenty years, Democratic and Republican Administrations have jealously guarded executive powers while Congress has yielded time and time again in these separation of powers fights. My only complaint is not that Barr wrote this memorandum, but that Congress lacks a similar memorandum and commitment in defense of its own authority under Article I.

V. THE 2018 BARR MEMORANDUM AND THE SCOPE OF FEDERAL OBSTRUCTION LAWS

On June 8, 2018, Bill Barr sent Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel a memorandum entitled "Mueller's 'Obstruction' Theory." As Rosenstein said publicly later, there was nothing unusual in former Justice officials, particularly a former Attorney General, sharing thoughts with the Department on legal issues. Indeed, Barr also raises his concerns over the basis for the prosecution of Sen. Bob Menendez with high-ranking Justice officials. He need no interest in that prosecution but was concerned about the implications of the theory of the prosecution and how it would be applied in other cases. The memorandum did not address the core allegations of Russian collusion that were the original purpose of the Special Counsel investigation. Barr was concerned about the widespread reports of the obstruction allegation based on the firing of former FBI director James Comey. The memo is a comprehensive and thoughtful analysis of the federal obstruction provision. It is vintage Bill Barr—detailed and dispassionate account of the history and scope of the obstruction criminal provision. As I have mentioned in columns, I do not agree with all of Barr's conclusions, but his analysis raises legitimate concerns over the use of obstruction theories in the context of the Russian investigation.

The memorandum argues that the use of obstruction to address issues like the firing of James Comey would distort the federal law in a dangerous way. That concern is shared by some of us in the civil liberties community. For almost two years, I have raised objections about the expansion of the definition of obstruction (and other criminal laws) that have been widely cited by experts in the media to implicate President Trump in criminal conduct. While Barr's concerns are primarily rooted in Article II, my own

concerns have been with broadening the reach of these obstruction statutes to cover a wide range of pre-grand jury conduct, including even the use of public comments likely protected under the First Amendment. Obstruction cases have historically involved acts committed during the pendency of grand jury investigation in the hiding or destruction or altering of evidence. It is less common to have such claims raised before the submission of an investigation to a grand jury and courts have rejected some claims as premature or ill-founded. The expansion of obstruction claims to the earliest stages of investigations raises serious questions of the over-criminalization of conduct. While it remains a crime to lie to federal investigators at any stage, most obstruction cases involve direct and clear efforts to corruptly influence or impede an “official proceeding.” The loose interpretations of the obstruction provisions would place a wide swath of conduct under the criminal code. It would also expand the ability of prosecutors to allege criminal acts and force plea agreements.

There are a variety of obstruction crimes, but most have no applicability to this controversy. 18 U.S.C. § 1503, for example, broadly defines the crime of “corruptly” endeavoring “to influence, obstruct or impede the due administration of justice.” This “omnibus” provision, however, is most properly used for judicial proceedings such as grand jury investigations, and the Supreme Court has narrowly construed its reach. There is also 18 U.S.C. § 1512(c), which makes it a crime for any person who corruptly or “otherwise obstructs, influences or impedes any official proceeding, or attempts to do so.” But this provision too has been narrowly limited to the underlying conduct and the need for some “official proceeding.” Mueller should be fully aware of that problem since his principal deputy, Andrew Weissmann, was responsible for overextending that provision in a jury instruction that led the Supreme Court to reverse the conviction in the Arthur Andersen case in 2005.

The obstruction provisions have been widely discussed by experts over the last two years in connection with the firing of Comey. That is the context that raised concerns for Barr, as laid out in his memorandum. Barr focuses on 18 U.S.C. § 1512 since it does not require a pending proceeding at the time of the alleged criminal act. The most obvious provision would be the so-called “residual clause” in subsection (c)(2), which reads:

(c) Whoever corruptly-- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or (2) *otherwise* obstructs, influences, or impedes any

official proceeding, or attempts to do so [is guilty of the crime of obstruction]. [emphasis added].

As Barr notes, the section specifically defines acts of obstruction, including killing a witness, threatening a witness to prevent or alter testimony, destroying or altering documentary or physical evidence, and harassing a witness to hinder testimony. Subsection (c) (1) then lists acts tied to the altering or concealment or destruction of records, documents, or objects. What follows is a residual reference to someone who “corruptly . . . otherwise obstructs, influences, or impedes any official proceeding.” Barr raises the fair question of why Congress would create the earlier specific references to acts if the “otherwise” reference can literally mean anything. Instead, he suggests that it is meant to be “tied to, and limited by, the character of all the other forms of obstruction listed in the statute.” Accordingly, he suggests that the most natural and plausible reading is that the residual clause “covers acts that have the same kind of obstructive impact as the listed forms of obstruction—i.e., impairing the availability or integrity of evidence—but cause this impairment in a different way than the enumerated actions do.” Barr further argued that the open-ended interpretation of the residual clause would implicate executive powers and privileges. Not only should courts avoid such conflicts in their interpretations with narrower constructions, but criminalizing discretionary powers left to the President would “disempower” his office and run contrary to Article II.

As I have previously stated, I do not agree with some of those conclusions. However, I am baffled by the criticism of some of Barr’s statements with regard to the constitutional powers and privileges. For example, Barr states that “[t]he Constitution itself places no limit on the President’s authority to act on matters which concern him or his own conduct. On the contrary, the Constitution’s grant of law enforcement power to the President is plenary.” That is demonstrably true. The Constitution does not contain any such express limits. That does not mean that presidential actions taken for personal reasons would be lawful. Indeed, Barr has stated that such conduct could involve other crimes and would presumably be both an abuse of power and a violation of the duty to faithfully execute the laws of the United States. However, the memo offers an excellent analysis from a perspective shared by many lawyers and judges in both the proper interpretation of the criminal provisions as well as the limitations on the scope of such interpretations in light of countervailing constitutional powers. I have frankly been taken

aback by some of the criticism of this memorandum, which either misrepresents Barr’s analysis or misconstrues the governing law. There are good-faith arguments on both sides of this issue and no clear answer on the scope of the obstruction provisions in this context. However, we live in times where such good-faith debates are no longer tolerated and where discourse commonly devolves into little more than *ad hominem* attacks. I would like to address a couple of these criticisms and explain why I believe that they are unfairly characterizing both Barr’s analysis and his motivations. One of the best-known sayings of Confucius is that “the beginning of wisdom is to call things by their proper name.” The same is true about the law. It is important to call – and to prosecute – conduct by their proper name. Barr was not saying that a president cannot commit obstruction or was above the law. He expressly said the opposite. What he was raising is how to properly identify and prosecute conduct in the proper way.

1. Barr’s “Assumptions” About The Possible Use Of Obstruction Theories By The Special Counsel

One of the most curious and unfair criticisms of the Barr memo was that the author engaged in some form of wild speculation about the use of the obstruction provisions in the absence of information from the Special Counsel. Critics have characterized the premise of the memo as “bizarre”¹¹ or “strange” and called the memorandum “a bizarre document” that was “based entirely on made-up facts.”¹² The objection is that Barr is suggesting that “he knows Mueller’s legal theory, and second, that he understands the fact pattern Mueller is investigating.”¹³ The problem is that Barr says precisely the opposite. At the outset of his memorandum, Barr says that he is “in the dark about many facts” given the secrecy surrounding the Special Counsel investigation. However, Barr is addressing what is a commonly known focus of the investigation: the firing of James Comey. We know that because the firing was one of the key factors behind the appointment of a Special Counsel. Indeed, some of us questioned the need for the appointment of a Special Counsel before the firing, but became

¹¹ Daniel Hemel and Eric Posner, *Bill Barr Just Argued Himself Out Of A Job*, *New York Times*, Dec. 21, 2018.

¹² Mijhaia Fogel and Benjamin Wittes, *Bill Barr’s Very Strange Memo On Obstruction of Justice*, *Lawfare*, Dec. 20, 2018, <https://www.lawfareblog.com/bill-barrs-very-strange-memo-obstruction-justice>.

¹³ Fogel & Wittes, *supra*.

strong supporters of such an appointment after the firing. Barr is not saying that Mueller will only use obstruction in this fashion but rather than this is the provision that most concerns him from a constitutional and policy perspective. Indeed, his express recognition that the President can be charged under other crimes should plainly show that his intention is not to shield the President but to address a legitimate concern over prosecutorial policy. Indeed, some conduct may not be properly defined as obstruction but properly charged as other crimes. The rule of law is often secured in its details; in the proper classification of conduct. That is what Barr raised in his memorandum.

What is particularly disconcerting is the suggestion that Barr is engaging in wild speculation to even discuss such a theory when experts have been debating this issue for months—and the President’s legal team has been crafting a public defense in response to it. Indeed, all of these critics engaged in precisely the same focus of analysis in discussing whether the firing of Comey was an act of obstruction. There are hundreds of columns and blogs on the obstruction question addressed by Barr, including by these critics.¹⁴ Indeed, one of these critics wrote a lengthy piece on precisely the same issue back in June 2018.¹⁵ He then proceeded within days of his column targeting Barr to write another column exploring the hitherto “strange” focus of an obstruction case against Trump in the Russian investigation.¹⁶ Another of these authors wrote a New York Times column blasting Barr for his bizarre speculation on the bringing of an obstruction claim but last year wrote another New York Times column exploring

¹⁴ Compare Marty Lederman, *A First Take On Bill Barr's Memo on Presidential Authority and The Mueller Investigation*, <https://www.justsecurity.org/61975/legal-arguments-bill-barrs-memo-mueller-investigation/> and Marty Lederman and David Pozen, *Why Trump's Disclosure To Russia (and Urging Comey To Drop The Flynn Investigation, and Various Other Actions) Could Be Unlawful*, <https://www.justsecurity.org/41024/why-trumps-disclosure-and-more-might-be-unlawful/>. See also, Marty Lederman, *Why Ron Rosenstein Won't Have To Recuse Himself*, Newsweek, June 19, 2017 (discussing the same obstruction standard as applied to the Comey firing).

¹⁵ Benjamin Wittes, *The Flaw In Trump's Obstruction-of-Justice Defense*, The Atlantic, June 4, 2018, <https://www.theatlantic.com/ideas/archive/2018/06/even-the-president-can-obstruct-justice/561935/>; see also *Jim Comey Friend Speaks Out On Possible Trump Obstruction*, CNN June 16, 2017, <https://www.youtube.com/watch?v=MJirvkFnbFY>

¹⁶ Benjamin Wittes, *What if The Obstruction Was The Collusion?* Lawfare, January 11, 2019, <https://www.lawfareblog.com/what-if-obstruction-was-collusion-new-york-times-latest-bombshell>.

precisely that issue and the specific language addressed by Barr.¹⁷ I have found all of these columns—like Barr’s analysis—to be insightful and helpful, even though I disagreed with them. There was nothing “bizarre” or “strange” in addressing one of the core crimes alleged at the time of the appointment of the Special Counsel.

The firing of James Comey has been openly discussed in Congress as a core allegation of obstruction and witnesses have confirmed that they have been questioned about the controversy. Barr actually wrote about that controversy much later than many of these critics and after more information was available confirming the obstruction inquiry. Indeed, my assumption is that the Special Counsel’s office completed the same analysis long before Barr decided to share his thoughts with Rosenstein. One can raise fair arguments against Barr’s conclusions (as I have) without unfairly characterizing his focus on the obstruction theory as wild or bizarre speculation.

2. Barr’s Statutory Construction of the Obstruction Provision

Barr’s analysis begins with a long and detailed analysis on how to interpret Section 1512. His analysis tracks much of the analysis by critics in the operative language and the unresolved issues related to an obstruction charge. The memo raises the common statutory issue of construction: how to interpret a generally worded residual clause that follows a more specific list of enumerated acts. For example, courts have long applied the doctrine of *eiusdem generis* (“of the same kind”) that states a general term following a list of specific terms will be limited to the more specific term. Moreover, the broad reading of the residual clause raises legitimate questions of why Congress would enumerate specific acts only to permit any act to qualify for the purposes of obstruction. As discussed earlier, Barr argues that an unlimited definition of the meaning of predicate acts that “otherwise” obstruct would make virtually the rest of the provision superfluous and meaningless. It is a fair point and one that a federal court would seriously consider. There is not only a “rule of lenity” where courts resolve ambiguities in favor of a criminal defendant, but courts tend to narrowly construe criminal laws to guarantee that citizens are given notice and clear

¹⁷ Daniel Hemel & Eric Posner, *The Case For Obstruction Charges*, *The New York Times*, June 15, 2017, <https://www.nytimes.com/2017/06/15/opinion/the-case-for-obstruction-charges.html>; see also Eric Posner, *The Motive Question and Obstruction of Justice*, <http://ericposner.com/the-motive-question-and-obstruction-of-justice/>

standards of what constitutes criminal conduct. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 16 (2011) (“It leads us to favor a more lenient interpretation of a criminal statute ‘when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute.’”) (quoting *United States v. Shabani*, 513 U. S. 10, 17 (1994)). This is a principle that some of us in the civil liberties community regularly raise as a protection from the wide and ambiguous criminalization of conduct.

What is most striking about the criticism of Barr’s memo is that his detractors dismiss his effort for a limiting principle without addressing the obvious danger of their open-ended definition to civil liberties. Their analysis dangerously argues against the notion that generalized language could or should be narrowed through judicial interpretation. In their New York Times column, Daniel Hemel and Eric Posner simply repeat the language of the provision as self-evident proof that it should not be construed to have a more limited meaning in the context of the statute as a whole:

The relevant statute, Section 1512(c) of the federal criminal code, applies, as Mr. Barr says, to cases of evidence impairment, but it also applies to anyone who “otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so” — provided that they act “corruptly.” If destroying evidence to protect oneself from an investigation is obstruction, then so is pressuring a subordinate to ignore such evidence or drop the investigation altogether.

First, I share their view that such acts can be obstruction, but not the determinative weight given this adverb. However, they do not offer (as does Barr) a clear interpretation of the provision other than “anything goes” so long as it can be alleged to be done corruptly. That would entail any act that a prosecutor alleges obstructed or influenced or impeded (or was intended to do so) in any way. They also do not address Barr’s interpretative arguments that the provision must be read in the context of the section overall.

Moreover, it is not clear that their alternative hypotheticals disprove Barr’s point. While Barr was addressing the firing of Comey, the authors note that it would be obstruction if Trump told Comey to ignore evidence or drop the investigation. However, Barr expressly states that

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. Indeed, the acts of obstruction alleged against Presidents Nixon and Clinton in their respective impeachments were all such “bad acts” involving the impairment of evidence.

It is not clear how some hypotheticals might fit in Barr’s analysis. Barr specifically includes acts that impair the integrity or availability of evidence. Indeed, Barr specifically embraces the Nixon impeachment, which dealt with acts intended to impair the integrity or availability of evidence. What Barr argues is that there must be some limiting principle so that any act by a president cannot be interpreted as obstruction merely because it has an influence on the investigation. He does not question that an obstruction investigation and charges against a president would be appropriate when there is a cognizable crime (like those alleged with regard to collusion) that have been identified. Moreover, he does not question that other crimes may be raised by such conduct even if it does not meet the definition of obstruction. Finally, he maintains that efforts to interfere with an investigation would be an “abuse of power” and a violation of a President’s duty to faithfully execute the laws.

In other writings, the view of Hemel and Posner becomes even broader and more amorphous.¹⁸ The authors do not even require a specific stand-alone act of obstruction: “The *actus reus* requirement does not require that an obstruction conviction be predicated on a single act. A ‘continuing course of conduct’ that obstructs an investigation can be the basis for guilt. And as the use of the verbs ‘endeavor’ and ‘attempt’ in the obstruction statutes suggests, a defendant can be convicted of obstruction even if his effort to stymie an investigation does not succeed.”¹⁹ Thus, a president could be charged with obstruction based on a mosaic of acts deemed to be part of an endeavor to “influence” an investigation. In the end, the authors seem to dispense with any limitation on the *actus reus* of obstruction by simply making it redundant with the *mens rea* requirement:

Moreover, a defendant who is innocent of the underlying charge can be convicted of obstructing the investigation into that charge.

¹⁸ Daniel Hemel & Eric Posner, Presidential Obstruction of Justice, July 18, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3004876

¹⁹ *Id.*

Obstruction of justice is an independent crime. But of course, it cannot be the case that any action or course of conduct that might interfere with an investigation of any charge constitutes criminal obstruction. The criminal defense lawyer who moves to quash a subpoena thereby impedes an investigation, but that does not mean that he should go to jail. What “separates the wheat from the chaff” in obstruction cases is the *mens rea* requirement: to be guilty of obstruction, a defendant must act with a “corrupt purpose.”

So, under this interpretation, prosecutors must prove both a criminal act and criminal intent, but the criminal act can be defined entirely by alleged criminal intent. Barr’s best defense might be found in such criticism in showing how dangerously undefined the obstruction crime becomes without limiting principles.

As a criminal defense attorney, I find their interpretation unnerving since most any act that is viewed as inimical to a pre-grand jury investigation could be deemed as satisfying this standard. What is notable is that the reliance on the *mens rea* element puts enormous stress at the weakest point of the statute. The ambiguous and undefined meaning of “corruptly” led earlier to the D.C. Circuit finding the term unconstitutionally vague. *United States v. Poindexter*, 951, F.2d 369, 386 (D.C. Cir. 1991) (“neither the legislative history nor the prior judicial interpretation of § 1505 supplies the constitutionally required notice that the statute on its face lacks. Accordingly, we find no reason to disturb our earlier conclusion that the statute is unconstitutionally vague as applied”). As Barr points out, Congress proceeded to magnify the problem with an equally ambiguous “fix” by defining “corruptly” as “acting with an improper motive . . . including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.” 18 U.S.C. §1515(b). This is the motivational definition that critics want to use without any limitation on the types of actions that fall under the statute. Notably, when unable to actually define the term, Congress listed the specific acts traditionally associated with obstruction and raised by Barr: “a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.”

As a civil libertarian, I would be more comfortable with Barr’s narrow interpretation than I would the virtually limitless interpretation of Hemel and Posner. However, in the end, I disagree with both. Barr is correct that the meaning of the residual clause must be read in the context of the section as a whole. The “otherwise” acts should, as Barr suggests, be confined to “acts

that have the same kind of obstructive impact as the listed forms of obstruction . . . but cause this impairment in a different way than the enumerated actions do.” Obstruction does “not criminalize just any act that can influence a ‘proceeding’. Rather they are concerned with acts intended to have a particular kind of impact.” After all, the thrust of the provision is to protect “proceedings” from interference or obstruction. That ties the crime to the process of fact gathering and truth finding. Yet, in the end, I think Barr cogently identifies the problem but not the solution. Confining the definition to “impairing the availability or integrity of evidence” might exclude actions limiting investigators and thus the investigation. The solution might be found in Barr’s evidence-based test with a broader definition of acts that interfere with evidence gathering. Thus, a direct effort to inhibit or prevent investigators from carrying out an investigation is indeed an obstruction of the fact-finding work of a federal proceeding.

Whatever workable definition may be developed, it would arise after decades of struggle with the ambiguity of these terms. More importantly, Barr is raising good-faith and compelling arguments for the type of clarity that courts in cases like *Poindexter* have demanded in the definition of crimes.

3. Barr’s Constitutional Limitations On Charging Presidential Obstruction

While it should not come as much of a surprise, my primary disagreement with the Barr memorandum is its discussion of the inherent presidential powers and privilege. I have long been a critic of the expansion of presidential authority (and corresponding decline of legislative authority) in our tripartite system. However, Barr’s views on executive power are not unlike those argued under the Obama Administration and other administrations. More importantly, Barr is not voicing some extreme view in the memorandum, as suggested by his critics. To the contrary, he leads with a statement that not only rejects such extreme interpretations of the executive immunity but actually contradicts the stated view of President Trump’s legal team. It is worth repeating here:

Obviously, 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. Indeed, the acts of obstruction alleged against Presidents Nixon and Clinton in their respective impeachments were all such “bad acts” involving the impairment of evidence. Enforcing these laws against the President in no way infringes on the President’s plenary power over law enforcement because exercising this discretion—such as his complete authority to start or stop a law enforcement proceeding—does not involve commission of any of these inherently wrongful, subversive acts.

That is a direct repudiation of the extreme view presented by many that a sitting president cannot by definition commit obstruction or be impeached for such acts. Indeed, in a letter to Chairman Lindsay Graham, Barr reaffirmed what he clearly stated earlier: “If a President, acting with the requisite intent, engages in the kind of evidence impairment the statute prohibits—regardless whether it involves the exercise of his or her constitutional powers or not—then a President commits obstruction of justice under the statute. It is as simple as that.” Despite stating (and restating) this important threshold position, critics have attempted to paint Barr’s analysis as outside of the mainstream of legal thought. It is not. Moreover, Barr’s view that statutory interpretations are often informed and limited by countervailing constitutional rights or powers is widely accepted. The federal courts have long followed a doctrine of avoidance when ambiguous statutes collide with constitutional functions or powers. In *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366 (1909), the Court held that “Under that doctrine, when ‘a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.’” *See also* Op. Off. Legal Counsel 253, 278 (1996) (“It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it.”). Such conflicts arise regularly in the interpretation of the scope of federal laws. Thus, when the Supreme Court considered the scope of the Federal Advisory Committee Act (“FACA”) it avoided a conflict with Article II powers through a narrower interpretation. In *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989), the Court had a broad law governing procedures and disclosures committees, boards, and commissions. However, when applied to consultations with the American

Bar Association regarding judicial nominations, the Administration objected to the conflict with executive privileges and powers. The Court adopted a narrow interpretation: “When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *Id.*; see also *Ass’n of American Physicians and Surgeons v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993) (“Article II not only gives the President the ability to consult with his advisers confidentially, but also, as a corollary, it gives him the flexibility to organize his advisers and seek advice from them as he wishes.”). These decisions explored the same tensions raised by Barr in the context of the obstruction statute in determining the scope of provisions in the context of countervailing executive functions.

There has been widespread caricaturing of Barr’s views on this issue in the memorandum. For example, while raising many legitimate points, Hemel and Posner stated that:

Mr. Barr also says that the obstruction statutes do not apply to ‘facially lawful’ acts by the president such as the firing of an F.B.I. director, because presidents are constitutionally authorized to fire their subordinates. But the obstruction statutes do apply to actions that would be “facially lawful” under other circumstances. For example, there is no law against tearing up pieces of paper; there is a law against tearing up documents so that they cannot be subpoenaed by federal prosecutors. Firing the F.B.I. director is not a crime; firing the F.B.I. director in order to block an investigation into the president’s own actions very well might be.

The problem is that Barr was not making such a simplistic argument. Obviously all of the acts that Barr agreed would be obstruction would also be, in isolation, facially lawful acts. Thus, Barr acknowledges that destruction of evidence would be obstruction. Destroying a piece of paper is a lawful act unless the paper happens to be evidence sought in a federal investigation. What Barr is saying is that the act cannot be the exercise of a power that is *faithfully* executed. He is speaking of a president who must carry out functions of his office that could have a collateral or perceived impact on an investigation. Barr states

under this theory, simply by exercising his Constitutional discretion in a facially-lawful way—for example, by removing or appointing an official; using his prosecutorial discretion to give direction on a case;

or using his pardoning power—a President can be accused of committing a crime based solely on his subjective state of mind. As a result, any discretionary act by a President that influences a proceeding can become the subject of a criminal grand jury investigation, probing whether the President acted with an improper motive.

His concern again is that an obstruction allegation could turn solely on a prosecutor's belief in a president's subjective mind—the very merging of *actus reus* and *mens rea* that Hemel and Posner advocate. If any act that “influences” an investigation can be obstruction, the only way to really know if there is obstruction would be to investigate a president and demand that he or she answer for the actions.

The example that Barr discusses is the firing of an FBI Director, which puts this difficulty in the sharpest relief. Trump had ample reason to fire Comey, even if the decision was ill-timed and ill-considered. Nevertheless, those reasons were well laid out in the memorandum of Deputy Attorney General Rosenstein, excoriating Comey for his “serious mistakes” and citing former federal judges, attorneys general, and leading prosecutors who believed that Comey “violated longstanding Justice Department policies and tradition” along with “his obligation to ‘preserve, protect and defend’ the traditions of the department and the FBI.” Rosenstein further added that Comey “refused to admit his errors.” Barr is saying that the firing of Comey did not have a direct impact on evidence or even the investigation. Barr is suggesting that this exercise of lawful authority is not an act covered by the obstruction provision. He is not saying that Trump could not or should not be investigated for obstruction if he took acts directly related to interfering with evidence or evidence gathering.

As with the civil liberties implications, critics ignore the countervailing dangers of an ill-defined crime of obstruction to the functioning of the presidency. Consider the application of such an interpretation to other past controversies. President Bill Clinton (who also faced federal investigations of this Administration and his own conduct) fired FBI Director William Sessions. It was a facially lawful exercise of presidential authority even if some could argue that it could influence possible investigations. The year was 1993—before the 1994 appointment of an independent counsel in the Whitewater investigation. A Resolution Trust Corporation investigation had already made a criminal referral of both Clintons to the Justice Department in 1993. Sessions was dismissed on July 19, 1993. It was the same month of all of the conspiracy theories that would follow the Vince Foster suicide and the speculation about the need for an

independent counsel. Was that obstruction? No. It did not hamper any later investigation, which proceeded under another Director. Even if it had some influence on an early investigation, I do not believe that Clinton should have been subject to questioning and investigation on that basis. However, if *mens rea* is the only determinative factor, should Clinton have been investigated for obstruction based on his conversations and motivations for the replacement of the Director? What Barr was seeking was some objective standard for acts of obstruction that would be tethered directly to the core concerns of the statute without implicating faithfully lawful acts like appointment and removal decisions.

I have previously written that I believe Trump can be charged with obstruction if there is evidence that he used official powers, including his appointment and termination authority, to terminate or interfere with the investigation into his actions or those of his campaign. However, this act would be tied directly to the evidence-gathering function of the investigation under a conventional meaning of obstruction. Thus far, the evidence does not create such a nexus but more details may arise from the expected report of the Special Counsel.

Once again, it is important to keep in mind that this entire controversy concerns only a narrow issue of one possible criminal allegation based on a single provision in the criminal code. What Barr is raising is how to properly define a specific obstruction crime when the act does not fit the classic definition and involves a presidential function. Some acts that may not be obstruction may be other crimes committed by a president. Not only did Barr affirm (and reaffirm) that a president could be charged with obstruction but he has gone further to state that it is fundamentally wrong to argue “that a President can never obstruct justice whenever he or she is exercising a constitutional function”—the very position advanced by members of the Trump legal team. Barr praised the appointment of Robert Mueller and has repeatedly committed to guaranteeing that Mueller be allowed to complete his work. He has maintained that “I believe it is in the best interest of everyone—the President, Congress, and, most importantly, the American people—that this matter be resolved by allowing the Special Counsel to complete his work. The country needs a credible resolution of these issues.” He has further stated “I also believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law.” That position is consistent with Barr’s position in the memorandum and in his public comments. It is consistent with Barr’s

lifetime of work as a federal lawyer. Most importantly, it is consistent with the Constitution that Barr has repeatedly sworn to support and defend.

VI. CONCLUSION

As noted at the start of my testimony, the evaluation of any nominee to the Office of Attorney General should ultimately turn on two words: *Domina Justitia*. When the Justice Department substituted those words for *domina regina sequitur*,” it reaffirmed that it acted in the name and in the interest of the law, not a president. I believe that this distinction resonates deeply with General Barr today as it did 27 years ago when he first appeared for confirmation as Attorney General of the United States.

Thank you again for the honor of addressing this Committee and I would be happy to answer any questions that the members may have.

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Senator Dianne Feinstein
William Barr Confirmation Hearing Opening Statement
January 15, 2019

When we met, your previous tenure—we talked about—marked a very different time for our country. And today, we find ourselves in a unique time, with a different administration and different challenges.

And now, perhaps more than ever before, the country needs someone who will uphold the rule of law, defend the independence of the Justice Department, and truly understand their job is to serve as the people's lawyer—not the president's lawyer.

Top of mind for all of us is the ongoing Mueller investigation. Importantly, the attorney general must be willing to resist political pressure and be committed to protecting this investigation.

I'm pleased that in our private meeting, as well as in your written statement submitted to the committee, you stated that "it is vitally important," and this is a quote, "that the special counsel be allowed to complete his investigation" and that "the public and Congress be informed of the results of the special counsel's work."

However, there are at least two aspects of Mr. Mueller's investigation. First, Russian interference in the United States election and whether any U.S. persons were involved in that interference; and, second, possible obstruction of justice.

It's this second component that you have written on. And just five months before you were nominated—I spent the weekend on your 19-page legal memo to Deputy Attorney General Rod Rosenstein criticizing Mueller's investigation, specifically the investigation into potential obstruction of justice.

In the memo, you conclude, I think, Special Counsel Mueller is "grossly irresponsible" for pursuing an obstruction case against the president, and pursuing the obstruction inquiry is "fatally misconceived." So I hope we can straighten that out in this hearing.

But your memo also shows a large sweeping view of presidential authority, and a determined effort, I thought, to undermine Bob Mueller even though you state you have been friends and are "in the dark about many facts" of the investigation.

So it does raise questions about your willingness to reach conclusions before knowing the facts and whether you have prejudged the Mueller investigation. And I hope you'll make that clear today.

It also raises a number of serious questions about your views on executive authority and whether the president is, in fact, above the law.

For example, you wrote the president "alone is the executive branch. As such, he is the sole repository of all executive powers conferred by the Constitution. Thus, the full measure of law

enforcement authority is placed in the president's hands, and no limit is placed on the kinds of cases subject to his control and supervision." This is in your memo on page 10 and I will ask you about it.

This analysis included cases involving potential misconduct where you concluded, "the president may exercise his supervisory authority over cases dealing with his own interests, [and] the president transgresses no legal limitation when he does so." That's on page 12.

In fact, you went so far as to conclude that "The framer's plan contemplates that the president's law enforcement powers extend to all matters, including those in which he has a personal stake." You also wrote, "The Constitution itself places no limit on the president's authority to act on matters which concern him or his own conduct." Page 10.

Later, you conceded that certain supervisory actions, such as the firing of Director Comey, may be unlawful obstruction. However, this too is qualified. You argued that in such a case obstruction of justice occurs only if first a prosecutor proves that the president or his aides colluded with Russia. Specifically you concluded: "The issue of obstruction only becomes ripe after the alleged collusion by the president or his campaign is established first."

So those are the some of the things I hope to ask you about. In conclusion, let me just say that some of your past statements on the role of attorney general and presidential power are concerning. For instance, you have said in the past that the attorney general "is the president's lawyer."

In November 2017, you made comments suggesting it would be permissible for the president to direct the Justice Department to open an investigation into his political opponents, and this is notable in light of President Trump's repeated calls for the investigation of Hillary Clinton and others who disagree with him.

I believe it's important that the next attorney general be able to strongly resist pressure whether from the administration, or Congress, to conduct investigations for political purposes.

He must have the integrity, strength, and fortitude to tell the president "no," regardless of the consequences. In short, he must be willing to defend the independence of the Justice Department.

So, Mr. Barr, my questions will be, do you have that strength and commitment to be independent of the White House pressures you will undoubtedly face? Will you protect the integrity of the Justice Department, above all else? Thank you very much.

Questions for the Record for William P. Barr
Submitted by Senator Richard Blumenthal
January 22, 2019

1. In June 2018, the FCC's plan to abdicate its authority over net neutrality came into effect. While the FCC has signed a memorandum of understanding with the FTC over unfair and deceptive practices by internet service providers, these actions have left consumers without clear rules and effective enforcement over net neutrality violations.

While the FCC and FTC are primarily responsible for oversight over internet service providers, the Department of Justice has interceded in cases regarding net neutrality in the past. Most recently, the California Attorney General reached a temporary agreement with the Department of Justice to delay their law from taking effect until federal lawsuits over the FCC's rollback of net neutrality are resolved.

When you were in private practice, you were significantly involved with telecommunications companies and other interests that were implicated in net neutrality. Most significantly, you served as General Counsel and Executive Vice President of Verizon Communications for eight years, during which you argued against net neutrality based on concerns over its impact on Verizon's revenue. For example, you reportedly stated that net neutrality regulations might prevent broadband providers like Verizon from earning "an adequate return." You also recently served on the board of Time Warner, which is seeking to merge with AT&T. Both affiliations create the appearance of potential conflicts of interest with regard to oversight of internet service providers and enforcement of net neutrality.

- a. **At least four states have passed their own net neutrality laws since the FCC abdicated its responsibility and still more are considering taking action to protect their residents. Do you intend to continue to pursue litigation to prevent states from enforcing their own laws to protect net neutrality? Under what specific conditions will the Department of Justice intervene against states that regulate discriminatory conduct within their state?**
- b. **Verizon and other internet service providers originally sued California to prevent the implementation of their net neutrality protections, and have been parties to most fights over the open internet. Considering the potential appearance of conflicts of interest based on your previous professional affiliations and statements on net neutrality, will you commit to recuse yourself from any cases that involve the enforcement or defense any net neutrality laws?**
- c. **Given concerns over the appearance of conflicts of interest, will you recuse yourself from any cases that involve specific claims of discriminatory conduct by Verizon that may come before the Department of Justice? Will you recuse yourself from any cases that involve specific claims of discriminatory conduct by other internet service providers?**

2. The Music Modernization Act was the result of years of bipartisan work by many members of the Judiciary Committee. The Department of Justice is currently conducting a sweeping review of 1,300 consent decrees, including the ASCAP and BMI consent decrees. These decrees play a critical role in allowing Americans to hear their favorite songs. I am concerned that terminating the ASCAP and BMI consent decrees could undermine the Music Modernization Act and permit the accumulation and abuse of market power.
 - a. **Can you commit that the Department of Justice will work with Congress to develop an alternative framework prior to any action to terminate or modify the ASCAP and BMI consent decrees?**

3. The Federal Correctional Institution in Danbury, Connecticut is home to over 1,000 federal inmates. It hosts important education and literacy programs, including some programs that bring in students from outside the institution to study with students housed inside the institution. Educational programs such as these are critical to restoring fairness to our criminal justice system and preparing inmates to contribute to society once have finished serving their time.
 - a. **Do you agree with me that education and literacy programs are important parts restoring fairness and opportunity to our criminal justice system?**
 - b. **What steps will you take as Attorney General to ensure that programs like the ones at the Federal Correctional Institution in Danbury are provided with the necessary resources?**
 - c. **What steps will you take to expand successful prison education programs on a nationwide basis?**
 - d. **Do you supporting restoring Pell grant funding to people in prison? Please explain the reasoning behind your position.**

4. During your confirmation hearing I asked you if you maintained the position you expressed in 1991, that *Roe v. Wade* should be overruled. You responded:

“I said in 1991 that I thought as an original matter it had been wrongly decided, and that was, what, within 18 years of its decision? Now it's been 46 years, and the department has stopped, under Republican administration, stopped as a routine matter asking that it be overruled, and I don't see that being turned--you know, I don't see that being resumed.”

- a. **Are you suggesting that you will not direct the Department of Justice to advocate to overturn *Roe*, or that it is merely unlikely that you will issue such an order?**
- b. **In your answer at the hearing you indicated that proximity in time to a Supreme Court ruling determines when you respect a precedent. In your opinion, when between 18 and 46 years does the principal of *stare decisis* attach?**
- c. **How do you determine when to give deference to a precedent?**

d. Does societal reliance on a precedent matter for *stare decisis* considerations?

5. As you know, American student loan borrowers now collectively owe more than \$1.5 trillion in student debt. The U.S. Department of Education relies on a number of large private-sector financial services firms to manage accounts and collect payments for more than \$1.2 trillion dollars of this debt. These firms have been the target of investigations and litigation by a range of state law enforcement agencies and regulators, alleging widespread abuses. This led Connecticut to pass the first comprehensive consumer protections in this area.

In the face of mounting litigation, beginning in 2017, the United States adopted the new legal position that it was never the government's expectation that these firms comply with state consumer law, including state prohibitions against unfair and deceptive practices, because these laws were preempted by federal law. To this end, in early 2018, the U.S. Department of Justice took the extraordinary step of filing a "statement of interest" in a lawsuit brought by the Massachusetts Attorney General related to one company's alleged mishandling of the federal Public Service Loan Forgiveness program in which DOJ urged a state trial court judge to side with the student loan company over that state's top law enforcement official. In late 2018, DOJ filed a second "statement of interest" in a federal trial court supporting affirmative litigation brought by a student loan industry trade association, which opposed an effort by the District of Columbia to empower its banking department to oversee the practices at these firms. In both instances, the United States departed from its long-held position supporting federalism and states' historic police powers in the student loan market-- a position that spanned administrations of both parties-- to side with the student loan industry.

- a. Will you commit to restoring the past position of the DOJ and refraining from filing further actions opposing state consumer protection litigation in the student loan market?**
6. In recent years, Congressional investigations and leaked financial documents (i.e. Panama and Paradise Papers) have shown the extent to which the wealthiest citizens and corporations around the world—including the United States—use sophisticated financial strategies to avoid and evade taxes. Some of these moves are illegal, depriving the federal government of revenue and preventing the wealthiest from paying their fair share in the process.
- a. Will you commit to making the full, fair, and consistent enforcement of tax laws a priority of the department during your tenure?**

7. Former White House Chief of Staff John Kelly recently stated that Attorney General Jeff Sessions “surprised” the Administration when he instituted a zero-tolerance policy that led to the family separation crisis on the border.
 - a. **Can you commit to me that you will never support a policy that leads to mass family separation?**

8. President Trump recently issued a Presidential Proclamation barring certain individuals from receiving asylum. This policy could result in deporting asylum seekers back to their death. In addition to being needlessly cruel, this Proclamation is illegal under our laws and under international law. For this reason, a federal judge has already issued a temporary restraining order blocking it from going into effect. A federal appeals court upheld this temporary restraining order. I have previously written to President Trump demanding that he revoke this unlawful Proclamation rather than continuing to fight a losing battle in court. So far, he has not done so.
 - a. **INA § 208(a)(1) is clear on this question. It says that any individual who arrives in the United States, “whether or not at a designated port of arrival,” may apply for asylum. Can you please explain how President Trump’s Proclamation is legal?**
 - b. **Will you commit to advising the president to rescind this proclamation?**

9. In 1990, you put forward an argument that Congress had very limited ability to control how the Executive spends congressionally appropriated funds. You stated – quote – “there may be an argument that if the president finds no appropriated funds within a given category to conduct activity, but there is a lot of money sitting somewhere else in another category — and both categories are within his constitutional purview — he may be able to use those funds.” In these remarks, you looked for a source of constitutional authority for Congress to control Executive spending, but you weren’t able to find one.
 - a. **Do you believe that Congress has constitutional authority to limit or control the Executive’s spending?**
 - b. **In your remarks in 1990, you asked a simple question regarding Congress’s appropriations power: “What is the source of the power to allocate only a set amount of money to the State Department and to restrict the money for that activity alone?” I would like you to answer your own question.**

10. Late last year, I wrote to the Department of Justice regarding Amazon’s use of most favored nation clauses in its contracts with third-party sellers on its site. I am deeply concerned that these hidden clauses are artificially raising prices on goods that millions of consumers buy every year. Amazon’s most favored nation clauses prevent sellers operating on its site from selling their goods at lower rates on other online marketplaces. This means that third-party merchants who sell on online marketplaces with lower transaction fees cannot pass on these savings to consumers. Relatedly, e-commerce sites that want to compete with Amazon to attract sellers will have trouble doing so by

charging third-party sellers lower fees, given that third-party sellers could not pass these savings on to consumers. As a result, most favored nation clauses can also act as a barrier to entry for competitors. Roughly, five years ago, UK and German antitrust regulators opened an investigation into Amazon's most favored nation clauses – and Amazon announced it would stop enforcing these most favored nation clauses in Europe. However, it continues to enforce them here in the United States.

- a. **Do you agree that Amazon's use of most-favored nation clauses in its contracts with third party sellers on its site could raise competition concerns?**
- b. **Would you commit to investigating Amazon's use of most-favored nation clauses in its contracts with third-party sellers on its site?**

11. Corporate consolidation does not only threaten consumers; it threatens workers. At a hearing last October, I asked Assistant Attorney General Delrahim to provide an example of the last time labor market considerations were cited as the basis for rejecting a merger. Mr. Delrahim has still not provided a single example.

- a. **Do you believe that labor market considerations are relevant to merger review?**
- b. **Can you commit to me that in every merger where the Department of Justice makes a second request, it will include a request for data related to labor market considerations?**

12. I am deeply concerned about the growth of non-compete clauses, which block employees from switching to another employer in the same sector for a certain period of time. These clauses weaken workers' bargaining power once they are in the job, because workers often cannot credibly threaten to leave if their employer refuses to give them a raise or imposes poor working conditions. According to the Economic Policy Institute, roughly 30 million workers – including one in six workers without a college degree – are now covered by non-compete clauses. Just this past December, President Trump's administration released a report indicating that non-compete clauses can be harmful in particular contexts, such as the healthcare industry.

- a. **Do you believe that non-compete clauses pose a threat to American workers?**
- b. **What action do you intend to take regarding non-compete clauses?**

13. Last month, we learned that Facebook has been selling more of users' personal data than previously disclosed. For example, it allowed Netflix and Spotify to read Facebook users' private messages. It is unconscionable and unacceptable that a company is able to act with such disregard for the privacy rights of its users. One reason that Facebook is able to get away with it is that they hold such a powerful market position. This allows them to impose poor privacy conditions on their users.

There is growing evidence that Facebook is willing to go to extreme lengths to protect its market power. Recently, the UK Parliament released documents showing Facebook's ruthless attempts to shut down competitors. In 2013, Facebook was concerned about

competition from Vine. A Facebook executive asked Mark Zuckerberg whether he could target Vine by shutting off Vine users' ability to find their friends via Facebook. Mr. Zuckerberg's response: "Yup, go for it."

a. Do you believe this sort of action could constitute anticompetitive conduct?

14. When Americans use Google to search for products, the top result should be the one that best answers users' queries – not the result that is most profitable to Google. But there is growing concern that this is not the case. Just over a year ago, the European Union concluded that Google has been manipulating search results to favor its own comparison shopping service. Now, the European Union is reportedly investigating whether Google is unfairly demoting local competitors in its search results.

a. Do you believe that there is sufficient evidence for the Department of Justice to act?

15. In a 2017 article, you wrote, "through legislative action, litigation, or judicial interpretation, secularists continually seek to eliminate laws that reflect traditional moral norms." According to your piece, secularists were attempting to, "establish moral relativism as the new orthodoxy" and in the process producing an explosion of crime, drugs, and venereal disease.

As an example of this trend, you discuss laws that, "seek to ratify, or put on an equal plane, conduct that previously was considered immoral. For example, "laws are proposed that treat a cohabitating couple exactly as one would a married couple. Landlords cannot make the distinction, and must rent to the former just as they would to the latter."

The implications of your statement for same-sex couples are troubling. At that time you wrote those words, same-sex couples were not allowed to get married. So, if landlords at that time were allowed to discriminate against unmarried couples, they would have been allowed to refuse to rent to any same-sex couple, essentially forcing millions of Americans to choose between living where they want and living with the person they love.

- a. Do you believe landlords should be able to discriminate against unmarried couples?**
- b. Do you believe landlords should be able to discriminate against gay and lesbian Americans?**
- c. If landlords can discriminate based on moral condemnation of unmarried couples and gay people, could a landlord refuse to rent to a Jew because he has a moral objection to that faith? If landlords should be allowed to express their moral beliefs by discriminating against groups they consider morally repugnant, where does that stop?**

Another example of this trend you highlighted was, "the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like

any other student groups.” You argued that, “This kind of law dissolves any form of moral consensus in society.”

You argued that the law undermined a “moral consensus.” But D.C.’s law was passed by the city’s elected officials. My understanding is that it is broadly popular in the city, and I suspect it is broadly popular on Georgetown’s campus as well. If Georgetown were allowed to discriminate against LGBT organizations, it would be rejecting a moral consensus, not embracing one.

- d. **In your view, is there a “moral consensus” against gay and lesbian student groups?**
- e. **What did you mean when you suggested that protections against discrimination “dissolve[] any form of moral consensus in society”?**

16. One of the major achievements of the last century is the recognition that racial segregation is a great moral and legal wrong. The Supreme Court recognized this truth in one of its most esteemed decisions, *Brown v. Board of Education*. I would hope that, in 2019, the correctness of the *Brown* decision cannot be in dispute.

Yet here we are, two years into the Trump Administration and judicial nominee after judicial nominee has come before this committee firmly and repeatedly declining to say that they believe *Brown* was correctly decided. If confirmed as Attorney General, you will oversee the Office of Legal Policy. Part of your duties will be to advise the president on judicial nominations, so I ask you this:

- a. **Do you believe *Brown v. Board of Education* was correctly decided?**
- b. **Will you commit to only recommending for nomination individuals who believe *Brown* was correctly decided?**

17. The 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States.” President Trump claims that “the 14th Amendment is very questionable as to whether or not somebody can come over and have a baby and immediately that baby is a citizen.”
- a. **Do you agree with President Trump?**
 - b. **Can the president eliminate birthright citizenship by executive order?**

18. In a 2001 interview with the Miller Center at the University of Virginia, you discussed how you prepared to advise President George H.W. Bush to deploy the army to address the Rodney King riots in Los Angeles. You said that, “basically the President has to issue a proclamation telling people to cease and desist and go to their homes. . . And then if they don’t cease and desist, you’re allowed to use regular army.” This seems like remarkably cavalier position on the use of the American military against the American people.

- a. **As you know, President Trump has expressed a willingness and desire to invoke national emergency powers to build a wall on the southern border. Would you advise him to do so?**
- b. **What factors would you consider before advising the president to declare a national emergency? What do you think constitutes a national emergency?**
- c. **In your opinion, what limits – if any – are there to the president’s use of the military in domestic matters?**

19. Just months before the 1992 presidential election, several employees of the State Department — at the direction of the Assistant Secretary of State for Consular Affairs — searched a National Archives warehouse for then-candidate Bill Clinton’s passport files. According to the State Department Inspector General, the search was conducted “in the hope of turning up damaging information about Clinton that would help President Bush’s reelection campaign” — namely, “whether Clinton had ever written a letter at the time of the Vietnam War renouncing or considering renouncing his U.S. citizenship.”

In a 2001 interview, you said you were still bitter about this investigation. Specifically, you said, “the career people in the public integrity section had some kind of wacky theory, a very broad theory that if the search was done for a political reason, it was improper.” You went on to say that you believe that, “if an executive official has the power to open a file and look in a file, it’s not illegal that he may have a political motivation in doing so.”

- a. **Do you stand by your statement?**
- b. **Is it your view that law enforcement is free to investigate people to gather political intelligence for a campaign?**

**Nomination of William Pelham Barr
Nominee To Be Attorney General of the United States
Questions for the Record
Submitted January 22, 2019**

QUESTIONS FROM SENATOR BOOKER

1. You testified that, if President Trump ordered you to fire Special Counsel Robert Mueller, you “would not carry out that instruction.”¹ You have previously made the argument, however, that once the President issues an order, the Attorney General has two options: follow the order or resign.

In a February 2017 op-ed, you said that President Trump was “right” to fire Acting Attorney General Sally Yates for refusing to carry out the President’s first Muslim travel ban.² She had determined the order was unlawful, and so she refused to direct the Justice Department to defend it.³ You wrote that Ms. Yates’s action was “unprecedented and must go down as a serious abuse of office.” You added that “neither her policy objection nor her legal skepticism can justify her attempt at overruling the president.” And you noted that “she was free to resign if she disagreed.”

This argument aligns with comments you made in 2006, describing the Attorney General’s constitutional relationship to the President as follows: “That is a presidential function you’re carrying out. If he doesn’t like the way you’re doing it or you don’t like what he’s telling you to do, you resign or he fires you, but it’s his function.”⁴

- a. If President Trump ordered you to fire Special Counsel Mueller without cause, why shouldn’t we expect that you would take the approach you suggested to Acting Attorney General Yates: either carry out the President’s order regardless of any doubts about its propriety or legality, or resign if you fundamentally disagree?
- b. Based on the view that you previously expressed about Acting Attorney General Yates’s situation—follow the President’s order or resign—on what basis would you refuse to carry out an order from President Trump to fire Special Counsel Mueller, as you pledged to this Committee?
- c. If President Trump demanded the repeal of the Justice Department’s Special Counsel regulations—so that President Trump could try to personally fire Special Counsel

¹ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

² William Barr, *Former Attorney General: Trump Was Right To Fire Sally Yates*, WASH. POST (Feb. 1, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html.

³ Matt Apuzzo, Eric Lichtblau & Michael D. Shear, *Acting Attorney General Orders Justice Dept. Not To Defend Refugee Ban*, N.Y. TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/attorney-general-civil-rights-refugee.html>.

⁴ MILLER CENTER, UNIV. OF VA., PROCEEDINGS OF THE LLOYD N. CUTLER CONFERENCE ON THE WHITE HOUSE COUNSEL (Nov. 10-11, 2006), *in* SJQ Attachments to Question 12(d) at 61.

Mueller—would you follow that order without questioning whether it was legal or proper?

2. On the issue of making Special Counsel Mueller’s report public, you testified that “there are two different reports. . . . [U]nder the current regulations, the special counsel report is confidential. The report that goes public would be a report by the Attorney General.” You also testified: “[T]he regs do say that Mueller is supposed to do a summary report of his prosecutive and his declination decisions, and that they will be handled as a confidential document, as are internal documents relating to any federal criminal investigation. Now, I’m not sure—and then the A.G. has some flexibility and discretion in terms of the A.G.’s report. What I am saying is, my objective and goal is to get as much as I can of the information to Congress and the public. . . . I am going to try to get the information out there consistent with these regulations. And to the extent I have discretion, I will exercise that discretion to do that.”⁵
 - a. Do those statements accurately reflect your interpretation of the relevant Special Counsel regulations,⁶ or do you wish to clarify or amend them in any way?
 - b. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to make Special Counsel Mueller’s report to the Attorney General public?
 - c. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to share Special Counsel Mueller’s findings with the public in some format besides releasing the report itself?
 - d. In determining whether to publicly release Special Counsel Mueller’s report or other such information, would you apply the legal standard contained in the regulations—namely, whether public release “would be in the public interest”?⁷
3. In a July 2017 interview, you said that you “would have liked to see [Special Counsel Mueller] have more balance” among the attorneys he had hired.⁸ Do you think it is appropriate to ask prosecutors about their political views before assigning them to a case?
4. President Trump has said, “I have absolute right to do what I want to do with the Justice Department.”⁹ Do you agree?

⁵ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

⁶ 28 C.F.R. § 600.8-9.

⁷ *Id.* § 600.9(c).

⁸ Matt Zapotosky, *As Mueller Builds His Russia Special-Counsel Team, Every Hire Is Under Scrutiny*, WASH. POST (July 5, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/07/05/as-mueller-grows-his-russia-special-counsel-team-every-hire-is-under-scrutiny>.

⁹ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. ‘Look Very Bad,’* N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html>.

5. Presumably you are aware of the many public attacks President Trump has made against Special Counsel Mueller, his team, and his investigation.

A couple of decades ago, when an Independent Counsel was investigating the President, you coauthored an op-ed with other former Attorneys General to express concern about what you described as “attacks” on the Independent Counsel and his office “by high government officials and attorneys representing their particular interests.”¹⁰

- a. Would you apply the same words to the present situation, and affirm that Special Counsel Mueller “should be allowed to carry out his or her duties without harassment by government officials and members of the bar”?¹¹
 - b. Again applying the same words to the present situation, are you in any way “concerned that the severity of the attacks” on Special Counsel Mueller and his team “by high government officials and attorneys representing their particular interests . . . appear to have the improper purpose of influencing and impeding an ongoing criminal investigation”?
6. In May 2017, you published an op-ed arguing that President Trump was “right” to fire FBI Director James Comey. You wrote, “Comey’s removal simply has no relevance to the integrity of the Russian investigation as it moves ahead.”¹²

Presumably you are aware of public reports that President Trump told Russian officials in the Oval Office, the day after he fired Mr. Comey, that he “faced great pressure because of Russia” that was “taken off” by firing him.¹³ Presumably you are also aware that, in a nationally televised interview, President Trump said that at the moment he decided to fire Mr. Comey, he was thinking, “This Russia thing with Trump and Russia is a made-up story.”¹⁴

In light of these remarks by President Trump, and knowing what you know today, do you still believe that his firing of Director Comey had “no relevance to the integrity of the Russian investigation”?

7. During your time in private practice, have you represented any foreign governments, or any organization that represents a foreign government’s interests? If so, please specify to the extent permissible any such governments or organizations.

¹⁰ Griffin B. Bell, Edwin Meese III, Richard L. Thornburgh & William P. Barr, *Let Starr Do His Job*, WALL ST. J. (Mar. 11, 1998), <https://www.wsj.com/articles/SB889562359714297500>.

¹¹ *Id.*

¹² William Barr, *Former Attorney General: Trump Made the Right Call on Comey*, WASH. POST (May 12, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-made-the-right-call-on-comey/2017/05/12/0e858436-372d-11e7-b4ee-434b6d506b37_story.html.

¹³ Matt Apuzzo, Maggie Haberman & Matthew Rosenberg, *Trump Told Russians That Firing ‘Nut Job’ Comey Eased Pressure From Investigation*, N.Y. TIMES (May 19, 2017), <https://www.nytimes.com/2017/05/19/us/politics/trump-russia-comey.html>.

¹⁴ Linda Qiu, *Did Trump Fire Comey Over the Russia Inquiry or Not?*, N.Y. TIMES (May 31, 2018), <https://www.nytimes.com/2018/05/31/us/politics/fact-check-trump-fire-comey-russia.html>.

8. It has been reported that, after President Trump offered you the Attorney General position, you “briefly” told him that your June 2018 memo about Special Counsel Mueller’s investigation and obstruction of justice could become an issue at your confirmation hearing.¹⁵
 - a. What did you tell President Trump about the June 2018 obstruction memo?
 - b. How did President Trump respond?
9. In December 1992, President Bush pardoned six Reagan Administration officials implicated in the Iran-Contra affair. In an interview nine years later, you recalled your role in this decision: “I went over and told the President I thought he should not only pardon [former Secretary of Defense] Caspar Weinberger, but while he was at it, he should pardon about five others. . . . There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’”¹⁶
 - a. If President Trump told you that he was considering pardoning members of his Administration, campaign staff, or other associates—or even himself—in matters relating to Special Counsel Mueller’s investigation, would you give him the same advice now: “In for a penny, in for a pound”?
 - b. Do you believe there are any specific limits on the President’s pardon power, aside from what is spelled out in the text of the Constitution? If so, what are those limits?
10. During your nominations hearing you assured me that you would “vigorously enforce the Voting Rights Act.”¹⁷ What actions are you planning to take to “vigorously enforce the Voting Rights Act”?
11. According to the Justice Department’s website, the Civil Rights Division has filed *no* lawsuits to enforce Section 2 of the Voting Rights Act since President Trump took office. By comparison, the Civil Rights Division filed 5 such suits under President Obama, 15 under President George W. Bush, and 16 under President Clinton. The Department’s website also does not list any Section 2 suits from the periods when you served as Attorney General and Deputy Attorney General under President George H.W. Bush.¹⁸

¹⁵ Sadie Gurman & Aruna Viswanatha, *Trump’s Attorney General Pick Criticized an Aspect of Mueller Probe in Memo to Justice Department*, WALL ST. J. (Dec. 19, 2018), <https://www.wsj.com/articles/trumps-attorney-general-pick-criticized-an-aspect-of-mueller-probe-in-memo-to-justice-department-11545275973>.

¹⁶ *William P. Barr Oral History: Transcript*, MILLER CTR., UNIV. OF VA. (Apr. 5, 2001), <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

¹⁷ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

¹⁸ *Civil Rights Division: Voting Section Litigation*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/crt/voting-section-litigation> (last visited Jan. 17, 2019); see Ian Millhiser, *DOJ’s Civil Rights Division Has Not Filed a Single Voting Rights Act Case Since Trump Took Office*, THINKPROGRESS (Nov. 5, 2018), <https://thinkprogress.org/civil-rights-division-has-not-filed-a-single-voting-rights-act-case-under-trump-792914a2689a>.

- a. Do you believe vigorous enforcement of the voting laws, as you pledged in your testimony, includes vigorous enforcement of Section 2 of the Voting Rights Act?
 - b. In 2017, the Department of Justice reversed the federal government’s position in *Veasey v. Perry*, which involved a challenge to what is often considered to be the nation’s strictest state voter ID law.¹⁹ The reversal came after almost six years of arguing that the Texas voter ID law intentionally discriminated against minorities.²⁰ Even the Fifth Circuit Court of Appeals, one of the most conservative circuits in the nation, ruled that the Texas voter ID law discriminated against minority voters.²¹
 - i. Will you make a commitment to review the Department of Justice’s position in this case?
 - ii. Will you report your conclusions to this Committee within the first 90 days of your tenure should you be confirmed?
12. Since the Supreme Court’s decision in *Shelby County v. Holder*,²² states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.²³ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.²⁴ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.
- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?
 - b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?
 - c. Do you believe that voter ID laws can disenfranchise otherwise eligible minority voters?

¹⁹ Pam Fessler, *Justice Department Reverses Position on Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

²⁰ *Id.*

²¹ *See Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

²² 570 U.S. 529 (2013).

²³ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR. FOR JUSTICE 6 (2007), <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

²⁴ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <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>.

- d. Please provide an example of a voter ID law that you believe disenfranchises otherwise eligible minority voters.
13. In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color and people of lesser means.²⁵
- a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means?
 - b. Study after study has shown that in-person voter fraud is extremely rare.²⁶ Do you believe that in-person voter fraud is a widespread problem in American elections?
14. On January 3, 2019, the *Washington Post* reported that the Trump Administration is considering an expansive rollback of federal civil rights law.²⁷ According to the article, “A recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be, according to people familiar with the matter.”²⁸
- a. Do you believe that actions that amount to discrimination, but that have no provable discriminatory intent, should be prohibited under federal civil rights law? In other words, is disparate impact a valid way to demonstrate discrimination?
 - b. If you don’t believe disparate impact is a valid way to demonstrate discrimination, how do you propose to remedy actions that have a disparate impact on minorities?
 - c. If confirmed as Attorney General, do you commit to halt this effort to rollback disparate impact regulations?
15. In January 2018, Attorney General Sessions rescinded the Cole Memorandum, which provided guidance to U.S. Attorneys that the federal marijuana prohibition should not be enforced in states that have legalized marijuana in some way or another.²⁹ When I asked you about this issue in your testimony last week, you stated: “My approach to this would be not to upset settled expectations and the reliance interests that have arisen as a result of the Cole Memorandum—and investments have been made, and so there’s been reliance on it, so I

²⁵ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly*, Wash. Post (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html; Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355>.

²⁶ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

²⁷ Laura Meckler & Devlin Barrett, *Trump Administration Considers Rollback of Anti-discrimination Rules*, WASH. POST (Jan. 3, 2019), https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html.

²⁸ *Id.*

²⁹ Memorandum from Jeff Sessions, Att’y Gen., to All U.S. Att’y’s on Marijuana Enforcement (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

don't think it's appropriate to upset those interests. However, I think the current situation is untenable and really has to be addressed. It's almost like a backdoor nullification of federal law. . . . I'm not going to go after companies that have relied on the Cole Memorandum. However, we either should have a federal law that prohibits marijuana everywhere—which I would support myself, because I think it's a mistake to back off on marijuana. However, if we want a federal approach, if we want states to have their own laws, then let's get there, and let's get there the right way.³⁰

- a. Do you intend to rescind Attorney General Sessions's January 2018 memorandum on marijuana enforcement, either in part or in its entirety?
 - b. Do you intend to reinstate the Cole Memorandum?
16. On May 10, 2017, Attorney General Sessions changed the Department of Justice's charging and sentencing policy and directed all federal prosecutors to "pursue the most serious, readily provable offense."³¹ After this announcement, I wrote a letter with Senators Mike Lee, Dick Durbin, and Rand Paul asking a series of question regarding the policy change because we believed the new policy would "result in counterproductive sentences that do nothing to make the public safer."³²
- a. If confirmed, will you review Attorney General Sessions' decision to revert back to an old Department of Justice policy to "pursue the most serious, readily provable offense"?
 - b. Will you make a commitment to conduct a review of the effect the new charging and sentencing policy is having on crime deterrence, public safety, and reducing recidivism and report your findings to the Senate and House Judiciary Committees?
 - c. The letter referenced above highlighted the cases of Weldon Angelos and Alton Mills.³³ Do you believe the punishment fit the crime in those two cases?
 - d. If you are not familiar with those cases, do you commit to have the Department of Justice respond to the May 2017 letter regarding whether it believed the punishment fit the crime in those two instances?
 - e. Will you make a commitment to conduct a review of all federal criminal offenses carrying mandatory minimum sentences and reporting to the Senate and House Judiciary Committees those that you believe are unfair and need adjustment?

³⁰ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

³¹ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³² Letter from Sen. Mike Lee et al. to Jeff Sessions, Att'y Gen., on the Department of Justice Charging and Sentencing Policy (June 7, 2016), <https://www.scribd.com/document/350652153/6-7-17-Letter-to-the-Attorney-General-on-DOJ-Charging-and-Sentencing-Policy-FINAL-SIGNED>.

³³ *Id.*

- f. According to Attorney General Sessions's memorandum, "prosecutors are allowed to apply for approval to deviate from the general rule that they must pursue the most serious, readily provable offense."³⁴ Do you commit to providing the Senate and House Judiciary Committees information detailing the number of requests that have been made to deviate from the Department's charging policy and a breakdown of whether those requests were approved or denied?
17. In 2015, the Presidential Task Force on 21st-Century Policing issued a report setting forth recommendations focused on identifying best practices for policing and recommendations that promote effective crime reduction while building public trust.³⁵ Have you read the report? If not, do you intend to read the report?
18. Communities of color have the lowest rates of confidence in law enforcement. A poll from 2015-2017 indicated that 61 percent of whites had confidence in police, only 45 percent of Hispanics and 30 percent of blacks felt the same way.³⁶ If confirmed as Attorney General, what policies and practices will you implement to rebuild trust between law enforcement and minority communities?
19. In the period leading up to Operation Desert Storm in the Gulf War, the FBI engaged in questioning of hundreds of Arab-American business and community leaders, on the asserted basis of collecting intelligence about possible terrorist threats. As Deputy Attorney General at the time, you said: "These interviews are not intended to intimidate. . . . The interviews are an opportunity to keep an open channel of communication with people who may be victimized if hostilities occur. At the same time, in the light of the terrorist threats . . . it is only prudent to solicit information about potential terrorist activity and to request the future assistance of these individuals."³⁷ Some community activists and others who had undergone questioning said the FBI interviews felt like "intimidation"³⁸ or "harassment."³⁹
- a. Do you believe that racial profiling is wrong?
- b. Do you believe that racial profiling is an ineffective use of law enforcement resources? If not, please explain why.
20. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5

³⁴ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³⁵ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST-CENTURY POLICING (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

³⁶ Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>.

³⁷ Sharon LaFraniere, *FBI Starts Interviewing Arab-American Leaders*, WASH. POST (Jan. 9, 1991), <https://www.washingtonpost.com/archive/politics/1991/01/09/fbi-starts-interviewing-arab-american-leaders/2c89a03e-d9c5-491a-981a-08726fdcd273>.

³⁸ *Id.*

³⁹ Paul Hendrickson, *Caught in the Middle: Detroit's Arab Americans*, WASH. POST (Feb. 15, 1991), <https://www.washingtonpost.com/archive/lifestyle/1991/02/15/caught-in-the-middle-detroits-arab-americans/e2e6721c-7007-432b-a806-c0770467dac4>.

times more likely to be arrested for possessing drugs than their white peers.⁴⁰ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁴¹ These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.⁴² In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴³

- a. Do you believe there is implicit racial bias in our criminal justice system?
 - b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?
 - c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.
21. According to Pew Charitable Trusts, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.⁴⁴ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁴⁵
- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.
 - b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.
22. Do you believe it is an important goal for there to be demographic diversity among law enforcement personnel? If not, please explain your views.
23. In 1992, you were asked about a proposal to build a border wall along the U.S.-Mexico border. You described that border wall proposal as "overkill."⁴⁶ In fact, you said "I don't think it's necessary. I think that's overkill to put a barrier from one side of the border to the other."⁴⁷ You then said, "In fact, the problem with illegal immigration across the border is

⁴⁰ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

⁴¹ *Id.*

⁴² Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴³ *Id.*

⁴⁴ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

⁴⁵ *Id.*

⁴⁶ Eric Tucker, *Trump's Pick for AG Once Questioned Value of Border Wall*, ASSOCIATED PRESS (Dec. 31, 2018), <https://www.apnews.com/01712e03bb324664b870cc74cc2f9c8d>.

⁴⁷ *Id.*

really confined to major metropolitan areas. Illegal immigrants do not cross in the middle of the desert and walk hundreds of miles.”⁴⁸

At the time you made those comments in 1992, there were more than 1.1 million border apprehensions the previous fiscal year.⁴⁹ In Fiscal Year 2017, there were around 304,000.⁵⁰ That’s about an 800,000 drop in border apprehensions—a decline of about 73 percent. Simultaneously, there have been significant increases in the amount of money spent on border enforcement. In 1992, \$326 million was spent on the U.S. Border Patrol’s budget.⁵¹ Now, \$3.8 billion is appropriated to U.S. Border Patrol to secure our borders.⁵²

- a. Do you still believe building a border wall along the U.S.-Mexico border in 1992 was “overkill”?
 - b. Do you believe building a border wall along the entire U.S.-Mexico border wall now is “overkill”?
 - c. In 1992, during President George H.W. Bush’s administration, did you believe the United States was experiencing a “crisis” at the border?
 - d. Do you believe the United States is experiencing a “crisis” at the U.S.-Mexico border now as President Donald Trump claims?
 - e. Since 1986, what years would you characterize the situation at the border as “stable”?
24. While you were Attorney General during the Bush Administration, you hired 200 additional Immigration and Naturalization investigators and created the National Criminal Alien Tracking Center to “combat illegal immigration and violent crime by criminal aliens.”⁵³ Also, during a 1992 interview with the *Los Angeles Times*, you appeared to partially hold undocumented immigrants accountable for the riots following the acquittal of law enforcement officers in the beating of Rodney King.⁵⁴ You said, “The problem of immigration enforcement—making sure we have a fair set of rules and then enforce them—I think that’s certainly relevant to the problems we’re seeing in Los Angeles. . . . I think there was anger and frustration over the verdict in the Rodney King incident that certainly wasn’t limited to Los Angeles, but I do think that there were a lot of unique circumstances in Los

⁴⁸ *Id.*

⁴⁹ U.S. Border Patrol, *Southwest Border Sectors: Total Illegal Alien Apprehensions by Fiscal Year*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf> (last visited Jan. 16, 2019).

⁵⁰ *Id.*

⁵¹ *The Cost of Immigration Enforcement and Border Security*, AM. IMMIGRATION COUNCIL 2 (Jan. 25, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf.

⁵² *Id.*

⁵³ *Department of Justice Authorization for Fiscal Year 1993 Before the Senate Committee on the Judiciary*, 103d Cong. (1992) (statement of William P. Barr, Att’y Gen.), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/06-30-1992.pdf>.

⁵⁴ Ronald J. Ostrow, *William Barr: A ‘Caretaker’ Attorney General Proves Agenda-Setting Conservative*, L.A. TIMES (June 21, 1992), http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2.

Angeles that came together in a way that added to the combustibility of the post-verdict hours and contributed to the intensity and the scale of the violence in Los Angeles.”⁵⁵

- a. Do you believe that immigrants—whether they are documented or undocumented—are prone to criminality?
 - b. If you believe that immigrants are prone to criminality, what studies are you relying on in making that judgment?
25. In 2018, the Cato Institute, a libertarian think tank, issued a study that found that immigrants who entered the United States legally were 20 percent less likely to be incarcerated as native-born Americans.⁵⁶ The research also found that undocumented immigrants were half as likely to be incarcerated as native-born Americans.⁵⁷ Do you have any reason to doubt the findings of this research?
26. On April 6, 2018, Attorney General Sessions announced a “zero tolerance” policy for criminal illegal entry and directed each U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all Department of Homeland Security referrals “to the extent practicable.”⁵⁸ A month later, on May 7, 2018, the Trump Administration announced that the Department of Homeland Security will refer any individuals apprehended at the Southwest Border to the Department of Justice.⁵⁹ This policy resulted in thousands of immigrant children being cruelly separated from their parents.⁶⁰
- a. Do you agree with Attorney General Sessions’s decision to institute a “zero tolerance” policy?
 - b. Do you believe it is humane to separate immigrant children and their parents after they are apprehended at the U.S.-Mexico border?
 - c. Will you make a commitment not to reinstitute a “zero tolerance” policy or anything resembling the policy?

⁵⁵ *Id.*

⁵⁶ Alex Nowrasteh, *Immigration and Crime—What the Research Says*, CATO INST. (July 14, 2015), <https://www.cato.org/blog/immigration-crime-what-research-says>.

⁵⁷ *Id.*

⁵⁸ Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁵⁹ Jeff Sessions, Att’y Gen., Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁶⁰ Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018) <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

27. On September 27, 2016, I sent a letter to then-Secretary Jeh Johnson opposing family detention and urging the Obama Administration to end its use of the practice.⁶¹ The letter said, “Detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means.”⁶² The letter also noted that “[t]here is strong evidence and broad consensus among health care professionals that detention of young children, particularly those who have experienced significant trauma as many of these children have, is detrimental to their development and physical health.”⁶³
- a. Do you agree that detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means?
 - b. Do you believe that detention of children—regardless of whether it is with or without their parents—has a detrimental effect on their development and physical health?
28. Attorney General Sessions made it virtually impossible for victims of domestic violence or gang violence to seek asylum in the United States.⁶⁴ He did so by personally intervening in an asylum application of a woman who was a victim of domestic violence at the hands of her husband.⁶⁵ He used her case to disqualify entire categories of claims that were legitimate grounds for asylum.⁶⁶
- a. Do you believe being a victim of domestic violence should be a valid reason for seeking asylum in the United States?
 - b. Do you believe being a victim of gang violence should be a valid reason for seeking asylum in the United States?
 - c. Do you commit to reversing Attorney General Sessions’s decision invalidating domestic violence or gang violence as grounds for claiming asylum?
29. Census experts and senior Census Bureau staff agree that a last-minute, untested citizenship question could create a chilling effect and present a major barrier to participation in the 2020 Census. Many vulnerable communities do not trust the federal government’s commitment to maintaining the confidentiality of Census data and are fearful that their responses could be used for law enforcement, including immigration enforcement, purposes. A citizenship question would exacerbate their concerns.

⁶¹ Letter from Sen. Patrick Leahy et al. to Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 27, 2016), <https://www.leahy.senate.gov/imo/media/doc/Letter%20to%20Sec.%20Johnson%20re%20Berks%20Family%20Detention%20Center.pdf>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Katie Benner & Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

⁶⁵ *Id.*

⁶⁶ *Id.*

Alarming documents revealed in the ongoing citizenship question litigation indicate that DOJ staff were open to reevaluating a formal Justice Department legal opinion from 2010 that there are no provisions within the USA PATRIOT Act that can be used to compel the Commerce Secretary to release confidential census information—that is, that supersede the strict confidentiality protections in the Census Act. In November, I joined my colleagues Senator Schatz and Senator Reed in a letter to Assistant Attorney General Eric Dreiband, seeking a clarification of the existing law, a commitment to maintaining the confidentiality of information collected by the Census Bureau, and assurances that personal Census responses cannot be used to the detriment of any individual or family, by the Justice Department, the Department of Homeland Security, or any other agency of government at any level.

Although litigation has continued for months, a federal district court—last Tuesday, the same day you appeared before this Committee—issued an exceptionally thorough and thoughtful ruling that blocked the Commerce Department from adding the citizenship question to the Census.

- a. When you were asked at the hearing about the Trump Administration’s position in this case, you answered, “I have no reason to change that position.”⁶⁷ What circumstances would lead you to reconsider the Justice Department’s defense of the Administration’s position concerning the addition of the citizenship question to the Census?
 - b. Do you agree that the confidentiality of Census data is fully protected by law?
 - c. Will you make a commitment that, if confirmed, you will ensure the Justice Department abides by all laws protecting the confidentiality and nondisclosure of Census data, and that you will prohibit the use of Census data for the purposes of immigration-related enforcement against any person or family?
 - d. Will you make a commitment that, if confirmed, you will reaffirm the Office of Legal Counsel’s interpretation that the USA PATRIOT Act does not weaken or change any confidentiality protection embodied in the Census Act?
30. Across the economy, the largest companies are taking over an ever greater share of the market—conducting mergers, acquiring other companies, and squeezing smaller competitors out. According to a 2016 study from the Levy Economics Institute at Bard College, the years between 1990 and 2013 saw the most sustained period of merger activity in American corporate history, with the concentration of corporate assets more than doubling during this period. The same study also found that the 100 largest companies in the United States now control one-fifth of all corporate assets. Another survey analyzed hundreds of U.S. industries and found that the top four companies in each industry expanded their share of revenues from

⁶⁷ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

26 percent of the industry total in 1997 to 32 percent in 2012. The upshot is that competition is falling, prices are rising, and wages are stagnant.⁶⁸

- a. Do you believe that corporate concentration is a problem in the U.S. economy? If so, what measures would you consider taking through the Department of Justice's antitrust authorities to address that problem?
- b. Given the race to consolidate that is occurring in many industries, will the Justice Department on your watch engage in rigorous scrutiny, heed all applicable antitrust laws, and if necessary reject mergers that will cut down competition and hurt consumers?
- c. In your estimation, at what point does market concentration become excessive?
- d. If the evidence shows that a merger will lead to an increase in the prices consumers pay, do you believe that such a merger would promote the public interest?
- e. To take one example, the agriculture sector has become increasingly highly concentrated, favoring the interests of major corporations and squeezing small family farmers. Today 65 percent of all pork, 53 percent of all chicken, and 84 percent of all beef is slaughtered by just four companies.⁶⁹ Small family farmers often confront a hard choice: try to compete with huge corporations, or work for them through starkly one-sided contracts. Do you believe that corporate concentration in American agriculture should be the subject of careful regulatory scrutiny?

⁶⁸ See Cory Booker, *The American Dream Deferred*, BROOKINGS INST. (June 2018), <https://www.brookings.edu/essay/senator-booker-american-dream-deferred>.

⁶⁹ Leah Douglas, *Consolidation Is Eating Our Food Economy*, NEW AM. (May 5, 2016), <https://www.newamerica.org/weekly/122/consolidation-is-eating-our-food-economy>.

Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 22, 2019

QUESTIONS FROM SENATOR COONS

1. At your nomination hearing, you agreed to seek the advice of career ethics officials regarding whether you should recuse from the Special Counsel investigation. You testified that you did not think you would have an objection to (1) notifying the Senate Judiciary Committee once you receive the ethics officials' guidance, (2) telling the Committee what that guidance was, and (3) explaining whether or not you disagree with it. Now that you have had an opportunity to consult any applicable rules, will you agree to (1) notify this Committee once you receive the career ethics officials' guidance on recusal from the Special Counsel investigation, (2) inform us of the advice that you received from these career ethics officials, and (3) explain why you agree or disagree with it? If you contend that these notifications are not permitted, please cite the applicable rule.
2. At your nomination hearing, you testified that you would share as much as possible of Special Counsel Mueller's report "consistent with the regulations and the law."
 - a. Which regulations and laws do you think may prevent you from sharing the report in its entirety?
 - b. If Special Counsel Mueller provides you with his report, and it contains information that you choose not to include in the Attorney General's report that is released to the public, would you provide a log of the information withheld and the rule, regulation, or privilege justifying that it be withheld?
3. If Donald Trump fires Special Counsel Mueller or orders you to fire Special Counsel Mueller without good cause, would you resign? Please answer yes or no.
 - a. If you would not resign, what would you do?
 - b. Will you agree to notify the Chairman and Ranking Member of the Senate Judiciary Committee if you believe Special Counsel Mueller has been removed without good cause? Please answer yes or no.
 - c. If you learn that the White House is attempting to interfere with the investigation, will you report that information to Special Counsel Mueller and inform Congress? Please provide examples of what, in your view, would constitute inappropriate interference.
4. If the President directed the FBI to stop investigating his National Security Advisor in order to hide the administration's Russia connections from the American people, is that illegal?
5. You were Attorney General when President Bush pardoned six administration officials charged with crimes in the Iran-Contra scandal, and you have said that you encouraged the President to issue those pardons. The Iran-Contra Independent Counsel called these pardons a "cover-up." He said they "undermine[] the principle that no man is above the

law” and “demonstrate[] that powerful people with powerful allies can commit serious crimes in high office – deliberately abusing the public trust without consequence.”

- a. What factors would you consider when advising the President on whether to issue a pardon?
 - b. You testified that if a President issues a pardon as a *quid pro quo* to prevent incriminating testimony, that would be a crime. How should a President be held accountable for such a crime?
 - c. Would it be permissible for President Trump to pardon Michael Flynn, Paul Manafort, or Michael Cohen if he did so to cover up his own criminal activity?
 - d. Would it be permissible for President Trump to pardon himself?
6. Chairman Graham, Senator Tillis, Senator Booker, and I have introduced the Special Counsel Independence and Integrity Act (S.71), which would codify the good-cause restriction on the Special Counsel’s removal and make it clear that the Special Counsel can be reinstated if he is removed improperly. If this bill passes, would you commit to complying with that law?
 7. When you were nominated to lead the Office of Legal Counsel, you told the Senate Judiciary Committee that you “fully accepted” the Supreme Court’s ruling in *Morrison v. Olson*, 487 U.S. 654 (1988). Do you still accept the *Morrison* decision as good law?
 8. Deputy Attorney General Rosenstein has said publicly that your June 2018 memorandum on obstruction of justice “had no impact” on the Special Counsel investigation. When I asked if you would order the Special Counsel’s office to accept and follow the reasoning in your memorandum, you testified that you would “try to work it out with Bob Mueller” and “unless something violates the established practice of the department, [you] would have no ability to overrule that.”
 - a. Please confirm that if Special Counsel Mueller’s theory of obstruction does not violate an established practice of the Department of Justice, you will not overrule his interpretation of the law.
 - b. Did any of the attorneys to whom you transmitted your June 2018 obstruction of justice memorandum respond to you? If so, please provide their responses.
 9. The same day that you sent your June 2018 obstruction of justice memorandum to Deputy Attorney General Rosenstein, former Attorney General Dick Thornburgh, who was your boss when you were the Deputy Attorney General, authored an op-ed published in the *Washington Post*, stating in part, “Mueller is the right person to investigate Russia’s apparent assault on our democracy. . . . Mueller must put all applicable evidence before an impartial grand jury that will decide whether to bring charges. We must let him do his job.”
 - a. Have you discussed your obstruction of justice memorandum with former Attorney General Thornburgh? If so, please describe this discussion.
 - b. Have you discussed former Attorney General Thornburgh’s op-ed with him? If so, please describe this discussion.

10. In the 26 years since you served as Attorney General, have you sent any other legal memoranda to Department of Justice leadership criticizing an investigation? If so, please provide a list of the investigations that these memoranda addressed and estimates of when the memoranda were transmitted.
11. What is the remedy if the President violates his constitutional duty to faithfully execute the laws or violates an obstruction statute?
12. During the hearing on his nomination to be Attorney General, then-Senator Sessions stated that he “did not have communications with the Russians,” but facts about meetings that he had with the Russian Ambassador later became public. Have you ever had any contact and/or communications with anyone from the Russian government? If so, please list these contacts and/or communications.
13. An op-ed that you joined in November, entitled “We are former attorneys general. We salute Jeff Sessions,” specifically praised Attorney General Sessions for changing the Department of Justice’s interpretation of Title VII to exclude protections for transgender individuals. Do you support interpreting Title VII to protect the LGBT individuals?
14. In a 1995 law review article, you criticized a D.C. law that required Georgetown University to “treat homosexual activist groups like any other student group.” Do you oppose laws that ensure equal treatment for LGBT student groups?
15. At your nomination hearing, you testified that you are “against discrimination against anyone because of some status,” including “their gender or their sexual orientation.” If you are confirmed, will the Department of Justice file amicus briefs defending discrimination against LGBT individuals, as it did in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *Zarda v. Altitude Express*?
16. In a speech that you gave as Attorney General, you said that public schools had suffered a “moral lobotomy” based on “extremist notions of separation of church and state.” However, you testified at your nomination hearing that you “believe in the separation of church and state.” Do you think that the Constitution permits public schools to endorse a particular religious view?
17. You authored an op-ed that was published in the *Washington Post* claiming that President Trump’s first travel ban was legal and that it did not discriminate against Muslims. Do you still contend that there were “no plausible grounds for disputing the order’s lawfulness,” even though over a dozen judges found the order was unlawful?
18. You testified at your nomination hearing that you are concerned about “the willingness of some district court judges to wade into matters of national security where, in the past, courts would not have presumed to be enjoining those kinds of things,” specifically citing the travel ban. If a President issues a discriminatory executive order while claiming a justification of national security, do you agree that it is the responsibility of a court

evaluating a challenge to that executive order to review its lawfulness and strike down the executive order if the court finds it violates the Constitution or a statute?

19. There are 67,000 Americans who are dying every year from drug overdoses. You once said “. . . I don’t consider it an unjust sentence to put a [drug] courier . . . in prison for five years. The punishment fits the crime.” We cannot incarcerate our way out of the opioid crisis. How would you use the resources of the Department of Justice to help those suffering from addiction get the help they need?
20. At your nomination hearing, you testified that you did not agree with the proffered percentage of nonviolent drug offenders within the federal prison population, stating that “sometimes the most readily provable charge is their drug-trafficking offenses rather than proving culpability of the whole gang for murder.” Is it your view that many individuals in prison for nonviolent drug offenses have committed violent crimes? If so, please provide the evidence you rely on in support of this contention.
21. Why did you sign a letter opposing passage of the Sentencing Reform and Corrections Act in 2015? Please explain the basis for your opposition to bipartisan sentencing reform.
22. If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?
23. Last Congress, I was grateful to join with Senator Toomey to introduce the NICS Denial Notification Act (S.2492) – a bipartisan, commonsense bill that ensures that state and federal law enforcement are working together to prevent those who should not be able to buy a gun from getting one. However, these “lie and try” cases are rarely prosecuted at the federal level. Will you work with me on this bill to ensure that state law enforcement has the information to prosecute violations of “lie and try” laws?
24. Studies show that five percent of gun dealers sell 90 percent of guns that are subsequently used in criminal activity. How would you direct the Department of Justice to instruct the Bureau of Alcohol, Tobacco, Firearms and Explosives to crack down on dealers that funnel thousands of crime guns to city streets?
25. 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, would the Department of Justice work to 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?
26. What would you do to ensure vigorous enforcement of the Ethics in Government Act, bribery and honest services laws, and anti-nepotism laws?

27. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. How would you use Department of Justice resources to address this growing threat?
28. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.
 - a. Would you prioritize enforcement actions to combat trade secret theft by foreign nationals?
 - b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?
29. The United States is currently facing a massive cybercrime wave that the White House has estimated costs more than \$57 billion annually to the U.S. economy. However, a recent study using the Justice Department's own data found that only an estimated three in 1,000 cyberattacks in this country ever result in an arrest.
 - a. Do you agree that we have to narrow this enforcement gap?
 - b. Although it may be difficult to successfully extradite and prosecute individuals located in countries like China, there have been a number of cases in which the U.S. has had success in arresting and extraditing cyber-attackers from foreign countries. Do you agree that we should be more aggressive in using existing laws against cyber-criminals located abroad, such as in China?
 - c. Will you commit to ensuring that the Computer Crime and Intellectual Property Section and the Office of International Affairs are fully staffed, should you be confirmed?
 - d. What actions would the Department take under your leadership to strengthen private sector cooperation in cybercrime investigations?
30. The CLOUD Act, a bill that I worked hard on with Chairman Graham and Senator Whitehouse, became law last year. This legislation authorizes the U.S. government to enter into agreements with foreign partners to facilitate law enforcement access to electronic communications. No such agreements have been entered into yet. Will you explore using these agreements to further leverage cooperation on cybercrime investigations?
31. You testified that protecting the integrity of elections would be one of your top priorities as Attorney General.
 - a. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?
 - b. If confirmed, will you work with Congress to restore preclearance review under the Voting Rights Act by helping to develop a coverage formula that the Department of Justice would support?

32. You testified at your nomination hearing that it might be appropriate to prosecute a journalist if that journalist “has run through a red flag or something like that, knows that they’re putting out stuff that will hurt the country.” Please explain how you would evaluate if a journalist has “run through a red flag” or is putting out information that “will hurt the country.”
33. While you were Attorney General, you were involved in litigation related to the detention of HIV-positive Haitians in Guantanamo Bay.
- In the litigation, the Justice Department represented to the Supreme Court that anyone who was identified as having a credible fear of persecution upon return to Haiti was to be brought to the United States for an asylum hearing. After making that representation, the administration changed its policy to hold HIV-positive Haitians, even those who had already been identified as having a credible fear of persecution, in Guantanamo Bay. Do you dispute that the Justice Department supported detentions of HIV-positive Haitians in Guantanamo Bay after representing to the Supreme Court that HIV-positive Haitians with a credible fear of persecution would be brought to the U.S. for an asylum hearing?
 - In that same litigation, the Justice Department represented to the Supreme Court that tens of thousands of Haitians wanted to flee violence in their home country, drawn by the “magnet effect” of a judicial decision issued by the Eastern District of New York. There was no credible evidence of this so-called magnet effect. Do you regret that the Justice Department made this unsubstantiated claim?
34. At your nomination hearing, you testified that you had not looked at the issue of birthright citizenship. Please review this article by John Yoo, entitled “Settled law: Birthright citizenship and the 14th Amendment,” available at <https://www.aei.org/publication/settled-law-birthright-citizenship-and-the-14th-amendment/>.
- Do you agree that the text of the Fourteenth Amendment guarantees birthright citizenship?
 - Do you support the revocation or modification of the Fourteenth Amendment’s constitutional guarantee of birthright citizenship?

Senator Cornyn's Questions for the Record for Attorney General Nominee William Barr

QFR #1: In your testimony, you discussed "red flag laws" and the concept of Extreme Risk Protection Orders (ERPOs) as a possible means of keeping firearms out of the hands of dangerously mentally-ill individuals. Of course that is a goal we all share. As I'm sure you are aware, several states have enacted ERPO laws to date; however, these laws have included varying levels of due process protections, some of which have been subject to abuse. As a result, this issue has become a cause of concern for many law-abiding gun owners. Would you agree that at a minimum, state ERPO laws should include robust front-end due process protections, penalties against the filing of frivolous charges, and mental health treatment for those who pose a significant danger to themselves or others?

QFR #2: In your testimony, you stated that you have opposed bans on certain semi-automatic firearms (often misnamed as "assault weapons"). You also stated your long standing belief that the Second Amendment guarantees the fundamental, individual right to keep and bear arms for all law-abiding Americans — a belief that predates the Supreme Court's Heller and McDonald decisions. You also mentioned that, in looking at firearms regulations, it is appropriate to consider whether the burden on law-abiding individuals is proportionate to any general benefit to public safety. Would you further clarify that last statement, in light of Justice Scalia's holding in Heller, that the enumeration of the Second Amendment right "takes out of the hands of government the power to decide whether the right is really worth insisting upon"?litigation?

Senator Mike Crapo
Written Questions for the Honorable William P. Barr
Submitted January 22, 2019

Operation Choke Point was an Obama-era initiative that targeted “high risk” industries and prevented them from fully participating in the economy. Employees of the DOJ coordinated with federal bank examiners to press financial institutions who provided financial services to certain targeted industries (including firearms and ammunition) to end these relationships. This program effectively operated as an end-run around the Second Amendment. Some Idaho businesses were directly impacted by this effort.

In July 2017, Senator Tillis and I sent a letter to your predecessor, then-Attorney General Sessions, requesting a review of all options available to ensure lawful businesses are able to continue to operate without fear of significant financial consequences, and asked for a statement ensuring that Operation Choke Point would no longer be in effect. We received a commitment from the Department that it had ended Operation Choke Point. Last November, my republican Banking Committee colleagues and I wrote FDIC Chairman Jelena McWilliams to again confirm that banks are not cutting off lawful businesses simply because they were viewed as unfavorable by certain administrations.

- 1. Do you believe Operation Choke Point was inappropriate and should not have been initiated?**
- 2. Will you commit to review whether DOJ has actually ended Operation Choke Point?**
- 3. Will you assure that, if confirmed, you will not resurrect Operation Choke Point or any other program aimed to cut off access to payment systems and banking services for merchants in politically disfavored industries?**

**Nomination of William Barr to be Attorney General of the United States
Questions for the Record from Senator Durbin
January 22, 2019**

For questions with subparts, please respond to each subpart separately.

1. In your June 8, 2018 memo, you acknowledge that there are many ways in which a President could commit obstruction of justice – for example by altering evidence, suborning perjury, or inducing a witness to change testimony. But your memo makes an assumption that Special Counsel Mueller’s obstruction theory relies on one particular obstruction of justice statute, 18 U.S.C. 1512—a statute you believe should not be used to investigate actions that you feel are within a President’s lawful authority.

Based on this assumption about Special Counsel Mueller’s obstruction theory, your memo concludes that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.” In other words, you urge Special Counsel Mueller’s supervisor not to allow Mueller to take a certain action in an ongoing investigation and not to allow Mueller to ask the President any questions about obstruction, even though you concede that you are “in the dark about many facts” and that you are making assumptions about the legal obstruction theory.

- a. **Is it appropriate for you to urge Special Counsel Mueller’s supervisor to block Mueller from taking an action in an ongoing criminal investigation when you do not know all the facts and were speculating about Mueller’s legal theory?**
- b. **Is it appropriate for you to flatly urge Special Counsel Mueller’s supervisor that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” when there are numerous potential obstruction theories besides 18 U.S.C. 1512 that Special Counsel Mueller may want to question the President about?**
- c. **Is it still your view that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction”?**
- d. **In your January 14 letter to Chairman Graham, you said of your memo that “my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory.” You noted in your January 14 letter that you shared the memo with the several of the President’s defense attorneys. Did you also forward the memo to the Special Counsel’s Office so they could consider your views the potential implications of the theory? If not, why not?**
- e. **Did any of the President’s attorneys whom you sent your memo tell you that they agreed with your view that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction”?**

- f. Did any of the President's attorneys whom you sent your memo tell you that they used your memo to argue that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?**
2. Because your June 8, 2018 memo expresses stark views about what you feel should and should not be permitted as part of the Special Counsel's ongoing criminal investigation, and because you sent your memo to Special Counsel Mueller's supervisor and to members of President Trump's defense team without informing the Special Counsel's Office of your memo, a reasonable person could conclude that you would not be impartial if issues arise as part of the Special Counsel investigation that require the Attorney General to make decisions regarding obstruction of justice, including decisions about what information about obstruction of justice should be included in reports to the Committee and the public. Therefore you should, at minimum, seek the advice of career Department ethics officials regarding recusing yourself from such decisions, pursuant to 5 CFR 2635.502(a)(2), given the legitimate questions that your memo and your use of it have raised about your impartiality.
- a. Will you commit, if confirmed, to seek the advice of DOJ career ethics officials on this recusal question?**
- b. If so, will you commit to promptly inform the Committee what advice the DOJ career ethics officials gave and whether you will follow it?**
3. At your hearing you said that you would decline to follow the advice of career DOJ ethics officials "if I disagree with them." **When you previously worked in the Justice Department, did you ever decline to follow the advice of career DOJ ethics officials? If so, please discuss when you did so and why.**
4. At your hearing, Professor Neil Kinkopf said: "It is clear that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict—declination decisions. In combination with the DOJ view that a sitting president may not be indicted, this suggests that Barr will take the position that any discussion or release of the Mueller report relating to the President, who, again, cannot be indicted, would be improper and prohibited by DOJ policy and regulations."
- a. Do you take DOJ regulations to mean that you should release not the Mueller report, but rather your own report?**
- b. Do you read DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict?**
- c. Do you believe it would be improper and/or prohibited by DOJ policy or regulations to provide Congress or the public with any discussion or release of parts of Mueller's report relating to the President?**

- d. 28 CFR 600.9(c) provides that “The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions” (emphasis added). Do you read the term “these reports” to include the report issued by the Special Counsel to the Attorney General pursuant to 28 CFR 600.8(c)?
 - e. 28 CFR 600.9(c) also provides that “All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.” Is it your view that this sentence governs the release of information concerning matters handled by Special Counsels to Congress, as opposed to public release?
 - f. Do you adhere to OLC’s view, stated in its October 16, 2000 opinion “A Sitting President’s Amenability to Indictment and Criminal Prosecution,” that “a sitting President is immune from indictment as well as from further criminal process” and that the Constitution provides the Legislative Branch the only authority to bring charges of criminal misconduct against a president through the impeachment process?
 - g. If you believe the answer to (f) is yes, then shouldn’t Congress be given access to the Special Counsel’s full investigative findings so that Congress can best evaluate whether or not to hold a President accountable for potential criminal misconduct through the impeachment process?
5. At your hearing you said “well, under the current regulations the special counsel report is confidential. The report that goes public would be a report by the attorney general.” You later said “the AG has some flexibility and discretion in terms of the AG’s report.”

If confirmed, will you use this flexibility and discretion to make sure the public can see Special Counsel Mueller’s own words about his findings and conclusions to the greatest extent possible, rather than your own summary or interpretation of Special Counsel Mueller’s words?

- 6. **Do you agree with the statement of then-CIA Director Pompeo, who said on July 21, 2017 that “I am confident that Russians meddled in this election, as is the entire intelligence community....This threat is real.”**
- 7. Will you commit that, if you are confirmed:

- a. **You would be willing to appear before the Senate Judiciary Committee to testify and answer questions specifically about the Special Counsel investigation after Special Counsel Mueller submits his concluding report?**
 - b. **You would not object to Special Counsel Mueller appearing before the Senate Judiciary Committee to testify and answer questions about the Special Counsel investigation after he submits his concluding report?**
8. During your confirmation hearing in 1991, you said “[t]here are a lot of different ways politics can come into play in a case.” You went on to say “you shouldn’t sweep anything under the rug. Don’t cut anyone a special break. Don’t show favoritism.”
- a. **Do you still stand by these principles?**
 - b. **Will you ensure that Special Counsel Mueller’s findings are made available to Congress and to the public, so that the Special Counsel’s findings are not swept under a rug?**
 - c. The President’s attorneys, led by Rudy Giuliani, are apparently preparing their own report to counter the Mueller report. Presumably there will be no redactions sought and no executive privilege claimed by the Administration over the contents of the Giuliani report, in contrast to the President’s expected efforts to hide much of the Mueller report from Congress and the people. **Are you concerned that it would seriously undermine the confidence of the American people in our justice system if the Special Counsel Mueller’s findings were swept under the rug or heavily redacted while the full Giuliani report was tweeted out to the American people?**
9. **Other than your 19-page memo that you sent to Deputy Attorney General Rosenstein and OLC head Steven Engel on June 8, 2018, have you sent any other memos to Justice Department officials urging them to follow a course of action in an ongoing criminal investigation since you left the Department in 1993? If so, please describe the date and contents of each memo you sent.**
10. **Why did you not mention in your June 8, 2018 memo that you had met with President Trump in June 2017 and discussed the possibility of joining the President’s legal defense team? Would that information have been relevant for the recipients of your June 8, 2018 memo to know?**
11. On November 14, 2017, you emailed Peter Baker of *The New York Times* and said “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] foundation, is far stronger than any basis for investigating so-called ‘collusion.’”
- a. **Why did you describe collusion as “so-called” in this email?**

- b. **Why did you put the word collusion in quotation marks in this email?**
 - c. **Why have you long believed that the predicates for investigating the uranium deal and the foundation are “far stronger” than any basis for investigating potential crimes that are commonly described as falling under the umbrella of collusion?**
12. **Why did you put the word obstruction in quotation marks in the subject line of your June 8, 2018 memo?**
- 13.
- a. **Was Attorney General Sessions wise to follow the advice of DOJ ethics officials and recuse himself from matters relating to the presidential campaign, including the Mueller investigation?**
 - b. **Was Acting Attorney General Whitaker unwise to disregard the advice of DOJ ethics officials that he should recuse himself from the Mueller investigation because a reasonable person would question his impartiality?**
 - c. **What message does it send to the American people if Attorneys General establish a practice of disregarding the ethics advice of career DOJ ethics officials?**
14. In your hearing testimony you quoted the following statement from your 1991 confirmation hearing: “The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of law.”
- President Trump has repeatedly denigrated Special Counsel Mueller and his investigation, calling it “unfair,” a “witch hunt” and a “hoax.” He also has tweeted and sent public signals to witnesses and targets in the investigation regarding their conduct. **In your view, has the President gone too far with political interference in Mueller’s investigation?**
15. **When you were working as a private sector attorney:**
- a. **Did you ever represent Russian individuals or corporations as clients? If so, please provide details on the dates and nature of the representation.**
 - b. **Did you ever have dealings with the Russian government or Russian oligarchs? If so, please provide details.**
16. During your 1989 confirmation hearing to head the Office of Legal Counsel, you said at one point that the Attorney General is “the chief lawyer in the administration. He is the

President's lawyer; he is the lawyer for the cabinet" (emphasis added). **Do you stand by this characterization of the Attorney General's role?**

17. During your hearing we discussed a January 25, 1996 speech you gave at the University of Virginia's Miller Center, in which you essentially admitted to taking actions as Attorney General for political purposes. You said: "After being appointed, I quickly developed some initiatives on the immigration issue that would create more border patrols, change the immigration rules, and streamline the processing system. It would furthermore put the Bush campaign ahead of the Democrats on the immigration issue, which I saw as extremely important in 1992. I felt that a strong policy on immigration was necessary for the President to carry California, a key state in the election."

This admission that you developed initiatives to "change the immigration rules" to "put the Bush campaign ahead" stands in stark contrast to the commitment you made in your 1991 confirmation hearing for Attorney General, where you said: "The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics."

- a. **Why did you feel it was appropriate to develop initiatives to "change the immigration rules" as Attorney General for purposes of helping the political fortunes of the Bush campaign despite the commitment you made during your confirmation hearing?**
 - b. **Is it appropriate for an Attorney General to "change the rules" to help the political campaign of the President who appointed him?**
 - c. **If confirmed, do you believe it would be within your proper role to develop initiatives to "change the immigration rules" in ways that would help the 2020 Trump campaign?**
18. In an April 5, 2001 panel at the University of Virginia's Miller Center, you said "my experience with the Department is that the most political people in the Department of Justice are the career people, the least political are the political appointees." **Do you stand by this characterization of DOJ career employees?**
19. **Did anyone at the White House or the Justice Department advise you not to meet with Democratic members of this Committee in advance of the hearing, and if so, who gave you this advice?**
20. On October 18, 2017, Attorney General Sessions testified before the Senate Judiciary Committee for a Department of Justice oversight hearing. This was the only time he testified before the Committee as Attorney General. At this hearing, Attorney General Sessions did not provide a written copy of his testimony to the Committee members in advance of the hearing; in fact, an electronic copy of his testimony was emailed to my committee staff by the Department only after the hearing had begun. As a result of this late submission, Committee members were denied the opportunity to prepare questions in advance based on

the Attorney General's written testimony. **Will you commit that if you are confirmed, you will provide your written testimony to the full Committee 24 hours in advance of each hearing where you testify in accordance with the Committee's long-standing rules?**

21. Attorney General Sessions never provided responses to written questions from this Committee from the Department of Justice oversight hearing on October 18, 2017. Other former Department officials have provided responses to this Committee's oversight questions after they have left the Department, including former FBI Director Comey who provided responses on December 4, 2018 to written questions following his appearance before the Committee on May 3, 2017. **If confirmed, will you ensure that the Committee receives prompt answers to all the written questions that were submitted to Attorney General Sessions from the October 18, 2017 oversight hearing?**

22. I appreciate that in your testimony you pledged to "diligently implement" the First Step Act.

- a. **Will you direct prosecutors not to oppose eligible petitions for retroactive application of the Fair Sentencing Act if you are confirmed?**
- b. **The First Step Act authorizes \$75 million in annual funding for the next five fiscal years to carry out the Act's provisions. The actual cost of implementation is likely to be higher, and the Bureau of Prisons is already facing severe funding and staffing shortages. Will you pledge that, if confirmed, you will ensure that the Justice Department's budget requests include an increase of at least \$75 million, as authorized to implement the First Step Act, as well as any additional funding needed to address previous shortfalls?**
- c. The First Step Act became law on December 21. It mandates the Attorney General begin immediate implementation of certain reforms, and establishes deadlines for others. Among other things, it requires that an Independent Review Committee be established by the National Institute of Justice by Tuesday, January 21, 2019. This deadline has already been missed.

The First Step Act requires the Attorney General, not later than 210 days after the date of enactment, and in consultation with the Independent Review Committee, to develop and release publicly on the Department of Justice website a risk and needs assessment system. **What steps will you take in order to ensure the risk assessment system is established by this deadline if you are confirmed?**

- d. The First Step Act broadens applicability of the Safety Valve under 18 U.S.C. § 3553(f).

Do you agree that this change applies to cases where a sentence for the offense has not yet been imposed? If you are confirmed, what guidance will you provide to prosecutors on the applicability of the safety valve in such pending cases?

23. In 1993 you co-wrote an article in *The Banker* entitled “Punishment that exceeds the crime – The crackdown on corporate fraud threatens to stifle the financial system.” In this article, you criticized what you described as an “overly hostile enforcement atmosphere” when it comes to investigation and prosecution of corporate fraud and white collar crimes.” You said this aggressive enforcement risks deterring entrepreneurial investment and “offending our notions of fundamental fairness.”

a. Why did you urge caution when it comes to investigating and prosecuting white collar crimes as opposed to your aggressive approach to investigating and prosecuting drug offenses?

b. Should white collar criminals get different treatment from other criminals?

24. At a panel discussion before the Federalist Society in 1995 you said “violent crime is caused not by physical factors, such as not enough food stamps in the stamp program, but ultimately by moral factors.” You went on to say “spending more money on these material social programs is not going to have an impact on crime, and, if anything, it will exacerbate the problem.”

Since you made these comments, new research has gone a long way toward rebutting them. For instance, scientific evidence now shows that childhood exposure to trauma affects brain development and perpetuates the cycle of violence. Social programs that help prevent and address exposure to trauma in children can have a significant impact on ending the cycle of violence.

a. Do you regret these comments you made in 1995 to the Federalist Society?

b. Have your views on the relationship between social programs and violent crime changed since 1995?

c. Is it your view that white collar crime is also ultimately caused by moral factors?

25. In 1992, when you were Attorney General, you issued a lengthy report called “The Case for More Incarceration” that said: “First, prisons work. Second, we need more of them.” And in an October 2, 1991 speech you described a high prison population as “a sign of success.” Over the last three decades, as a result of stiff mandatory minimums, the federal prison population grew by over 700%, and federal prison spending climbed nearly 600%. Federal prisons now consume one quarter of the Justice Department’s budget. And we hold more prisoners, by far, than any other country in the world. America has five percent of the world’s population but 25 percent of the world’s prisoners – more than Russia or China.

Meanwhile, use of illegal drugs actually increased between 1990 and 2014. The availability of heroin, cocaine, and methamphetamine also increased. And recidivism rates for federal drug offenders did not decline. Today the data is clear – there is no significant relationship between drug imprisonment and drug use, drug overdose deaths, and drug arrests.

Have your views about the value of incarceration changed as a result of what we've learned in the last three decades?

26. Now, we are facing another deadly drug epidemic, and some are proposing that we again respond with harsh mandatory minimum sentences. Today, a large body of research establishes that stiffer prison terms do not deter drug use or distribution.

Do you agree that we cannot incarcerate our way out of the fentanyl epidemic?

27. During your testimony before this Committee, you acknowledged that “the heavy drug penalties, especially on crack and other things, have harmed the black community, the incarceration rates have harmed the black community.”

On May 10, 2017, Former Attorney General Sessions directed all federal prosecutors to always seek the maximum penalty in federal criminal prosecutions. During your confirmation hearing, you testified that you intend to continue this policy unless “someone tells me a good reason not to.” Yet you also testified that the “draconian policies” enacted in reaction to the crack epidemic resulted in “generation after generation of our people . . . being incarcerated,” and that it is time to “change the policies.” I agree. This seems to be a “good reason” not to continue the Sessions policy, which applies to violent and non-violent offenders alike. **Will you commit to reviewing and revising the Sessions charging guidance if you are confirmed as Attorney General?**

28. In recent years, the Federal Bureau of Prisons (BOP) workforce has faced a number of significant challenges—including severe staffing shortages that jeopardize their ability to ensure the safety of inmates, staff, and the public. These staffing concerns resulted from a hiring freeze imposed by the Trump Administration and implemented by former Attorney General Sessions. Additional hiring was also delayed after President Trump proposed an FY 2019 budget that inexplicably sought to cut an additional 1,168 BOP positions, while projecting an increase in BOP’s prison population.

These staffing shortages have led to widespread reliance on “augmentation,” a practice that forces non-custody staff, such as secretaries, counselors, nurses, and teachers, to work as correctional officers—despite the fact that these employees lack the experience and extensive training of traditional correctional officers. Augmentation places staff at risk and reduces access to programming, recreation, and education initiatives—all of which are key to maintaining safe facilities and reducing recidivism.

- a. **If confirmed, how will you address the ongoing staffing challenges at BOP?**
- b. **Will you commit, if confirmed, to ensuring that BOP is adequately staffed so that augmentation is no longer needed?**
- c. **The ongoing government shutdown has exacerbated an already-dangerous situation for BOP staff and has caused significant financial stress as they**

continue to work without a paycheck. If confirmed, how will you address the impact that this shutdown has had on BOP and other DOJ staff?

29. In an op-ed last November you praised Attorney General Sessions' immigration policies including, among other things, for "breaking the record for prosecution of illegal-entry cases." This praise came in the aftermath of Attorney General Sessions' disastrous "zero-tolerance" policy directing U.S. Attorneys along the Southwest border to criminally prosecute every illegal entry misdemeanor case referred by DHS, which included parents fleeing gang and sexual violence. The President of the American Academy of Pediatrics saw the zero-tolerance policy differently than you did— she called it "government-sanctioned child abuse". It led to the separation of thousands of families, some of whom have still not been reunited today.
- a. **As Attorney General, would you adhere to the zero-tolerance policy?**
 - b. **Do you think the zero-tolerance policy has been a success?**
 - c. **Was it appropriate for a Federal District Court Judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?**
30. On June 5, 2018, when asked, "Is it absolutely necessary . . . to separate parents from children when they are detained or apprehended at the border?" Attorney General Sessions answered, "Yes." Yet on June 21, 2018, after widespread public backlash, Attorney General Sessions claimed that the Administration did not anticipate the separation of families, stating: "We never really intended to do that." The Justice Department's Inspector General (IG) is reviewing the Justice Department's poorly planned and chaotic implementation of the zero-tolerance policy.
- a. **Will you pledge that, if confirmed, you will implement the IG's recommendations so we can avoid a repeat of this disaster?**
 - b. **Do you agree with Attorney General Sessions' comment that it is absolutely necessary to separate parents from children when they are detained or apprehended at the border?**
31. On June 17, 2018, DHS Secretary Nielsen stated on Twitter "We do not have a policy of separating families at the border. Period." **Was this an accurate statement?**
32. Justice Department resources were reportedly diverted from federal drug-smuggling felony cases to handle immigration charges under the zero-tolerance policy. **Was the zero-tolerance policy a wise use of Department resources?**
33. Congress received a letter on January 9, 2019 from Judge Ashley Tabaddor, the President of the National Association of Immigration Judges. Judge Tabaddor explained that every immigration judge across the country is currently in a no-pay status. She added that every

day the immigration courts are closed, thousands of cases are cancelled and have to be indefinitely postponed.

Judge Tabaddor stated that there is currently a backlog of more than 800,000 pending immigration cases, an increase of 200,000 cases in less than two years despite the largest growth in the number of active immigration judges in recent history. At the end of Fiscal Year 2016 there were 289 active judges, while currently there are over 400.

Judge Tabaddor said “When a hearing is delayed for years as a result of a government shutdown, individuals with pending cases can lose track of witnesses, their qualifying relatives can die or age-out and evidence already presented become stale. Those with strong cases, who might receive a legal status, see their cases become weaker. Meanwhile, those with weak cases – who should be deported sooner rather than later – benefit greatly from an indefinite delay.”

Do you agree that the shutdown has hurt the administration of justice in our immigration courts and is worsening the immigration court backlog?

34. **Do you believe a child can represent herself fairly in immigration court without access to counsel?**
35. During the presidency of George H.W. Bush, the U.S. generously accepted refugees fleeing persecution from around the world. In Fiscal Year 1989 the U.S. resettled 107,070 refugees, in 1990, 122,066, in 1991, 113,389, and in 1992, 132,531. By contrast, in Fiscal Year 2018 the U.S. resettled just 22,491 refugees, less than half of the 50,000 target established by President Trump, and for 2019 the Trump Administration has established the lowest refugee admissions goal since the Refugee Admissions Program was created in 1980: a mere 30,000 refugees may be admitted this year, at a time when there are more than 25 million refugees worldwide, more than ever before, according to UNHCR.
- a. **Did you have any role in the refugee admissions policy of the George H.W. Bush Administration, including providing any opinions to other cabinet departments and officials about the number of refugees admitted? Please describe your role, if any, in initiating and implementing this policy.**
 - b. **Did you support the admission of over 100,000 refugees per year during President George H.W. Bush’s Administration?**
 - c. **Do you believe the refugee admissions ceiling established by President Trump for Fiscal Year 2019 (30,000) is an adequate response to the unprecedented global refugee crisis?**
36. You have described yourself as a “strong proponent of executive power.” In your June 8, 2018 memo, you went so far as to state that “constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He *alone* is the Executive branch.”

President Trump has taken an aggressive and expansive view of presidential power. He has shown contempt for the federal judiciary unlike any president we can recall. He has undermined and ridiculed your predecessor, whom he chose. He has shown disrespect for the rule of law over and over again.

- a. **In light of this record, do you believe President Trump is a faithful steward of executive power?**
 - b. **Do you stand by your argument that President Trump *alone* is the Executive branch?**
 - c. **Are you concerned about President Trump continuing to abuse executive power?**
 - d. **Are you confident that the Justice Department and OLC will serve as a check and balance on any abuses of executive power by President Trump?**
37. On multiple occasions, President Trump has issued pardons without any apparent consultation or vetting from the DOJ Office of the Pardon Attorney. For example, Scooter Libby, Joe Arpaio and Dinesh D'Souza were all pardoned by President Trump without even applying for a pardon, let alone going through the Justice Department's vetting process.
- a. **In your view, is it appropriate for a President to exercise the pardon power without any input from the Justice Department?**
 - b. **If you are confirmed, would you insist on the Department having input into clemency decisions, including the opportunity for the Office of the Pardon Attorney to vet clemency applicants?**
38. **On June 15, 2018, President Trump's attorney Rudy Giuliani said of the Special Counsel's Russia investigation: "When this whole thing is over, things might get cleaned up with some presidential pardons."**
- a. **In your view, does a statement like this constitute inappropriate interference in an investigation?**
 - b. **When does it cross into obstruction of justice for a President or his representative to publicly hint that the pardon power might be used to reward investigation witnesses and targets who refuse to cooperate?**
 - c. **In your view, would it constitute inappropriate interference in Special Counsel Mueller's investigation for President Trump to issue pardons to people under investigation or indictment by Special Counsel Mueller?**

- d. **On June 4, 2018, President Trump tweeted “I have the absolute right to pardon myself.” Do you agree?**
 - e. **Would you advise a President against attempting to pardon himself?**
 - f. You have not been shy in discussing how you urged President George H.W. Bush to pardon Defense Secretary Caspar Weinberger and five other government officials involved in the Iran-Contra scandal. After President Bush issued these pardons in 1992, Lawrence Walsh, the independent counsel who led the Iran-Contra inquiry, said that the pardon of Weinberger and other Iran-contra defendants “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office — deliberately abusing the public trust without consequence.” **If confirmed, how would you ensure that President Trump does not use the pardon power in a way that undermines the principle that no man is above the law?**
- 39.
- a. **As a general matter, do you believe it is a worthy goal for the Department of Justice to seek to remedy systematic constitutional and civil rights violations by police departments?**
 - b. **On November 7, Attorney General Sessions issued a memo that drastically curtails DOJ pattern or practice investigations of police departments and limits the use of consent decrees to bring police departments into compliance with the Constitution. If confirmed, will you revisit the Sessions memo, which was hastily issued right before his resignation, to ensure the Department is fulfilling its responsibility to protect the American people from systemic Constitutional violations by police?**
 - c. **In a March 31, 2017 memo, Attorney General Sessions stated that: “Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies.” Do you share that position? If so, was it inappropriate for Attorney General Sessions to petition a federal court in opposition to the policing reform consent decree that was independently negotiated between the City of Chicago and the Illinois State Attorney General last year?**
40. Earlier this month, the *Washington Post* reported that the Trump Administration is “considering a far-reaching rollback of civil rights law that would dilute federal rules against discrimination in education, housing and other aspects of American life.”

Senior civil rights officials within DOJ were reportedly instructed to “examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” Officials at the Department of Education and the Department of Housing and Urban Development are also reportedly reviewing disparate impact regulations under their jurisdictions.

Disparate impact liability is a key civil rights enforcement tool.

The Supreme Court reaffirmed this in a 2015 case, holding that disparate impact claims are cognizable under the Fair Housing Act. Justice Kennedy, writing for the majority, noted that “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation.... But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse.” The opinion concluded with the Court acknowledging the Act’s “continuing role in moving the Nation toward a more integrated society.”

- a. **Do you agree that disparate impact liability is an important and valid civil rights enforcement tool?**
 - b. **If so, will you agree not to take any actions to undermine disparate impact liability if you are confirmed?**
41. In your 1991 confirmation hearing, you said “discrimination is abhorrent and strikes at the very nature and fiber of what this country stands for.” You also said “I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.”
- a. **Do you stand by that pledge today?**
 - b. **Does your pledge include discrimination against LGBTQ Americans?**
 - c. **Do LGBTQ Americans face discrimination today?**
 - d. **Do you believe LGBTQ Americans have protections against discrimination under federal law?**
 - e. **If so, in your opinion, what is the scope of federal protections for LGBTQ Americans?**
 - f. **Do you agree that an individual cannot choose or change their sexual orientation, any more than an individual can choose or change their race or national origin?**
42. In recent years, you have made troubling statements in opposition to efforts to combat LGBTQ discrimination. For example, in November 2018, you wrote a joint op-ed with former Attorneys General Ed Meese and Michael Mukasey “saluting” former Attorney General Sessions. You specifically praised Sessions for changing DOJ’s litigation position to argue that transgender people are not protected by Title VII’s prohibition on sex-based discrimination in the workplace. You suggested that this reversal “help[ed] restore the rule of law.” Further, in a 2007 panel discussion, you criticized the Supreme Court’s decision in

Lawrence v. Texas, stating that “the striking down of the anti-sodomy laws in Texas on the grounds that ‘liberty’ entails some right to engage in sodomy and therefore the state’s ability to regulate that... [threw] out hundreds of years of understanding about the ability of local and state governments to engage in ‘moral’ legislation.”

Do you stand by those statements today?

43. When former Attorney General Sessions came before this Committee for an oversight hearing in October 2017, I asked him about his recently-issued guidance to all administrative agencies and executive departments on religious liberty issues. You praised this guidance in your November 2018 joint op-ed.

However, the guidance has received significant criticism, particularly in relation to its impact on the rights of LGBTQ Americans. The Human Rights Campaign had this to say about the guidance:

“A preliminary analysis of the Trump-Pence administration’s license to discriminate indicates that LGBTQ people and women will be at risk in some of the following ways:

- A Social Security Administration employee could refuse to accept or process spousal or survivor benefits paperwork for a surviving same-sex spouse;
- A federal contractor could refuse to provide services to LGBTQ people, including in emergencies, without risk of losing federal contracts;
- Organizations that had previously been prohibited from requiring all of their employees from following the tenets of the organization’s faith could now possibly discriminate against LGBTQ people in the provision of benefits and overall employment status; [and]
- Agencies receiving federal funding, and even their individual staff members, could refuse to provide services to LGBTQ children in crisis, or to place adoptive or foster children with a same-sex couple or transgender couple simply because of who they are.”

I asked then-Attorney General Sessions for his response to this analysis. He said he would get back to me, but he never did.

Do you believe that under this guidance, it is acceptable for a Federal government employee to cite their religious beliefs in refusing to serve or assist a same-sex couple?

44. In an April 1995 news report following the Oklahoma City bombing, you discussed the Bush administration’s work countering domestic right-wing groups. You said “[w]e were concerned about extreme rightwing groups in the country, but the surveillance and investigation of these groups was not as thorough as it should have been because of domestic restrictions.”

Right-wing extremism remains a significant threat today. To name just two recent examples, we’ve seen alleged fatal attacks by right-wing extremists in Charlottesville, Virginia and at the Pittsburgh Tree of Life Synagogue. A recent analysis by the *Washington*

Post found the following: “Of 263 incidents of domestic terrorism between 2010 and the end of 2017, a third—92—were committed by right-wing attackers.”

- a. **Do you agree that “extreme right-wing groups,” to use your words, remain a significant domestic terrorism threat today?**
- b. **If confirmed, what steps will you take to combat this threat?**
- c. **Do you agree with President Trump’s statement that “You also had some very fine people on both sides” of the white supremacist demonstrations in Charlottesville?**
- d. **Will you pledge to ensure that the Department of Justice directs sufficient resources to combat domestic terrorism?**
- e. **Will you also commit to ensuring that the Department of Justice provides regular briefings to this Committee on the Department’s efforts to combat domestic terrorism?**

45. In 2017, I introduced the Domestic Terrorism Prevention Act. This legislation would enhance the federal government’s efforts to prevent domestic terrorism by requiring federal law enforcement agencies to regularly assess those threats and provide training and resources to assist state, local, and tribal law enforcement in addressing these threats.

Would you commit, if you are confirmed, to review this legislation and give us your feedback on it?

46. During your tenure as Attorney General, you oversaw the publication of the Justice Department’s annual reports. The 1992 report emphasized the Department’s “efforts to assure minorities a fair opportunity to elect candidates of their choice to public office through its administrative review of voting changes under Section 5 of the Voting Rights Act, as well as through litigation.”

The 1992 report also specifically noted that “[t]he Attorney General interposed Section 5 objections to 16 statewide redistricting plans,” including in Alabama, Georgia, and North Carolina.

Unfortunately, in 2013, a divided Supreme Court voted 5-4 in *Shelby County v. Holder* to gut the Voting Rights Act. The Court struck down the formula that determined which jurisdictions were subject to Section 5 preclearance.

- a. **In your experience as Attorney General, did you find Section 5 preclearance to be an effective tool to combat voter suppression efforts?**
- b. **In light of your experience, what was your reaction to the *Shelby County* decision?**

- c. What role do you believe that the Voting Section of the Civil Rights Division should play in enforcing federal voting laws?**
- d. If confirmed, will you commit to ensuring that the Voting Section of the Civil Rights Division will be more aggressive in pursuing Section 2 cases against states and localities engaging in voter suppression efforts?**
47. In the lead-up to the 2018 midterm election, we saw a number of significant voter suppression efforts across the country:
- Several states engaged in significant voter purges—a problematic method of cleaning up voter registration rolls that often deletes legitimate registrations, preventing voters from casting their ballots on Election Day. For example, in Georgia, on a single day in July 2017, more than a half million people were purged from the voter rolls—which totaled eight percent of Georgia's registered voters.
 - Georgia also employed a controversial “exact match” system, which required names on voter registration records to exactly match voters’ names in the state system—so if you filled out one form as “Tom” and another as “Thomas,” your registration would be blocked. This led to 53,000 “pending” registrations being held up in the weeks before the election; nearly 70 percent of these registrations were for African-American voters.
 - In North Dakota, a strict new voter ID law went into effect that required voters to present an ID with their residential street address. It was clear that the law would have a disproportionate impact on Native American communities, in which many community members do not have street addresses. It was estimated that 5,000 Native American voters would need to obtain qualifying identification before Election Day.
 - Voters across the country also saw reduced access to voting after state and local governments shuttered polling locations and curtailed early voting opportunities. In Florida, election officials were ordered to block early voting at the state’s college and university campuses. And since the Supreme Court’s 2013 ruling in *Shelby County v. Holder* to gut the Voting Rights Act, almost 1,000 polling locations across the country have been closed—many of them in predominantly minority communities.
- a. Do you agree that these are examples of voter suppression?**
- i. If so, what steps would you take as Attorney General to address similar voter suppression efforts in the future?**
 - ii. If not, what do you consider to be an incident of voter suppression?**
- b. Do you think voter fraud is a problem that justifies these types of restrictive voting measures?**

c. Do you agree with President Trump's claims that 3-5 million people illegally voted in the 2016 election?

48. Despite frequent claims from Republicans that voter fraud is a rampant problem that must be addressed through restrictive voter laws, the most salient recent example of alleged election fraud was perpetrated by a Republican in the 9th Congressional District of North Carolina. A Republican House candidate, Mark Harris, apparently employed contractors who collected absentee ballots from mostly African-American voters and either filled them out for Harris or discarded them if they supported Harris' opponent. The North Carolina State Board of Elections has refused to certify Harris' purported 900-vote victory, and a local prosecutor has confirmed that an investigation is underway.

Do you support a federal investigation into apparent election fraud in North Carolina's 9th District?

49. In your 1991 confirmation hearing, you were asked your views on the right to privacy. You stated:

I believe that there is a right to privacy in the Constitution...I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled.

Do you stand by that statement today in light of the Court's subsequent decisions in *Planned Parenthood v. Casey* (1992) and *Whole Women's Health v. Hellerstedt* (2016), which each affirmed the right to abortion?

50. Attorney General Sessions tried to block federal Byrne-JAG violence prevention grant funds in an effort to try to force unrelated immigration policy reforms on cities and states. At least 5 district courts and the 7th Circuit have held that the Justice department does not have the authority to impose unrelated grant conditions on programs like Byrne-JAG. However, Attorney General Sessions nonetheless refused to release these vital funds to cities like Chicago, which hurts the fight against deadly gun violence.

I don't think the Byrne-JAG program should be used as a political football in the immigration debate. Byrne-JAG is a formula grant program that was designed by Congress to give state and local jurisdictions flexibility to address their public safety needs. Ironically, the Byrne-JAG program was named for a New York City police officer who heroically gave his life to protect an immigrant witness who was cooperating with law enforcement.

Will you commit that if you are confirmed you will stop DOJ's withholding of Byrne-JAG funds to state and local communities as part of an effort to force immigration policy reforms?

51. In a June 5, 2005 hearing before the Senate Judiciary Committee, you said regarding the Bush Administration's detention policy: "Rarely have I seen a controversy that has less substance behind it. Frankly, I think the various criticisms that have been leveled at the administration's detention policies are totally without foundation and unjustified." In July 2005, you sat on a panel entitled "Civil Liberties and Security" hosted by the 9/11 Public Disclosure Project and said that "under the laws of war, absent a treaty, there is nothing wrong with coercive interrogation, applying pain, discomfort, and other things to make people talk, so long as it doesn't cross the line and involve the gratuitous barbarity involved in torture."
- a. **Do you reject the reasoning of the OLC "torture memo," which claimed that the torture statute unconstitutionally infringed on the President's authority as Commander-in-Chief and was subsequently rescinded by the Bush Administration Justice Department?**
 - b. **Do you acknowledge that the McCain Detainee Treatment Act, which passed the Senate with 90 votes in 2005 and which outlawed cruel, inhuman and degrading treatment, is constitutional? Do you pledge to abide by it?**
 - c. **Is waterboarding torture?**
 - d. **Can terrorists be successfully prosecuted and incarcerated in our domestic criminal justice system?**
52. Under Attorney General Sessions, the Justice Department changed its previous litigation position and decided to stop defending the constitutionality of the Affordable Care Act in court, instead arguing that the ACA's protections for people with pre-existing conditions should be invalidated. Two career DOJ attorneys withdrew from the case rather than sign DOJ's brief, and one of these attorneys resigned.
- a. **Was it appropriate for the Justice Department to change its previous litigation position and decline to continue defending the constitutionality of the Affordable Care Act?**
 - b. **Did you agree with that decision?**
 - c. **Will you review the Department's decision if you are confirmed?**
 - d. **You have previously argued in an amicus brief that the Affordable Care Act is unconstitutional. Do you still hold that view?**
53. You have described Attorney General Sessions as "an outstanding attorney general" in your November 2018 *Washington Post* op-ed. **Please identify any actions or policies that Attorney General Sessions implemented during his tenure that you think were misguided and that should be revisited by the next Attorney General.**

54. In order to reduce the number of shootings in Chicago, we must address the flow of illicitly-trafficked guns from out-of-state into the city.

- a. **Will you commit that, if you are confirmed, you will make it a priority of the Department of Justice to investigate and prosecute those who are selling guns that supply Chicago's criminal gun market?**
- b. **If you are confirmed, what steps will you take to ensure that cases involving straw purchasing, gun trafficking, and dealing in firearms without a license are prosecuted?**
- c. **Will the Department of Justice's budget requests support additional resources, specifically for ATF, to enforce these laws?**
- d. **If confirmed as Attorney General, would you take steps to enable and encourage all state and local law enforcement agencies to use eTrace and NIBIN for all guns and ammunition casings recovered in crimes?**

55. There is an important program in the Justice Department's Office of Justice Programs called the John R. Justice Program. Named after the late former president of the National District Attorneys Association, the John R. Justice Program provides student loan repayment assistance to state and local prosecutors and public defenders across the nation

Congress created this program in 2008 and modeled it after a student loan program that DOJ runs for its own attorneys. The John R. Justice program helps state and local prosecutors and defenders pay down their student loans in exchange for a three-year commitment to their job. This is a very effective recruitment and retention tool for prosecutor and defender offices. And since DOJ is giving hundreds of millions of dollars in grants each year to state and local law enforcement, which generates more arrests and more criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The John R. Justice Program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to funding this program and to carefully administering it.

Will you commit to support this program during your tenure if you are confirmed?

56. In your 1991 confirmation hearing you were asked by Senator Thurmond about the pace of filling judicial vacancies while you were Deputy Attorney General. You said "it is a long process because we have to make sure that we are putting people who have the proper character and integrity and competence on the bench, and that requires the FBI background check, it requires the ABA screening process, and that takes a lot of time."

- a. **Is it still your view that the ABA screening process is required to ensure that judicial nominees have the proper character, integrity and competence to serve on the bench?**
- b. **If so, will you commit to doing all in DOJ's power to ensure that the Committee has the benefit of the results of the ABA screening process before the Committee holds a hearing on a judicial nominee?**

57. **Will you commit that, if you are confirmed, you will take steps to ensure that the FBI and the Department of Justice work together to improve hate crime reporting by state and local law enforcement?**

58. When I was Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held two hearings on the human rights, fiscal, and public safety consequences of solitary confinement. Anyone who heard the chilling testimony of Anthony Graves and Damon Thibodeaux—exonerated inmates who each spent more than a decade in solitary confinement—knows that this is a critical human rights issue that we must address.

In light of the mounting evidence of the harmful—even dangerous—impacts of solitary confinement, states around the country have led the way in reassessing the practice. Some progress was made at the federal level as well; however, much of the progress has been erased during the Trump Administration, and there are currently more than 11,000 federal inmates in segregation.

- a. **Do you believe that long-term solitary confinement can have a harmful impact on inmates?**
- b. **If you are confirmed, can you assure me that you will examine the evidence and work with BOP to make ensure that solitary confinement is not overused?**

59. **When asked at your hearing about the Foreign Emoluments Clause to the Constitution, you said “I cannot even tell you what it says at this point.”**

The Foreign Emoluments Clause in Art. I, Section 9, Clause 8 of the Constitution states that “No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

The Foreign Emoluments Clause reflects a fundamental priority of the Founding Fathers as they designed our form of government. They were worried about foreign powers attempting to influence and corrupt the leadership of our nation, so the Constitution included safeguards against pressure from such powers, particularly the Foreign Emoluments Clause, which was adopted unanimously at the Constitutional Convention. As Delegate Edmund Randolph of the Continental Congress said during the ratification debates in Virginia, “[i]t was thought

proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”

- a. **Do you believe that all current provisions of the Constitution must be followed and enforced, including the Foreign Emoluments Clause?**
 - b. **If you are confirmed as Attorney General, what steps will you take to ensure that the Foreign Emoluments Clause is followed and enforced?**
- 60.
- a. **In an April 5, 2001 interview, conducted in connection with the preparation of an oral history of the presidency of George H.W. Bush, you called the *qui tam* provisions of the False Claims Act “an abomination and a violation of the Appointments Clause under the due powers of the President. . . .” At your hearing you said you no longer consider the False Claims Act an abomination. What changed your mind?**
 - b. **In 2000, the year before your April 5, 2001 interview, the Supreme Court made it clear in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*--a decision authored by Justice Scalia--that *qui tam* relators have Article III standing to bring False Claims Act cases on behalf of the government. Do you think this case was wrongly decided?**
 - c. **If you are confirmed, will you commit to vigorously enforcing the False Claims Act and its *qui tam* provisions?**

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

QUESTIONS FROM SENATOR FEINSTEIN

1. In your written testimony, you said that your “goal will be to provide as much transparency as I can consistent with the law” with respect to any report produced by Special Counsel Mueller. You also said that “where judgments are to be made by me,” you would make those judgments based solely on the law. As you may be aware, recent reports suggested that President Trump’s legal team is “gearing up” to “strongly assert the president’s executive privilege” in an effort to prevent information in the report from becoming public. (Carol D. Leonnig, *A beefed-up White House legal team prepares aggressive defense of Trump’s executive privilege as investigations loom large*, WASH. POST (Jan. 9, 2019))
 - a. **Have you discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?**
 - b. **If confirmed, what standards would you apply and what process would you follow in evaluating any claims of executive privilege asserted by the President?**
 - c. **How will you ensure your desire to grant the public and Congress “as much transparency” as possible is not impeded by the White House’s interest in preventing full disclosure of the report?**
2. Despite your pledge at your hearing “to provide as much transparency as [you] can,” you also indicated that you might not provide the report that Special Counsel Mueller will prepare at the conclusion of his investigation pursuant to the Justice Department’s Special Counsel regulations. Rather, you committed only to providing your own “report based on that report.” **Will you commit, if confirmed, to provide to Congress the full report that Special Counsel Mueller prepares at the end of his investigation?**
3. In June 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Steve Engel, the head of the Department of Justice Office of Legal Counsel, and to President Trump’s personal attorneys criticizing Special Counsel Robert Mueller’s investigation. (Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel re: Mueller’s “Obstruction” Theory (June 8, 2018)) **Please provide a complete list of everyone to whom you gave the memo, when it was provided, whether there was any communication about the memo before or after it was delivered, and why you provided it.**
4. You testified that “It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down

the road.” Please provide a list of all other topics under the Justice Department’s jurisdiction where you submitted a legal memo to the Department or the White House, the dates the memos were provided, and whom they were submitted to.

5. I wrote to you about the June 2018 Mueller memo in December, but I’d like you to clarify your answers for the record.
 - a. **You testified no one asked you to write the memo. Why did you decide to do so?**
 - b. **At the time you submitted this memo to officials at the Justice Department and President Trump’s attorneys, had you talked to anyone about a possible Attorney General nomination? If so, with whom, when, and what was discussed?**
 - c. **Did you consult anyone during the process of drafting this memo? If so, whom?**
 - d. **Did you discuss this memorandum or its contents with Mr. Rosenstein, Mr. Engel, or anyone at the Department of Justice before or after you submitted it? If so, with whom, when, and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?**
 - e. **Did you discuss this memorandum or its contents with anyone else? If so, with whom and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?**
6. During your hearing, you reserved the right not to follow advice from career Department ethics officials.
 - a. **If you are confirmed, will you commit to providing to the Committee any advice career Department ethics officials give you about recusal related to this memo or any other matter related to the Special Counsel’s investigation?**
 - b. **If you disregard or disagree with advice from career ethics officials, will you also commit to providing an explanation of the basis for your disagreement and how you plan to address any concerns raised?**
7. What steps will you take if you are confronted with a legal question or matter where the outcome might implicate the President’s business or other financial interests?
8. Longstanding Justice Department policies limit communications between the Justice Department and the White House about pending or contemplated investigations to a select few officials. (Memorandum from the Attorney General for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009)) This policy helps insulate Justice Department decision

making from political influence and protects potentially sensitive law enforcement information. At his nomination hearing, Deputy Attorney General Rosenstein confirmed that this policy was still in place and committed to enforcing it. (S. Hrg. *Confirmation Hearing on the Nomination of Rod Rosenstein to be Deputy Attorney General* (Mar. 7, 2017))

When you were asked at your hearing what the current Justice Department communications policy is, you said, “Well, it depends -- it depends what it is, but on criminal matters I would just have the AG and the deputy.”

- a. **Are you familiar with the longstanding Justice Department policy memorialized in a May 2009 letter from Attorney General Holder? If you are confirmed, do you commit to enforcing this policy and ensuring that both the Justice Department and the White House know the rules?**
 - b. **You also stated in the hearing, you thought you would strengthen the policy. What did you mean by that?**
9. The Justice Department and FBI consistently decline to comment publicly or to Congress about open investigations. The Inspector General calls this the “stay silent” rule and says that rule, among other things, protects “the integrity of an ongoing investigation” and “the Department’s ability to effectively administer justice without political or other undue outside influences.” (Department of Justice, Office of the Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) at p. 371) For similar reasons, nearly two decades ago, the Justice Department informed Congress in a letter to Rep. John Linder that “[t]he Department’s longstanding policy is to decline to provide Congressional committees with access to open law enforcement files.” (Linder Letter, 1/27/00)
- a. **Are you familiar with this longstanding Justice Department policy against public disclosure of information about open investigations?**
 - b. **If you are confirmed, do you commit to enforcing this policy against public disclosure of information about open investigations?**
 - c. **Is the disclosure of information about a confidential source consistent with this policy?**
 - d. **Is providing FISA applications relevant to an ongoing investigation consistent with this policy?**
10. You have repeatedly endorsed an expansive view of presidential power, referred to as the “unitary executive theory.” (William P. Barr, Assistant Attorney General, Office of Legal Counsel, *Common Legislative Encroachments On Executive Branch Authority*,

(July 27, 1989)) Under this theory, the President would have virtually limitless control over the Executive Branch, and very few, if any, checks on his constitutional authorities.

At your hearing, you promised to allow Special Counsel Mueller's investigation to continue unimpeded if you are confirmed as Attorney General and committed to complying with the Justice Department's Special Counsel regulations. **Under the unitary executive theory, would the President have the power to direct the Attorney General's to rewrite the regulations?**

11. The Supreme Court rejected the unitary executive theory in *Morrison v. Olson*, 487 U.S. 654 (1988).
 - a. **Do you believe *Morrison v. Olson* was correctly decided?**
 - b. **In your view, are laws requiring the President to have "good cause" before removing heads of independent agencies constitutional?**
 - c. **During your hearing you said, "the President can fire a U.S. Attorney. They are a presidential appointment." Was it acceptable for the President to dismiss seven U.S. Attorneys for prosecuting Republican elected officials or not prosecuting Democratic elected officials in 2006?**

12. You have said that, as Attorney General, you advised President George H.W. Bush that you "favored the broadest" pardon for Caspar Weinberger and several other individuals implicated in the Iran-Contra Affair. (Miller Center Interview, 4/5/01) Then-Independent Counsel Lawrence Walsh said the decision to issue these pardons "undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust without consequence." (David Johnston, *Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'*, N.Y. TIMES (Dec. 25, 1992))
 - a. **Do you believe the President's pardon authority is subject to any limits? What would constitute an abuse of presidential pardon authority?**
 - b. **Could a President under criminal investigation pardon his co-conspirators?**
 - c. **Could a President offer a pardon in exchange for a witness's agreement not to cooperate with investigators?**
 - d. **Could the President grant pardons in exchange for bribes?**
 - e. **In your view, what are the options for holding a president accountable for abuse of the pardon authority?**

13. During your hearing, you were asked if the President has authority to use money appropriated to the Defense Department to build a wall on the border. You responded, “without looking at the statute, I really could not answer that.”
- a. **Now that you have had the opportunity to review any relevant statutes, please state whether you believe the President can use money currently appropriated to the Defense Department to build a border wall.**
 - b. **Putting aside the statute, do you believe the President has inherent authority under the Constitution to use appropriated funds regardless of what Congress dedicated the funds for?**
14. In 2005, the George W. Bush Administration issued a signing statement reserving the President’s right to decline to enforce the Detainee Treatment Act’s ban on torture. The statement argued the ban could infringe on the President’s Commander in Chief authority. (Bush Signing Statement (Dec. 30, 2005))
- a. **Do you agree with this signing statement?**
 - b. **Do you believe it was lawful?**
15. Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence’s Study into the CIA’s Detention and Interrogation Program? If confirmed, will you commit to reviewing the full, classified study before you work on any matter regarding detainee treatment or interpretation of the Convention Against Torture or Geneva Conventions?
16. During your hearing, you told Senator Grassley that, if confirmed, you will ensure that the Justice Department will respond in a timely manner to requests from both Committee Chairs and Members of Congress.
- a. **Will you specifically commit to timely responding to minority requests—not just requests from a Chair or members of the majority?**
 - b. **When Congress requests information from the Executive Branch, how and in what circumstances is executive privilege properly invoked? What standards and process will you use to evaluate the legitimacy of presidential executive privilege claims?**
17. On January 16, 2019, the U.S. General Services Administration (GSA) Office of Inspector General released a report regarding the Old Post Office Building that GSA leases to President Trump and a corporation he wholly owns. The report concluded that GSA attorneys acted improperly when they “agreed [that the lease presented] a possible violation of the Foreign Emoluments Clause but decided not to address the issue.” This conclusion was based, in part, on the GSA attorneys’ “fail[ure] to seek OLC’s guidance,

even though [they] knew that OLC issued opinions on the Foreign and Presidential Emoluments Clauses.” (GSA OIG Report at p. 16) During your hearing, you repeatedly discussed the importance of seeking the Office of Legal Counsel’s guidance when faced with complex constitutional questions.

- a. **The Justice Department has also been confronted with issues related to President Trump’s financial holdings and the Emoluments Clauses. If confirmed, do you commit to seeking guidance from OLC on the applicability of the Emoluments Clauses to President Trump’s personal financial interests?**
- b. **Do you commit to make public any OLC opinion on the applicability of the Emoluments Clauses to President Trump’s personal financial interests to enable the public to understand OLC’s reasoning and conclusions about the issue?**

18. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).
19. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.
20. Have you spoken with anyone about possible recusal from the Special Counsel’s investigation? If so, with whom, when, and what was discussed?
21. Did President Trump or anyone else ever ask you to promise not to recuse from the Special Counsel’s investigation?
22. You previously wrote: “The fact that terrorists’ actions have been made criminal does not preclude the government from treating them as enemy combatants without any rights under our criminal justice system.” (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) **Do you still hold that view?**
23. You previously wrote: “Thus, where the government sees an *individual* foreign person apparently acting as a terrorist, that should be a sufficient basis to conclude that the individual is not part of ‘the people’ and thus not protected by the Fourth Amendment.” (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) **Is it your position that non-citizens, even those located in the United States, are not protected by the Fourth Amendment of the Constitution? If so, what is the basis for that view?**

24. **Is the President authorized under Article II of the Constitution to conduct warrantless domestic security surveillance? Please explain your answer.**
25. **Does the President have authority under Article II of the Constitution to conduct bulk collection of Americans' telephone metadata? Please explain your answer.**
26. You previously wrote: "Numerous statutes were passed, such as FISA, that purported to supplant Presidential discretion with Congressionally crafted schemes whereby judges become the arbiter of national security decisions." (*Testimony of William P. Barr before the House Select Committee on Intelligence* (Oct. 30, 2003))
- a. **In your view, is the President required to follow laws enacted by Congress governing surveillance? If not, please explain the basis for this conclusion.**
 - b. **Are there any aspects of existing surveillance law, including the Foreign Intelligence Surveillance Act (FISA), that you believe the President can disregard? Please identify specific legal provisions and the basis for your conclusion that these provisions do not apply to the President.**
 - c. **Is the Foreign Intelligence Surveillance Act (FISA) the exclusive means for the President to conduct foreign intelligence electronic surveillance in the United States? Please explain your answer.**
27. Previous Attorney General nominees, including your predecessor, agreed to seek and follow the advice of career ethics officials about questions of recusal that may arise during service in the Justice Department.
- a. **If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of the companies — private and public, including parent companies, subsidiaries, and related entities — for which you have served on the board of directors or advisors? These companies include Och-Ziff Capital Management Group, LLC; Dominion Energy, Inc.; Time Warner, Inc.; Holcim (US) Inc. and Aggregate Industries Management, Inc.; Selected Funds; and Dalkeith Corporation.**
 - b. **If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of your legal and consulting clients, including but not limited to Caterpillar and Credit Agricole?**
 - c. **If you will not commit to following the advice of career ethics officials, will you commit to providing to Congress the advice that they provided to you along with an explanation of why you are not following their advice?**

28. According to the ethics agreement prepared by the Justice Department's Justice Management Division on January 11, 2019, you agree if confirmed to "not participate personally and substantially in any particular matter involving specific parties in which" the law firm Kirkland & Ellis "is a party or represents a party," unless you first receive authorization to participate. That prohibition applies for a period of one year after your resignation from Kirkland.
- a. **If confirmed, will you commit to following this agreement even if it applies to investigations conducted by Special Counsel Mueller?**
 - b. **If confirmed, will you commit to following this agreement even if it applies more broadly to investigations into potential interference in the 2016 Presidential election, including but not limited to investigations into collusion and/or obstruction of justice?**
29. During your confirmation hearing to be Attorney General in 1991, you said that the right to privacy in the Constitution does not "extend[] to abortion" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-505, Pt. 2, *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General* (Nov. 12, 1991) at p. 63) In a June 1992 hearing before the Senate Judiciary Committee, you echoed these comments and said the Supreme Court's 1992 decision in *Planned Parenthood v. Casey* "didn't go far enough" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-1121, *Proposed Authorizations for Fiscal Year 1993 for the Department of Justice* (June 30, 1992) at p. 47) At the time you made these remarks *Roe v. Wade* had been established precedent for 18 years. *Roe v. Wade* is now more than 40 years old and has survived more than three dozen attempts to overturn it.
- a. **Is *Roe v. Wade* settled law? Do you still believe that *Roe v. Wade* should be overruled?**
 - b. **Do you believe that the Due Process Clause of the Fourteenth Amendment includes a right to privacy?**
30. As Attorney General, you argued that it was proper for the Justice Department to urge the Supreme Court to overturn established precedent. You said that "urging the Court to reconsider a prior decision serves the executive branch's obligation to the Constitution, without diminishing the Court's constitutional role." (15 CARDOZO L. REV. 31 (1993)).
- When is it proper for the Justice Department to urge the Court to overturn precedent? What factors should the Department take into account before urging the Court to overturn precedent?**
31. During an appearance on CNN in July 1992, while you were Attorney General, you said "I think this [Justice] Department will continue to do what it's done for the past 10 years

and call for the overturning of *Roe v. Wade* in future litigation.” (Evans and Novak, CNN Television Broadcast (July 4, 1992))

- a. **Will you commit to ensuring that the Department of Justice does not call for reconsideration and overturning of *Roe v. Wade*, if you are confirmed as Attorney General?**
- b. **Will you commit to ensuring that the Department does not seek ways, short of overturning *Roe*, to limit reproductive rights?**

32. At your confirmation hearing, Senator Blumenthal asked whether you would defend *Roe v. Wade* if it were challenged. You responded that “usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that.” (S. Hrg, *Confirmation Hearing on the Nomination of William Barr to Be Attorney General* (Jan. 15, 2019) Tr. at 145)

- a. **If confirmed, will you ensure that the Justice Department defends *Roe v. Wade* in court?**
- b. **Will you ensure that the Department does not argue that state restrictions do not constitute a “substantial burden” on a woman’s right to abortion?**

33. At any point before or after your nomination to be Attorney General, has anyone from the Trump Administration discussed with you your views on *Roe v. Wade*? If so, please describe these discussions, including when they took place, who was involved, and what was discussed.

34. In the summer of 1991, while you were Deputy Attorney General, the anti-choice group Operation Rescue organized a six-week long protest of three abortion clinics in Wichita, Kansas. The protests resulted in 2,600 arrests. Judge Patrick Kelly, a federal district court judge in Kansas, entered a preliminary injunction barring Operation Rescue and its protestors from blocking access to abortion clinics and physically harassing staff and patients. The Justice Department intervened in the litigation on behalf of Operation Rescue and sought to stay Judge Kelly’s preliminary injunction order.

According to news reports, the Justice Department argued that the abortion clinics had not demonstrated that they would prevail in their lawsuit and that the specific requirements of the order intruded on the Marshals Service’s discretion to enforce court orders. Although Judge Kelly granted the Justice Department’s request to intervene in the lawsuit, he reportedly said he was “disgusted by this move” and he characterized the Justice Department’s involvement as political. (*U.S. Backs Wichita Abortion Protestors*, ASSOCIATED PRESS (Aug. 7, 1991))

During this time, the Justice Department was involved in a similar case in Virginia – *Bray v. Alexandria Women’s Health*. This case concerned a lawsuit by several abortion clinics to prevent protesters from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protesters.

Please describe the nature and extent of your involvement in cases involving abortion clinic protests – including the Kansas and Virginia cases mentioned above – during your tenure as Deputy Attorney General and Attorney General under President George H.W. Bush.

35. There has been significant reporting about young migrants being forced to appear in immigration court hearings without adequate representation. For example, there have been reports of toddlers sipping milk bottles as they defend themselves in immigration court without their parents or guardians. (Sasha Ingber, *1-Year-Old Shows Up in Immigration Court*, NPR (July 8, 2018)) Courts have consistently held that anyone on United States soil is protected by the Constitution’s right to due process. (*See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to [the] constitutional protection” in the Fifth and Fourteenth Amendments))
- a. **Are toddlers receiving due process when they appear alone in immigration court?**
 - b. **If confirmed, what specific steps will you take to ensure that minors are adequately represented in immigration court proceedings?**
36. At your hearing, Senator Durbin discussed the zero-tolerance policy implemented by then-Attorney General Sessions that led to the separation of over 2,000 children from their parents at the Southern border. Specifically, he asked you whether you agree with the zero-tolerance policy decision. You acknowledged that the Administration walked back its family separation policy in a June 2018 executive order, but you did not directly answer Senator Durbin’s question.
- a. **Do you agree with the Zero Tolerance policy?**
 - b. **Do you agree with separating children from their parents when they arrive in the United States? If yes, why? If not, why not?**
 - c. **If confirmed, will you commit that the Justice Department will not continue, reinstate, and/or defend policies that lead to family separations?**
37. If confirmed, will you enact policies that restrict asylum law or lead to prolonged or indefinite detention of children and families? Such policies include changing the definition of “particular social group” to exclude families or forcing parents to choose

between being detained with their children and being separated but allowing their children to apply for asylum.

38. President Trump has determined that asylum seekers who have already filed asylum claims within the United States will be forced to wait in Mexico while their claims are adjudicated. In Mexico, many of these asylum seekers, including small children, have no fixed address, but instead camp out in stadiums or on the street.

An asylum seeker who demonstrates a credible fear of persecution must receive an opportunity to make his or her case before an immigration judge. This means the asylum applicant will need to receive documents from the Justice Department, including hearing notices, in Mexico, where they have no fixed address and where legal requirements for service of documents differ from the requirements for service in the United States.

How will the Justice Department ensure that asylum seekers with no fixed address in Mexico receive notice of the time and place of the hearings before the immigration judge, and receive documents regarding their case, including notices of changes in the Immigration Court calendar?

39. At your hearing, Senator Hirono asked whether you believe the 14th Amendment to the U.S. Constitution guarantees birthright citizenship. You responded that you “have not looked at that issue.” The Citizenship Clause of the 14th Amendment states that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”
- a. **Do you agree that the 14th Amendment to the U.S. Constitution guarantees birthright citizenship? If not, on what basis did you reach that conclusion?**
 - b. **Do you agree that a child born in the United States to undocumented parents is a citizen of the United States? If not, on what basis did you reach that conclusion?**
40. Last October, President Trump announced plans to prepare an executive order ending birthright citizenship. **Do you believe the President has the authority to nullify birthright citizenship by executive order?**
41. A longstanding principle of U.S. asylum law is that a group of family members constitutes the “‘prototypical example’ of a particular social group” *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985). Nonetheless, the Acting Attorney General referred an immigration case to himself and asked the parties to brief “whether, and under what circumstances, an alien may establish persecution on account of membership in a particular social group under 8 U.S.C. 1101(a)(42)(A) based on the alien’s membership in a family unit.” (*Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018)) **If confirmed, will you review the grounds for certifying this question to the Attorney General and, if you agree with the decision to do so, explain the basis for that decision to this Committee?**

42. Under federal law, fugitives cannot legally purchase or possess guns. I am deeply troubled that the Justice Department has now issued guidance that forced the FBI National Instant Criminal Background Check System database — also called NICS — to drop more than 500,000 names of fugitives with outstanding arrest warrants. I know that local law enforcement shares these concerns. Apparently, the FBI was forced to drop these names because the Justice Department has further narrowed the definition of “fugitive” to include only those who cross state lines to avoid prosecution.

a. If confirmed, will you commit to reviewing the Justice Department’s decision about who qualifies as a “fugitive”?

b. Do you think this decision put public safety at risk? Why or why not?

43. Following the murders of nine churchgoers at Emanuel AME church in South Carolina in 2015, the FBI admitted it did not properly obtain information regarding the gunman’s drug arrest record, which should have prohibited him from buying a handgun. Because the FBI had not received the correct information within 3 days, the dealer was legally permitted to complete the sale to the gunman. As a result, 9 were killed.

Would you support extending or eliminating the three-day requirement that allows a gun dealer to transfer a gun without a completed background check? If not, please explain why you would not support this change.

44. I am increasingly concerned about legislation that would imperil police officers in California and nationwide, specifically a proposal to force every state to recognize concealed-carry permits issued by other states, even those states that have less stringent standards for issuing concealed carry permits. Major national law enforcement organizations, such as the International Association of Chiefs of Police and the Major Cities Chiefs Association, have recognized how dangerous such a proposal would be for officers nationwide.

a. Do you believe the Second Amendment requires California to recognize a concealed-carry permit from Alabama or Texas? Do you believe that this is required by any other constitutional provision? Please provide a yes or no answer and explain your reasoning.

b. What is your position on legislation that requires one state to recognize concealed-carry permits issued by other states? Please explain the basis for your views.

45. The Administration recently issued a regulation to ban bump stocks, which essentially transform semi-automatic rifles into machineguns. In 2017, bump stocks enabled the shooter in Las Vegas to carry out the most catastrophic mass shooting in American history. That regulation, however, has now been challenged in court, and it may not be

upheld. A law, however, would not be vulnerable to the same sort of challenge. **If confirmed, do you commit to support legislation to ban bump stocks?**

46. Many domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are still able to stockpile an arsenal of firearms and ammunition. That is despite being prohibited from possessing firearms or ammunition under federal firearms law. Local domestic violence programs often attempt to help victims by seeking enforcement of federal law and removal of the firearms, but they are unable to get assistance from the Department of Justice and other federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer number of firearms in the possession of domestic violence offenders.

If you are confirmed, how will the Department of Justice improve its response to cases like these, which are likely to lead to homicides, and what kind of resources will you devote to make sure that guns are not as accessible to domestic abusers?

47. We are at an important moment in our nation with regarding to addressing sexual assault and the MeToo movement. **If confirmed as Attorney General, what will the Department of Justice's role and priorities be with regards to addressing sexual assault through the Office on Violence Against Women and the Office for Victims of Crime?**
48. If confirmed as Attorney General, will you commit to working with Congress to reauthorize the Violence Against Women Act, including improvements to support the national response to domestic violence, dating violence, sexual assault, and stalking?
49. As Attorney General, you will be responsible for enforcing the landmark Voting Rights Act, which has proven instrumental to expanding the right to vote for all Americans, and minorities in particular. But with its 2013 decision in *Shelby County v. Holder*, the Supreme Court gutted the law by severely limiting the ability of the Justice Department to block discriminatory voting laws from taking effect in states with a history of limiting minority voting rights. This majority based its decision on its conclusion that “the conditions that originally justified these measures no longer characterize voting” in states with a history of discriminatory voting practices.
- a. **Do you agree that “the conditions that originally justified [the application of preclearance provisions in the Voting Rights Act to certain states] no longer characterize voting” in states with a history of discriminatory voting practices?**
 - b. **If confirmed, would you support legislation to restore the preclearance provisions struck down by the Court in Shelby County?**
50. On October 20, just weeks before the 2018 election, President Trump tweeted: “All levels of government and Law Enforcement are watching carefully for VOTER FRAUD,

including during EARLY VOTING.” (President Donald Trump, (@realDonaldTrump), Twitter (Oct. 20, 2018, 8:36 AM)) And the day before the election, President Trump said: “All you have to do is go around, take a look at what’s happened over the years, and you’ll see. There are a lot of people — a lot of people — my opinion, and based on proof — that try and get in illegally and actually vote illegally.” (Amy Gardner, *Without evidence, Trump and Sessions warn of voter fraud in Tuesday’s elections*, WASHINGTON POST, (Nov. 5, 2018))

Are you aware of any evidence that “a lot of people” vote illegally? If not, are you concerned about statements like this undermining the public’s faith in election results?

51. Remarkably, in Texas, a voter can show a handgun license to vote, but not a student ID. And in Georgia, the name on a voter registration form must be identical to the applicant’s name as it appears on his or her ID. Any minor discrepancy or clerical error — for example, a hyphen on the voting application that does not appear on the ID — could be grounds for blocking voters from registering or for kicking voters off of the voting rolls. (Janell Ross, *It’s Time for a New Voting Rights Act*, THE NEW REPUBLIC (Nov. 13, 2018))
 - a. **What is the basis to allow someone to vote if they show a handgun license, but not a student ID?**
 - b. **Is a minor discrepancy between a voter registration form and a photo ID— for instance, a hyphen in the name on a voting application that does not appear on the voter’s ID — a valid reason to purge a registered voter from the voting rolls?**
52. Under longstanding policy, the Justice Department will defend the constitutionality of any statute so long as a reasonable argument can be made in its defense. Attorney General Sessions concluded that no reasonable argument could be made in defense of the ACA and, specifically, the ACA’s guaranteed-issue provision. During your confirmation hearing, you told Senator Harris that if you are confirmed, you “would like to review the Department’s position” in *Texas v. United States*, which challenges the ACA’s constitutionality. You also said that you were open to reconsidering the Department’s position in the case. (S. Hrg. Confirmation Hearing on the Nomination of William Barr to Be Attorney General (Jan. 15, 2019) Tr. at 301)
 - a. **Will you commit, if confirmed, to notifying Congress when you start and when you complete your review of the Department’s position in *Texas v. United States*? Will you commit to notifying Congress what the basis is for your decision?**
 - b. **If confirmed, do you commit to consulting with career Justice Department attorneys before making any final decision as to the Department’s position in the case?**

53. The Justice Department announced in October 2018 that it planned to close the San Francisco field office of the Environment and Natural Resources Division. This office has focused on enforcing environmental laws and protecting public resources on the West Coast, particularly in California. I am deeply concerned that the closure of this office will allow polluters in California to avoid complying with our environmental laws.

If confirmed, will you commit to seeing if an alternative location can be identified to keep the office in Northern California?

54. You served in the Department of Justice at the time the Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush, on July 26, 1990. As you know, the ADA received broad, bipartisan support, passing the Senate by a vote of 91-6 and the House of Representatives by a vote of 377-28. When he signed the ADA, President Bush said the following: "Today we're here to rejoice in and celebrate another 'independence day,' one that is long overdue. With today's signing . . . every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom." (*Remarks of President George Bush at the Signing of the Americans with Disabilities Act*, (July 26, 1990)) But, of course, that equality, independence, and freedom depend on vigorous enforcement of the ADA.

If confirmed, what specific steps will you take to ensure that the ADA is vigorously enforced?

55. I have long been a proponent of funding for anti-methamphetamine programs. I established the COPS Anti-Methamphetamine grants program in 2014 and later supported its authorization in the Substance Abuse Prevention Act. In 2018, 9 states were awarded COPS Anti-Methamphetamine grants, totaling more than \$7 million. These funds go to state law enforcement agencies and enable them to participate in meth-related investigative activities.

In fiscal year 2018, the Justice Department's budget proposed eliminating funding for this program. Given the increase in methamphetamine related deaths, if you are confirmed as Attorney General, will you commit to prioritizing and requesting funds for this program?

56. It is well established that former Attorney General Sessions opposes the legalization of marijuana, regardless of whether it is for medical or recreational purposes. In January of last year, he issued a memorandum to U.S. Attorneys, titled "Marijuana Enforcement." In this memo, the former Attorney General rescinded what is known as the "Cole Memorandum," which allowed states to implement their own marijuana laws without fear of federal interference, provided that they were in compliance with eight priority enforcement efforts.

In rescinding this memo, the Attorney General maintained that opioids and fentanyl, not marijuana, were the Department's primary focus. I agree that other drugs of abuse should be prioritized over marijuana, and do not want to see Californians arrested if they are acting in compliance with State law.

You discussed this issue with Senator Booker at your confirmation hearing, when you said the following: "I am not going to go after companies that have relied on the Cole Memorand[um]. However, we either should have a Federal law that prohibits marijuana everywhere – which I would support myself because I think it is a mistake to back off on marijuana. However, if we want a Federal approach, if we want States to have their own laws, then let us get there and let us get there the right way." (Hearing Tr. at 171) To clarify your position, please answer the following questions:

What is your position on the legalization of marijuana, whether for medical or recreational purposes?

57. In August 2016, the Department of Justice posted a notice in the Federal Register to solicit applications for the bulk manufacture of marijuana, intended to supply legitimate researchers in the United States. I understand that 26 applications, including 3 from California, were submitted in response. It has now been almost 3 years, and the Department has failed to take action on any of these applications. This delay could hinder important research that may lead to the development of FDA-approved drugs. (*Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States*, Federal Register (Aug. 12, 2016))

I asked former Attorney General Sessions about this delay on multiple occasions - both in questions for the record and through staff contact – and still have yet to receive a response as to when a final decision will be made on these pending applications.

If you are confirmed, will you commit to taking immediate action on these applications?

58. Studies by the National Institute of Justice have found that drug courts are more effective in reducing rates of recidivism among offenders and cost less per participant as compared to the traditional criminal justice system. (*Do Drug Courts Work? Findings from Drug Court Research*, National Institute of Justice)

Do you support drug court programs, and if confirmed, will you prioritize funding for these programs?

59. On March 26, 2018, Commerce Secretary Wilbur Ross issued a memorandum directing the Census Bureau to add a question on citizenship status on the 2020 Census. Secretary

Ross said that this question was requested by the Justice Department, which argued that the information is needed to enforce the Voting Rights Act (VRA). (Memorandum from Secretary Ross to Karen Dunn Kelley (Mar. 26, 2018))

The Census Bureau's decision is currently being challenged in *New York Immigration Coalition v. United States Department of Commerce*. As part of that case, John Gore, the then-Acting Assistant Attorney General for the Civil Rights Division, was recently deposed. In his deposition, Mr. Gore was asked the following: "You agree, right, Mr. Gore, that [citizenship] data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts?" Mr. Gore responded: "I do agree with that. Yes." (Gore Dep. Tr. at 300, *New York Immigration Coalition v. United States Dept. of Commerce*)

- a. **Do you support the inclusion of a question on citizenship in the Census? If so, why?**
 - b. **Do you agree with Mr. Gore that citizenship "data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts"? If not, on what basis do you disagree with his assessment?**
60. According to Mr. Gore, after the Census Bureau received the Justice Department's request to add a citizenship question, the Census Bureau suggested that there might be a method *other* than a citizenship question to get citizen voting age population data — also known as CVAP data — to the Justice Department for purposes of VRA enforcement. (Gore Dep. Tr. at 264-265) The Census Bureau's plan, as detailed by the Census Bureau's acting director, Dr. Ron Jarmin, in an email to Justice Department officials, was to "utilize[e] a linked file of administrative and survey data the Census Bureau already possesses," rather than to add a citizenship question. According to Dr. Jarmin, this approach "would result in higher quality data produced at lower cost." (Email from Ron S. Jarmin to Arthur Gary re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 22, 2017)) The Justice Department rejected Dr. Jarmin's offer to meet. According to Mr. Gore, Attorney General Sessions personally directed Mr. Gore to deny the meeting request. (Gore Dep. Tr. at 274 ("Q. And who informed you that the Department of Justice should not meet with the Census Bureau to discuss the Census Bureau's alternative proposal for producing block-level CVAP data? A. The Attorney General."))
- a. **Should the Justice Department have the best available data for purposes of enforcing the Voting Rights Act? If not, why not?**
 - b. **If confirmed, do you commit to allowing the Justice Department to meet with the Census Bureau to discuss the Bureau's views as to how to provide the best citizenship data?**

Nomination of William P. Barr to be Attorney General of the United States
Questions for the Record
January 31, 2019

FOLLOW-UP QUESTIONS FROM SENATOR FEINSTEIN

1. In the Questions for the Record, you were asked whether you had “discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?” (Feinstein QFR 1(a)) You responded that you “*recall having general discussions about the possibility that any Special Counsel report may include categories of information that could be subject to certain privileges or confidentiality interests, including . . . information subject to executive privilege.*” You also wrote: “*I do not recall any discussions regarding the use of executive privilege to prevent the public release of any such report.*” (Barr Response to Feinstein QFR 1(a))

You did not indicate with whom you had these general discussions; when those discussions or occurred; or what you discussed as requested.

- a. **Please identify the individual or individuals with whom you had the discussions you referenced. Please state their names and titles/positions.**
 - b. **Please identify the date(s) when they occurred.**
 - c. **Please identify what was discussed.**
 - d. **Did you discuss whether information from Mueller's report may not be provided to Congress or the public (based on privilege, confidentiality, or any other basis) with anyone? If so, what specifically was discussed, when, and with whom?**
 - e. **You acknowledged in your response that you did discuss executive privilege, but said you could “not recall any discussions regarding the use of executive privilege to prevent the public release of any such report.” What specifically did you discuss with respect to executive privilege?**
2. In the Questions for the Record, you were asked for specific details regarding the drafting and dissemination of your June 2018 Mueller memo. (Feinstein QFR 5). You provided a general narrative that covered some of the requested details, but failed to disclose others.
- a. **You responded that before you wrote the memo, you spoke with Deputy Attorney General Rosenstein “at lunch in early 2018” and with Assistant Attorney General Steven Engel “later, on a separate occasion.” For each of these discussions, please explain the circumstances, including who initiated the meeting or discussion and what specifically was discussed.**

- b. You also responded that, after you wrote the memo, you provided copies to lawyers for the President. Specifically, you say you sent a copy to Pat Cipollone and discussed the issues raised in your memo with “*him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow.*”
- i. **When did your conversations with Mr. Cipollone take place? If he was not yet serving as White House Counsel, were you aware that he was under consideration for that position? Please also explain who initiated these conversations, who else was present, and what specifically was discussed.**
 - ii. **With regard to your discussions with Marty and Jane Raskin and Jay Sekulow, please similarly explain when these conversations took place, who initiated these conversations, who was present, and what specifically was discussed.**
 - iii. In your letter to Senator Graham (dated January 14, 2019 and referenced in your response), you list Abbe Lowell, who has been representing Jared Kushner in the ongoing Russia investigation, as someone to whom you gave your memo and discussed your views. **Please explain when you gave Mr. Lowell the memo or discussed it with him, who initiated these contacts, who was present for these discussions, and what specifically was discussed. Was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed.**
 - iv. Your letter to Senator Graham also lists Richard Cullen, who has been representing Vice President Pence in the ongoing Russia investigation, as someone to whom you gave your memo and discussed your views. **Please explain when you gave Mr. Cullen the memo or discussed it with him, who initiated these contacts, who was present for these conversations, and what specifically was discussed. Was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed**
 - v. **Have you shared a copy of or discussed your memo with any other individual who is currently or has represented clients in connection with the Mueller investigation? If so, with whom? Please also explain who initiated the meeting or discussion, and what specifically was discussed.**
 - vi. Your letter to Senator Graham also lists Jonathan Turley, a law professor who testified at your hearing, and George Terwilliger, a former colleague of yours at the Justice Department, as individuals to whom you gave your memo and discussed your views. **Did you discuss with either Professor Turley or Mr. Terwilliger whether they would testify regarding your**

memo, or defend you or the memo in another context such as a publication, or otherwise?

- vii. Have you ever discussed your June 8, 2018 memo with Vice President Pence? If so, when, who initiated the conversation, and what specifically did you discuss? In any discussions with Vice President Pence, was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed.**
3. Previously, you were asked whether you would “specifically commit to timely responding to minority requests” and “not just requests from a Chair or members of the majority.” (Feinstein QFR 16(a)) You responded in relevant part: *“I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department’s law enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department’s Office of Legislative Affairs.”* (Barr Response to Feinstein QFR 16(a))

As you may know, on June 7, 2017, then-Chairman Grassley wrote a letter to the President expressing his strong disagreement with conclusions in the OLC memo dated May 1, 2017. Then-Chairman Grassley stated that the OLC memo “falsely asserts that only requests from committees or their chairs are ‘constitutionally authorized,’ and relegates requests from non-Chairmen to the position of ‘non-oversight’ inquiries — whatever that means.” (June 7, 2017 Letter from Chairman Grassley to President Trump) In response, former White House Director of Legislative Affairs Marc Short wrote that “the OLC Letter was not intended to provide, and did not purport to provide, a statement of Administration policy.” Mr. Short also wrote that “[t]he Administration’s policy is to respect the rights of all individual Members, regardless of party affiliation, to request information about Executive Branch policies and programs. The Administration will use its best efforts to be as timely and responsive as possible in answering such requests consistent with the need to prioritize requests from congressional Committees” (July 20, 2017 Letter from WH Director of Legislative Affairs Marc Short to Chairman Grassley)

- a. Do you agree with Mr. Short’s statement that the May 1, 2017 OLC opinion is not a statement of Administration policy?**
- b. If confirmed, what specific policy will you follow with regard to requests from the minority?**
- c. Given the May 1, 2017 OLC opinion, and the White House letter of July 20, 2017, will you specifically commit to timely responding to minority requests, if you are confirmed, and not just to requests from a Chair or members of the majority?**

4. Previously you were asked whether you had “spoken with anyone about possible recusal from the Special Counsel’s investigation? If so, with whom, when, and what was discussed?” (Feinstein QFR 20) You responded that you “*discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest.*” (Barr Response to Feinstein QFR 20) But you did not identify the specific individuals or what was discussed, including whether you were provided with any advice regarding your potential recusal from the Mueller investigation.
- a. **Please identify the individual or individuals within the Justice Department with whom you had these discussions. Please state their names and titles/positions.**
 - b. **Please identify the date(s) when you had these discussions.**
 - c. **Please identify what was discussed with respect to possible recusal from the Mueller investigation, including whether anyone provided any advice about your possible recusal from this investigation.**
5. In Questions for the Record, you were asked whether “you still believe that *Roe v. Wade* should be overruled.” (Feinstein QFR 29(a)) You responded that *Roe* “*is precedent of the Supreme Court and has been reaffirmed many times,*” adding: “*I understand that the Department [of Justice] has stopped, as a routine matter, asking that Roe be overruled.*” (Barr Response to Feinstein QFR 29(a))
- a. **Please clarify whether you believe that *Roe v. Wade* should be overruled. If so, on what basis?**
 - b. **Please clarify whether, if confirmed, you will seek to ask for *Roe* to be overruled.**
6. In Questions for the Record, you were asked: “*In your view, what are the options for holding a president accountable for abuse of the pardon authority?*” (Feinstein QFR 12(e)) You did not respond to this question. **Please clarify, in your view, what are the options for holding a president accountable for abuse of the pardon authority?**
7. You were previously asked a question about enforcement of the Americans with Disability Act (ADA): “If confirmed, what specific steps will you take to ensure that the ADA is vigorously enforced?” (Feinstein QFR 54) You responded: “*If confirmed, I will enforce all federal civil rights law enacted by Congress, including the ADA.*” (Barr Response to Feinstein QFR 54) **Please identify the specific steps you will take, if confirmed, to enforce the ADA. Please provide details about enforcement under both Titles II and III.**

Senator Grassley's Questions for the Record for Attorney General Nominee William Barr

1. At the hearing, I pointed out my concerns about concentration and consolidation in the health care industry and my concerns about the high cost of drugs. I have written and expressed my concerns to the Department of Justice (DOJ) Antitrust Division about certain mergers, and have raised concerns with DOJ and the Federal Trade Commission (FTC) about certain practices in the health care and pharmaceutical industries that I have heard could be anti-competitive.

- a. If confirmed, will you make sure that the Antitrust Division carefully scrutinizes transactions and mergers in the health care and pharmaceutical industries? Will you make sure that the Antitrust Division looks into anti-competitive and abusive practices in these sectors that reduce choice and keep costs high for consumers?
- b. If confirmed, will you commit to ensuring that health care and prescription drug antitrust issues are a top priority for the DOJ?
- c. If confirmed, will you commit to collaborating with the FTC in their efforts in this area?

2. As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector. I believe that the Antitrust Division needs to dedicate more time and resources to agriculture competition issues. DOJ must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

- a. If confirmed, can you assure me that agriculture antitrust issues will be a priority for DOJ?

3. During consideration of the Hatch-Goodlatte Music Modernization Act (MMA), several colleagues and I inquired about the DOJ Antitrust Division's Judgement Termination Program, specifically as it relates to the consent decrees governing ASCAP and BMI, the two largest performing rights organizations. Because of concerns about the impact that a potential termination of these decrees would have on music industry stakeholders, DOJ assured us that there would be a process of timely consultation and substantial stakeholder input under which these consent decrees would be considered prior to any possible termination. The MMA also provides for congressional consultation and oversight of any DOJ action regarding these consent decrees.

- a. If confirmed, can you ensure that DOJ will provide this Committee with ongoing updates and meaningful advanced notice regarding any proposed modification or termination of the ASCAP and BMI consent decrees?
- b. If confirmed, will you commit to working closely with this Committee if DOJ decides to modify or terminate these consent decrees so that Congress can take any necessary legislative action prior to modification or termination of the decrees?

4. The *First Step Act* requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will lead to more inmates being put in prerelease custody, such as residential reentry centers (RRCs). That means we have to make sure that RRCs are appropriately funded.

- a. Will you commit to making sure that there is enough space in RRCs to meeting the needs of prisoners who qualify through earned and good time credits for prerelease custody?

5. The *First Step Act* requires the Bureau of Prisons (BOP) to recalculate good behavior credits for all inmates. Previously, inmates could earn up to 47 days per year toward early release for good behavior. The new law allows BOP to apply 54 days per year. However, it now seems BOP plans to delay this recalculation for months which could impact thousands of inmates who should be released under the new law. I don't see any reason to keep people in prison when the law clearly states they should be released.

- a. In your opinion, what are the justifications for delaying this recalculation and would you foresee any issues if Congress made this good time credit recalculation effective immediately?

6. Since 2007, DOJ has used the Justice Reinvestment Initiative to support states that want to take a fresh look at their sentencing and corrections systems in order to improve the public safety return-on-investment on each taxpayer dollar. The Department has supported these states as they implement policies to reinvest savings from reduced correctional populations into evidence-based programs that reduce recidivism, helping states to both cut costs and crime at the same time.

- a. Do you support the Justice Reinvestment Initiative and do you anticipate any modifications in its administration?

7. Over the years, Congress has appropriated billions of dollars to be used for DOJ grants. These grants are then awarded by DOJ to fund state, local, and tribal governments and nonprofit organizations for a variety of important criminal justice-related purposes. However, at times there have been reports of duplicative grant programs, as well as fraud and abuse.

- a. If confirmed, will you commit to working with this committee to remove these duplicative programs as well as root out waste, fraud, and abuse in DOJ grant programs?

8. Illegal drug traffickers and importers can currently circumvent the existing scheduling regime established in the Controlled Substances Act by altering substances in a lab, which thereby creates a drug that is legal but often dangerous. Under the Controlled Substances Act, an eight-factor analysis of a substance must be conducted to determine potential abuse and accepted medical use. Unfortunately, this is a time-consuming process. With the onslaught of dangerous synthetic drugs continuing to affect thousands of Americans, we must be more proactive and efficient in identifying and prosecuting cases with these substances.

a. What do you see as an effective way to address the increasing number of synthetic analogues that enter our country?

b. How can a balance be struck between analyzing drugs for medical use while protecting Americans from these substances' potential dangers and holding drug traffickers responsible for distributing synthetic drugs?

9. For nearly fifty years, the University of Mississippi has had the sole contract with the National Institute on Drug Abuse (NIDA) to grow cannabis for research purposes. To expand the number of manufacturers, the Drug Enforcement Administration (DEA) submitted a notice in the Federal Register on August 11, 2016, soliciting applications for licenses to manufacture marijuana for research purposes. However, over two years have passed without any new schedule I marijuana manufacturer registrations. Your predecessor, Attorney General Sessions, testified on April 25, 2018 at the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, stating that "[w]e are moving forward and we will add, fairly soon . . . additional suppliers of marijuana under the Controlled [Substances Act]." On July 25, 2018, I sent a letter with other Senators to Attorney General Sessions asking for an update on marijuana manufacturer applications.

a. Will you review this letter and assess the status of the pending marijuana manufacturer applications?

b. Do you intend to support the expansion of marijuana manufacturers for scientific research?

10. Along with Senator Feinstein, I introduced legislation that expands research into a derivative of marijuana known as cannabidiol, or CBD. The Food and Drug Administration (FDA) recently approved Epidiolex, whose main active ingredient is CBD. This FDA-approved drug has since been placed in Schedule V of the Controlled Substances Act. While this is a positive step and will provide a new treatment option for those with two types of intractable epilepsy, it is my understanding that this scheduling action relates only to CBD in an FDA-approved formulation. Senator Feinstein and I wrote to DOJ and Health and Human Services (HHS) on two occasions requesting that a scientific and medical evaluation of CBD be conducted. The first letter was sent on May 13, 2015, and the second letter was sent on November 18, 2018. Both DOJ and HHS agreed to conduct a medical and scientific evaluation of CBD independent of marijuana in 2015.

a. What is the status of this request?

b. What is the anticipated date of completion?

c. Do you view the substance CBD as in Epidiolex as a separate substance from CBD in marijuana?

d. Do you believe that marijuana-derived CBD is separate and distinct from hemp-derived CBD?

11. Today's global economy facilitates commerce and a strong American financial system. However, most money within global transactions flows through U.S. banks, which unfortunately makes our financial institutions prone to exploitation by terrorists, drug kingpins, and human traffickers who need to fund their operations. Congress has made efforts to strengthen our laws and make it more difficult for terrorists to move money. However, it has been almost 15 years since Congress took action and updated anti-money laundering laws.

- a. What do you see as the biggest challenges for DOJ in combatting money laundering in our current age of digital currency, global economies, and terrorist financing?
- b. What additional tools do you believe would be helpful in addressing money laundering?
- c. My bill, the *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act*, seeks to improve our nation's anti-money laundering laws. If confirmed, will you commit to working with me to pass meaningful legislation to address money laundering?

12. China recently stated that it plans to place all fentanyl-like substances on Schedule I in China. This could dramatically decrease the amount of fentanyl and its analogues that flow into the United States.

- a. What can you do in your role as Attorney General to ensure that China executes its promise to place these drugs in Schedule I?
- b. What can we do within our own borders to hold China accountable? Do you have any legislative recommendations?

13. DOJ is the administrator of immigration laws and the Attorney General has statutory authority to implement and execute these laws, including asylum claims. Over the past few years, we've seen the number of asylum claims filed increase drastically. As many as 80% of these claims are eventually denied as having no legal merit. At the same time, DOJ recently reported that the total asylum backlog exceeds 700,000 cases. 8 U.S. Code Section 1158 clearly states that grants of asylum should only be extended to those applicants who can show that their home country government persecuted them on the base of race, religion, nationality, membership in a particular social group, or political opinion. Last year, then-Attorney General Sessions took up the case of *Matter of A-B*, which restored asylum adjudications to original congressional intent, reversing an Obama-era decision to expand grounds of asylum without Congressional approval.

- a. What is your position for defining the threshold for an initial positive finding of credible fear and the grant of asylum?
- b. What are the implications for legitimate asylum seekers when our asylum backlog is in this dire state?
- c. If confirmed, will you commit to working with Congress to achieve meaningful bipartisan asylum reform?

14. Previous administrations have refused to prosecute many previously deported aliens who illegally re-entered the United States. If confirmed, will you prioritize felony illegal re-entry cases?

15. There's an ongoing debate about the legality of so-called "sanctuary jurisdictions." Can DOJ and federal law enforcement effectively do their jobs when states and cities across the country refuse to comply with the law?

16. Will you commit to enforcing immigration detainer statutes and regulations, and will you use all available tools at your disposal to encourage compliance?

17. In 2018, DOJ announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of

asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work.

- a. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

18. Current DOJ regulations give the Attorney General the discretion to release certain reports to the public concerning the work of a Special Counsel. If confirmed, will you commit to erring on the side of transparency in releasing information that's in the public interest?

19. In February 2018, then-Associate Attorney General Rachel Brand announced that DOJ would begin reviewing the fairness of class action settlements, pursuant to the Attorney General's authority under the Class Action Fairness Act of 2005 (CAFA)—a bill on which I was the lead sponsor. Congress passed CAFA with bipartisan support to push back against certain abuses in the class action system, particularly where lawyers were cashing in at the expense of class members. I was pleased to hear that DOJ began exercising its review authority under CAFA last year by filing statements of interest where certain proposed settlements appeared unfair to class members.

- a. If confirmed, will you ensure DOJ continues this work in protecting class members from unfair settlements?

20. Every day, the Americans with Disabilities Act (ADA) protects countless individuals with disabilities, ensuring physical access to "any place of public accommodation." For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.

- a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?
- b. More broadly, what other steps will you recommend DOJ take under your leadership to combat abusive litigation practices under the ADA?

21. In 2010, I authored a change to the False Claims Act that prevents the dismissal of a qui tam action if the government is in opposition to such dismissal and if the action is based on information that may have been publicly disclosed. The purpose of 31 U.S.C. 3730(e)(4) is to allow the federal government to maximize recoveries for taxpayers by using qui tam relators as a source of information regarding fraud about which the government may not be fully aware. Will you commit to use this provision to prevent unnecessary dismissals of meritorious qui tam cases, especially those where the affected agency supports the continuation of the litigation?

**Questions for the Record from Senator Kamala D. Harris
Submitted January 22, 2019
For the Nomination of**

William P. Barr, to be Attorney General of the United States

1. At your confirmation hearing, you agreed to follow the Special Counsel regulations in your handling of Robert Mueller's investigation into Russian interference in the 2016 election. Among other things, those regulations require the Attorney General to notify the House and Senate Judiciary Committees, with an explanation for each action upon conclusion of the Special Counsel's investigation.
 - a. **If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with the representations, descriptions, and summaries in your report(s) to Congress?**
 - b. **If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with any decision to withhold information from Congress, whether for privilege or otherwise?**

The regulations also state that the Attorney General may publicly release the Special Counsel's report, if release is in the public interest and to the extent that release complies with applicable legal restrictions.

- c. **If confirmed, what facts and principles will guide your decision about whether or not to publicly release the Special Counsel's report?**
2. In August 2017, the Justice Department began investigating Harvard University for its affirmative action policies. One year later, the Justice Department filed a statement of interest in a federal case opposing Harvard University's affirmative action policies.
 - a. **As a practical matter, do you believe that educational institutions are likely to be able to achieve meaningful racial diversity without recognizing and taking account of race?**

Senator Mazie Hirono**The Nomination of the William Barr to be Attorney General of the United States
Questions for the Record**

1. At your hearing you both told Senator Graham that you don't believe Robert Mueller would be involved in a "witch hunt," and expressed to me that you had sympathy for Donald Trump's calling it that.

You said, "the President is one that . . . has denied that there was any collusion and has been steadfast in that. . . . But I think it is understandable that if someone felt they were falsely accused, they would view an investigation as something like a witch hunt, where someone like you or me who does not know the facts, you know, might not use that term."

If you don't believe that Mr. Mueller would conduct an unfounded investigation, and if you know about the numbers of indictments and guilty pleas entered so far, why would you express sympathy for the President's insulting characterization of the Special Counsel's work?

2. **You mentioned that you had lunch with Deputy Attorney Rod Rosenstein and tried to sell him on your theory that a President can never obstruct justice if his actions are among those properly delegated to the Chief Executive, even if they have a corrupt intent. You described his reaction as "sphinx-like." Did you think that reaction was improper, given the fact that you were not a Department official and had no basis to be involved in the case? Are you implying he should have reacted more positively to you? Why?**
3. To explain why you provided unsolicited input to narrow the scope of Special Counsel Mueller's investigation – efforts that you noted were resisted by Deputy Attorney General Rosenstein – you asserted that you also "weighed in repeatedly to complain about the idea of prosecuting Senator Menendez" when your "friend . . . was his defense counsel."
 - a. **Do you think it is proper for non-Department of Justice (DOJ) officials, including former Attorneys General, to weigh in to seek to influence law enforcement decisions, particularly when such decisions have a personal benefit?**
 - b. **Should you be confirmed, how will you respond when others give you unsolicited input or seek to influence Special Counsel Mueller's investigation?**
4. In the 19-page unsolicited memo addressed to Justice Department officials that you distributed to Donald Trump's private and White House Attorneys, you argued that

“Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” and that “[i]t is inconceivable to me that the Department could accept Mueller’s interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President.” Despite making such strong and unequivocal assertions, you claimed you did not know many facts about Special Counsel Mueller’s investigation.

You testified at your hearing that you “do not recall getting any confidential information about the investigation.” Please review your emails, notes, and any other relevant materials. Having reviewed those materials, did you receive any confidential information about Special Counsel Mueller’s investigation? Do you recall getting any information whatsoever about the investigation from anyone? If you did, who gave it to you?

5. At your hearing, you mentioned two meetings you had with Donald Trump.
 - a. **Are those two meetings that you mentioned at the hearing the only times you have met with Donald Trump? If not, when else have you met with him? Where?**
 - b. **Have you had any telephone conversations with Donald Trump? If so, where? When?**
 - c. **Please tell us the details of all of your meetings and telephone calls with the President, including the following:**
 - Where were the meetings?
 - Who was present for the meetings and the phone calls?
 - How long did each meeting or phone call last?
 - What was discussed?
 - What promises, if any, did the President ask you to make?
 - Did the President ask for your loyalty?
 - Did he make any threats?
 - Do you have any notes from any of the meetings or phone calls?
 - Did anyone else in the meetings or on the phone calls take notes?
6. **The former head of the Office of Government Ethics, Walter Shaub, believes you were wrong in your testimony about government ethics rules. You testified that you would seek the opinion of ethics officials about whether or not you should recuse yourself from the Special Counsel’s investigation, but that you would not necessarily follow it. You reserved the right to ignore their advice and decide for yourself. Mr. Shaub points to 5 C.F.R. 2635.502(c), which requires you to follow the guidance of your designated agency ethics official. Is Mr. Shaub correct? If not, why not?**

7. In light of 5 C.F.R. 2635.502(c), will you commit to following the opinion of career ethics officials on whether or not you should recuse yourself from the Special Counsel's investigation?
8. You testified at your hearing that you think former FBI Director James Comey "is an extremely gifted man who has served the country with distinction in many roles," although you disagreed with some actions he took in the investigation of Hillary Clinton's emails. What do you think about the President's insults of Mr. Comey? The President has referred to the former FBI Director as "Leakin' James Comey," called him a liar multiple times, a "bad guy," a "slime ball," "slippery," and "shady."
9. At your hearing, you testified to Senator Cornyn that you "completely agree with" the memo Rod Rosenstein wrote justifying former FBI Director James Comey's firing.

But do you believe Donald Trump really fired James Comey because he was too harsh on Hillary Clinton, or because he didn't follow Department of Justice guidelines? Do you discount the other explanations Donald Trump has given – specifically, that he told Lester Holt of NBC on air that he fired Mr. Comey because of "this Russia thing;" and that he told the Russian Ambassador and Russian Foreign Minister in the Oval Office that he fired Mr. Comey, referring to the former FBI Director as "crazy, a real nut job," and saying, "I faced great pressure because of Russia. That's taken off."?

10. You told Sen. Feinstein at your hearing that you would "[a]bsolutely" commit "to ensuring that Special Counsel Mueller is not terminated without good cause consistent with Department regulations."

Would the President's displeasure with a lawful action by Special Counsel Mueller taken in accordance with Justice Department regulations constitute good cause?

11. You told Senator Durbin at your hearing that there is nothing wrong with an Attorney General taking a policy position that happened to have a political benefit to it. But do you agree that an Attorney General should not formulate policies just BECAUSE they are politically advantageous?
12. At your hearing, you told Senator Whitehouse that with respect to finding out the sources of payments to Acting Attorney General Whitaker, "my first consideration always is where do you – where do you draw the line, and also what are the implications for other kinds of entities because, you know, there are membership groups and First Amendment interests"

Why is that your FIRST consideration? What about transparency and confidence in the system? Shouldn't they be your first considerations in addressing conflicts of interests by the nation's top law enforcement official?

13. I asked you at your hearing whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment. You said you had not looked at the issue and that you would ask the Justice Department's Office of Legal Counsel to advise you on "whether it is something that is appropriate for legislation."

In 1995, Walter Dellinger, then-Assistant Attorney General for the Office of Legal Counsel testified in the House Judiciary Subcommittees on Immigration and Claims and on the Constitution that to change birthright citizenship the Constitution would have to be amended. See <https://www.justice.gov/file/20136/download>.

Now that you have had a chance to look at the Constitution, and read Mr. Dellinger's testimony, do you believe that birthright citizenship is guaranteed by the 14th Amendment?

14. When you were Attorney General for President George H.W. Bush, you recommended that he pardon people implicated in the Iran-Contra scandal. You told the Miller Center about it, saying, "I went over and told the President I thought he should not only pardon Caspar Weinberger, but while he was at it, he should pardon about five others. I favored the broadest — There were some people arguing just for Weinberger, and I said, 'No, in for a penny, in for a pound.' Elliot[t] Abrams was one I felt had been very unjustly treated."

President Bush issued the pardons you recommended, and they were widely viewed as having the effect of protecting the President and others from having to testify in any related cases. At the time the pardons were issued, Independent Counsel Lawrence Walsh, criticized them, and said, "The Iran-Contra cover-up, which has continued for more than six years, has now been completed."

- a. **Why did you recommend the Iran-Contra pardons?**
- b. **If confirmed, will you recommend that Donald Trump pardon any of the people who have already been convicted or have pleaded guilty under Special Counsel Robert Mueller's investigation or in related cases?**
- c. **Would you agree that pardoning anyone who is subject to a current indictment or will be subject to a future indictment by the Special Counsel could be seen as undermining the Special Counsel's investigation and an abuse of the President's pardon power?**

- d. **Do you believe it is proper for the President to use his pardon power to pardon his family members or any associates, businesses, foundations, campaigns, or organizations in which he has a personal interest?**
 - e. **Will you recommend Donald Trump pardon any of the people convicted, indicted, or under investigation by Special Counsel Robert Mueller or any of the related cases in other districts that relate to President Trump's business, foundation, campaign, inauguration, administration, family, or associates?**
15. At your hearing, you stated, "I will vigorously enforce the Voting Rights Act." The Trump administration has not brought a single lawsuit to enforce the Voting Rights Act. Moreover, the administration has actually withdrawn the Justice Department's claim against a Texas voter ID law that a federal district court judge found was enacted with discriminatory intent and reversed its position in a case by defending Ohio's voter purge efforts that Justice Sotomayor recognized "disproportionately affected minority, low-income, disabled, and veteran voters." In fact, career attorneys in the Civil Rights Division did not sign the amicus brief defending the voter purge efforts as they did the prior brief.
- a. **Since you agreed that you would "vigorously enforce the Voting Rights Act," should you be confirmed, will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?**
 - b. **Similarly, if confirmed, will you commit to investigating, evaluating, and reviewing those states and jurisdictions—including any that were formerly covered under the Voting Rights Act's preclearance system—that have passed voting laws that tend to hinder voter turnout to determine if they are, in fact, discriminatory, and to bring Section 2 claims under the Voting Rights Act for any that are found to have a discriminatory impact or purpose?**
 - c. **Should you be confirmed, will you commit to working with Congress to support a fix to Section 5 of the Voting Rights Act, which was nullified by the Supreme Court in *Shelby County v. Holder*?**
 - d. **If confirmed, will you commit to reviewing the decisions by the Justice Department to switch positions in the following two cases to determine whether customary processes for changing the government's position in a case were followed and what, if any, improper influences impacted those decisions? The two cases are: (1) *Veasey v. Abbott*, where the Department withdrew its claim that a Texas voter ID law was enacted with a discriminatory intent, despite a finding of discriminatory intent by a federal district court, and (2) *Husted v. A. Philip Randolph Institute*, where the Department reversed its position by defending Ohio's voter purge efforts under the National Voter Registration Act,**

even though Justice Sotomayor recognized such efforts “disproportionately affected minority, low-income, disabled, and veteran voters.”

16. After the Supreme Court’s decision in *Shelby County v. Holder*, many states passed voting restriction laws based on claims of going after voter fraud. But a 2014 study found a total of 31 credible allegations of voter fraud between 2000 and 2014 out of more than 1 billion votes cast.
- a. **Are you aware of any credible study that confirms that there was massive voter fraud, not election fraud, in either the 2016 or 2018 election?**
 - b. **Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?**
17. In a 2017 report entitled *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that “its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement’s mandates.” But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions’s memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.
- a. **Do you agree with the Civil Rights Division’s report that based on its experience, “court-enforceable consent decrees are most effective” in accomplishing complex institutional reforms in a transparent way that ensures accountability?**
 - b. **Despite the Civil Rights Division’s finding regarding the historical effectiveness of consent decrees, Mr. Sessions’s memo warns that “the Department should exercise special caution before entering into a consent decree with a state or local governmental entity.” Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you now agree that that Mr. Sessions’s memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.**
 - c. **At your hearing, you recognized that “the Department has a role in pattern and practice violations.” Please specify what role you believe the Civil Rights Division should play in pattern or practice violations.**

18. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department’s Civil Rights Division Vanita Gupta criticized this decision, saying “[e]nding programs that help build trust between police and the communities they serve will only hurt public safety.”

Under the Collaborative Reform Initiative for Technical Assistance program, local police departments involved in controversial incidents, such as police-involved shootings, would ask the COPS Office to investigate and issue public reports with recommendations.

- a. **If confirmed, will you reinstate this program?**
- b. **If confirmed, what steps will you take to support and promote community-oriented policing?**

19. The Washington Post published an article on January 3, 2019 that reported that a “recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” In 2015, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, affirmed that the Fair Housing Act protects against discrimination based on a disparate impact.

- a. **Do you believe that there are actions that can have a discriminatory impact regardless of intent? If so, how do you propose such actions should be addressed or remedied?**
- b. **Do you believe that a valid way to demonstrate discrimination is through a disparate impact analysis?**
- c. **If you are confirmed, will you continue this reported DOJ effort to change or remove disparate impact regulations related to enforcing civil rights laws?**

20. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard’s diversity admissions policies. When you worked for the Reagan administration you co-wrote a memo arguing that you “want[ed] a color blind society” and did not “embrace the kind of social engineering that calls for quotas, preferential hiring and the other approaches that do nothing but aim discrimination at other racial groups.”

- a. **Is it your view that policies that promote diversity are the same as discrimination against other racial groups?**

b. If confirmed, will you commit to not intervening in the Harvard lawsuit or others like it?

21. The Justice Department includes the Office on Violence Against Women (OVW), which currently administers 25 grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation. VAWA protects and provides services to survivors of dating violence, domestic violence, sexual violence, and stalking – four issues that impact people of all genders and sexual orientations. The law also prohibits discrimination on the “basis of actual or perceived race, color, religion, national origin, sex, gender identity..., sexual orientation, or disability.”

a. Do you believe that VAWA’s protections should be extended to LGBTQ survivors of violence more fully than the current level?

b. Should you be confirmed, how will you ensure that LGBTQ survivors of violence are included and represented in the services of OVW?

22. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims.

If you are confirmed, what steps would you take to support access for vulnerable victims to VAWA’s protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

23. Native Americans experience higher rates of domestic violence and sexual assault. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes.

Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Natives, and American Indian survivors of domestic violence and sexual assault?

24. When you left the Reagan Administration’s Domestic Policy Council, you talked derisively about women’s issues, calling feminist agenda items “pernicious” and saying, “I think the whole label women’s issues is a crock.”

a. Do you still believe issues of equality for women in the workplace and elsewhere are a “crock”?

b. Do you believe women are discriminated against?

c. What is your view of the “Me Too” movement?

d. What do you think the role of the Justice Department should be in ensuring equality for women, and ensuring harassment-free workplaces and industries?

25. At your hearing, Sen. Blumenthal asked you if you would defend *Roe v. Wade* if it were challenged. You responded, without answering his question, stating: “Would I defend *Roe v. Wade*? I mean, usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that.” You testified in 1992 that you believed the Supreme Court’s decision in *Planned Parenthood v. Casey* “didn’t go far enough” in allowing restrictions on abortions and that “*Roe v. Wade* should be overruled.” Currently there are efforts to effectively gut *Roe* by narrowing it. For example, in last March, Mississippi enacted one of the most restrictive abortion laws in the country – a ban on abortions after 15 weeks. In striking down the law, the federal judge observed: “The State chose to pass a law it knew was unconstitutional to endorse a decades-long campaign, fueled by national interest groups, to ask the Supreme Court to overturn *Roe v. Wade*.”

Should you be confirmed, if a case came before the Supreme Court or a lower court that presented the possibility of narrowing *Roe v. Wade*, would you have the Solicitor General or a DOJ component weigh in and argue for narrowing the scope of *Roe*, even if the case did not involve a federal statute or program?

26. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the United States. It has integrated people with disabilities into American life in ways they had not been before.

Last Congress, the House of Representatives passed H.R. 620, the “ADA Education and Reform Act of 2017,” which would remove most incentives for businesses to accommodate people with disabilities, and reward businesses for ignoring their responsibilities under the law. It was opposed by disability rights groups, and seen as a giant step backward for the country.

- a. Do you support these restrictions on the ADA’s protections?**
- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?**
- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?**

27. You criticized former Acting Attorney General Sally Yates for refusing to defend Donald Trump’s Muslim Ban because she did not think it was constitutional. But at your 1991 confirmation hearing, you told Senator Paul Simon that you would do the same. He asked you, “...would you automatically defend [a statute] even if you believe it is unconstitutional?” You responded, “No. In fact, I have told agencies I wouldn’t defend

regulations, not only if they raise constitutional questions, but if I don't think the regulation is consistent with Congress' intent. If the statute requires a certain action and if a regulation in my view is not consistent with the statute, then there is a legal problem with it."

Why did you criticize Sally Yates for doing what you told Senator Simon you would do?

28. More than a year after the 2016 election, you told the New York Times, "I have long believed that the predicate for investigating the uranium deal, as well as the foundation, is far stronger than any basis for investigating so-called 'collusion.'" Both Senator Leahy and Senator Blumenthal asked you about this at your hearing, but I found your answers unclear.
- a. **Can you explain clearly and succinctly exactly what you believed the predicate for investigating the "uranium deal" and the Clinton Foundation were?**
 - b. **What evidence did you have to support your contention?**
 - c. **Where did you get that evidence?**
 - d. **What evidence supporting an investigation into the Trump campaign's possible collusion with Russia were you comparing it to?**
 - e. **What was your standard for comparison?**
 - f. **Now that you're aware of all of the evidence of contacts and cooperation between Russian officials (many in Russian intelligence) and high-ranking officials of the Trump campaign (Paul Manafort, Jared Kushner, Donald Trump, Jr., and Rick Gates, to name a few), has your assessment of the strength of the predicate for investigating possible conspiracy changed?**
29. At your hearing, you promised Senator Graham you would "look in to see what happened in 2016."
- a. **What exactly have you agreed to investigate?**
 - b. **How will it be different from any existing investigations into what the FBI was investigating related to the 2016 elections?**
 - c. **How will it be different from the DOJ Inspector General's investigation into "Various Actions by the Federal Bureau of Investigation and the Department of Justice in Advance of the 2016 Election," on which a report was issued in June 2018?**

30. You also agreed at your hearing to look into a FISA warrant issued in relation to an investigation into Carter Page.

- a. **What exactly have you agreed to investigate?**
- b. **What evidence do you have to doubt the integrity of a decision made by the Foreign Intelligence Surveillance Court (FISC)?**
- c. **Do you think it is wise to launch a politically-motivated investigation into decisions by the FISC?**

31. If Donald Trump declares a national emergency based on the crisis he has manufactured at the southern U.S. border, will you defend it, should you be confirmed?

32. When I asked you at your hearing whether you agreed with former Attorney General Sessions's zero-tolerance policy that resulted in the separation of children from their parents, you replied that you "would have to see what the basis was for those decisions" to determine whether you agreed with the policy and would continue them if you were confirmed.

You then implied that family separations were no longer a problem because the Department of Homeland Security was currently not referring migrant families for prosecution and therefore, the Justice Department's policy of prosecuting all referrals for illegal entry under its zero-tolerance policy would not result in separating families.

- a. **What more information do you need to know about the zero-tolerance policy that resulted in the separation of more than 2,000 children from their parents in order to determine whether you agree with that policy and whether you would continue it, if confirmed?**
- b. **If the Department of Homeland Security changed course again and referred families for prosecution of illegal entry, would you continue the zero tolerance policy, knowing that it would result in children being separated from their parents?**
- c. **Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources? If yes, will you agree to provide the Senate Judiciary Committee a review of the impact of this policy on federal prosecutions across the Justice Department within 120 days, should you be confirmed?**

d. If confirmed, will you continue to implement former Attorney General Sessions's April 11, 2017 memo that directs federal prosecutors to highly prioritize the enforcement of immigration laws?

33. Former Attorney General Sessions took the unusual action of intervening in an individual asylum application and deciding the case himself as a way of making policy. Mr. Sessions used the case *Matter of A-B* to overturn legal precedent and longstanding policies by significantly restricting the ability of victims of domestic violence and gang violence to obtain asylum relief. A court eventually struck down many of these new policies and ordered the government to bring prior claimants back to the United States who have already been deported so they can pursue their asylum claims.

a. Should you be confirmed, will you comply with these court orders in a prompt manner?

b. Do you think it is appropriate for an attorney general to intervene in immigration cases in order to set policies that narrow asylum protections that immigration judges have recognized were established by Congress?

34. As you know, U.S. Immigration Courts operate as a component of the Department of Justice, which creates the possibility that Immigration Judges can be subjected to inappropriate political pressure. Moreover, former Attorney General Jeff Sessions decided to effectively subject Immigration Judges to quotas, which may make it difficult for these judges to review each case fully and fairly.

What is your view of how Immigration Judges ought to be categorized and treated?

35. When Sen. Ernst asked you at your hearing about legislation that requires Immigration and Customs Enforcement to detain an undocumented person who is charged with a crime resulting in death or serious injury, you stated that it "sounds like a very commonsensical bill" and "something that [you] would certainly be inclined to support."

a. When Donald Trump began separating families at the border he created hundreds of Unaccompanied Alien Children (UAC). These children, including infants, who did not speak English, were expected to represent themselves in court. Last year, I introduced, together with Senator Feinstein, the Fair Day in Court for Kids Act. It would require that legal counsel be provided for every Unaccompanied Alien Child. Studies show that when unaccompanied minors are represented by a lawyer, they are consistently more likely to show up for immigration court – in fact, a 2014 study found that 92.5% of children with counsel attended immigration proceedings. **Do you agree that providing children with legal counsel so that a child does not have to appear before a judge alone is commonsensical? Is that something that you would be inclined to support?**

b. Last year I introduced the Immigration Courts Improvement Act, which was endorsed by the National Association of Immigration Judges. The bill would eliminate the use of numerical completion goals as a measurement of how judges are doing their jobs

and would insulate them from the Attorney General's control, treating them like independent decisionmakers rather than as DOJ attorneys. **Do you agree that allowing Immigration Judges to act as independent decisionmakers and insulating them from inappropriate political pressure is commonsensical? Is that something that you would be inclined to support?**

36. In February 2018, the New York Times reported that former Attorney General Sessions had effectively shut down the Justice Department's Office for Access to Justice, even though he cannot officially close the office without notifying Congress. The purpose of that office is to promote fairness in the justice system and increase access to legal resources for indigent litigants.
- a. **If confirmed, what steps will you take to ensure that the justice system is fair for all Americans, regardless of whether they are poor or rich and regardless of their racial or ethnic background?**
 - b. **Will you commit to reinstating the Office for Access to Justice by reallocating resources to this office?**
37. **In 2006, you wrote a letter to the Speaker of the House of the Massachusetts legislature to urge increased funding for the Massachusetts Legal Assistance Corporation. Donald Trump has submitted two budgets in a row proposing to defund the Legal Services Corporation. Do you agree with the President's proposal to defund the Legal Services Corporation?**
38. The Department of Justice and its Office of Juvenile Justice and Delinquency Prevention enforce the Juvenile Justice and Delinquency Prevention Act that was passed in December 2018. The law bans states from holding children in adult jails even if they have been charged with adult crimes.
- Is it still your view that chronic or serious juvenile offenders should be treated like an adult and tracked through the traditional criminal justice system? If so, if confirmed, how would you implement the Juvenile Justice and Delinquency Prevention Act?**
39. **In a report you issued as Attorney General laying out 24 recommendations to combat violent crime, you called it a "flawed notion[]" that "success in reforming inmates can be measured by their behavior in prison." Is it still your view? Do you disagree with the approach taken by the First Step Act to expand the use of "good time" credits?**
40. The Tax Cuts and Jobs Act eliminated the income tax deduction for moving expenses for most people. Accordingly, reimbursements for moving expenses received by federal employees, such as FBI Special Agents who are required to relocate in connection with their service, are now considered income subject to taxation by the IRS. This can result in extra withholding and higher tax liability for government employees.

While the General Services Administration has taken action to give clear authorization for agencies to use the Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) to reimburse most federal employees for their extra tax liability, we are still hearing questions from Justice Department employees about whether the Department is doing everything in its power to offset the increased tax liability being faced by employees.

Given that many Justice Department employees are required to relocate in connection with their work, will you commit to using the WTA and RITA, and taking any other actions within your power, to provide timely reimbursements for employees who face increased tax liability as a result of reimbursed moving expenses?

41. In October 2018, The Washington Post published an article asserting that “Attorney General Jeff Sessions and Solicitor General Noel J. Francisco have repeatedly gone outside the usual appellate process to get issues such as the travel ban, immigration and greater authority for top officials before the justices.” The article argued that they aggressively bypassed the normal process of appealing lower court decisions to circuit courts, and tried to short-circuit the judicial process on the Trump administration’s “signature issues by seeking extraordinary relief from a reformed conservative Supreme Court.”
- a. **Do you believe this strategy is proper? Do you think such efforts to repeatedly bypass the normal judicial processes may erode public confidence in the judicial system?**
 - b. **Should you be confirmed, will you review the Trump administration’s efforts to bypass the appellate courts and jump directly to the Supreme Court and reconsider this strategy?**
42. In an op-ed published in The Washington Post on January 10, 2019, a former lawyer in the Justice Department’s Office of Legal Counsel (OLC) wrote:
- “[W]hen I was at OLC, I saw again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people. The failure took different forms. Sometimes, we just wouldn’t look that closely at the claims the president was making about the state of the world. When we did look closely, we could give only nudges. For example, if I identified a claim by the president that was provably false, I would ask the White House to supply a fig leaf of supporting evidence. Or if the White House’s justification for taking an action reeked of unconstitutional animus, I would suggest a less pungent framing or better tailoring of the actions described in the order.”

She further explained that she “occasionally caught [her]self fashioning a pretext, building an alibi” for the President’s “impulsive decisions.”

- a. **If you are confirmed, what steps will you take to prevent the Office of Legal Counsel from retroactively justifying the President's decisions or policies based on a pretext or a fig leaf of evidence?**
- b. **If you are confirmed and find that the Office of Legal Counsel has justified the legality of the President's decisions or policies based on a pretext or a fig leaf of evidence, will you agree to report such actions to the Senate Judiciary Committee?**

43. In a panel at Hastings Law School, you once said of judicial selection, "[o]f course you're picking them for their personal beliefs....I think political philosophy is an important part of what makes a judge."

If confirmed, will you recommend to judicial nominees – who are prepared for their hearings by Justice Department lawyers – that they answer questions posed by Senators about their personal beliefs? If political philosophy is an important part of what makes a judge, why should nominees be reluctant to discuss theirs?

44. **You also said at that Hastings event that you think the reason the President appoints judges is so the judiciary is "responsive to the popular will." Donald Trump has given a very large role in judicial selection to outside, non-governmental groups. In particular, he has chosen many of his lower court judges, and both of his Supreme Court justices, from a list compiled by the Federalist Society and the Heritage Foundation. Do you think the authors of the Constitution intended the judiciary to be responsive to the will of the Federalist Society and the Heritage Foundation?**

45. In your written statement, you state, "As Attorney General, my allegiance will be to the rule of law, the Constitution, and the American people." It does not appear that Donald Trump views the role of the Attorney General in that way. From the time he recused himself from the Russia investigation, former Attorney General Jeff Sessions became the target of merciless attacks by Donald Trump. Beginning in the summer of 2017, and continuing to the end of Mr. Sessions's tenure, Donald Trump questioned and mocked him on Twitter. He called Mr. Sessions "weak," "beleaguered," and "disgraceful." He is even reported to have asked his advisors, "Where's my Roy Cohn?" after being "perturbed by Attorney General Jeff Sessions's decision to recuse himself from supervising the investigation into the Trump campaign's relationship with Russia."

- a. **Do you think the President agrees with your vision of the Attorney General's duty?**

- b. If a conflict arises between your views of the Attorney General's role and that of the President, how will you maintain your allegiance "to the rule of law, the Constitution, and the American people"?**

**Senate Judiciary Committee - Questions for the Record from Senator John Kennedy
January 15, 2018**

Hearing entitled: "Attorney General Nomination"

Questions for The Honorable William P. Barr, nominated to be Attorney General of the United States

1. The 2014 Supreme Court Case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, addressed the use of disparate-impact as a theory for determining discriminatory practices. While the case addressed the Fair Housing Act, the analysis has applicability to the Equal Credit Opportunity Act and the banking regulators' use of disparate impact as a theory for determining discriminatory practices. The Court held that a disparate impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing the disparity.

The Department of Justice's 1996 memorandum on identifying lender practices that may form the basis of a pattern or practice referral remains in effect. The memo references a de minimis violation, which would be of pattern or practice referral that would return the investigation from the DOJ back to the referring agency. Will you commit, upon your confirmation, to expeditiously update the 1996 guidance and clarify what the DOJ views to be a de minimis violation?

2. President Trump just signed my bill called the JACK Act (Justice Against Corruption on K Street) into law. This bill requires lobbyists convicted of bribery, extortion, fraud and embezzlement to disclose it. The law falls short of prohibiting corrupt lobbyists from lobbying the government. Would you support a full prohibition on lobbying by those convicted of these crimes?
3. Last time you were here, you said in your hearing you would be in favor of an amendment banning certain types of semiautomatic rifles. You also said you "would prefer a limitation on the clip size." Will you uphold our second amendment rights as our Attorney General and have your views changed since that hearing?
4. In 2010, Live Nation and Ticketmaster completed a merger of the world's largest concert promoter and with the world's leading ticket provider. The consent decree--set to expire in 2020--was designed to increase competition and prohibit Live Nation from leveraging its market power in live entertainment to obtain primary ticketing contracts. There is little dispute that the consent decree has been unsuccessful meeting that goal. Since the merger, Live Nation Entertainment has solidified its dominant position in ticketing; some estimates suggest Ticketmaster controls 80% of primary ticketing. Today, its footprint extends beyond concert promotion and primary ticketing services to artist management, venue ownership, and secondary ticketing services. As the consent decree comes close to expiration, how will the Department of Justice be reviewing this matter? Do you think

that the consent decree should be extended? In what ways could the consent decree be modified to account for TM/Live Nation's increased anti-competitive behavior?

5. Last year the US Attorney for the Western District of Louisiana announced that three different illegal aliens were deported for the third time to Mexico and Honduras in November alone. How can we stop illegal aliens from reentering the country repeatedly, especially in cases where they are violent criminals? These deportations are costly and use our already limited resources. Would you support deported individuals' country of origin to pay for these efforts?
6. I arranged for several meetings with local officials and the Attorney General regarding New Orleans' sanctuary city status. The city of New Orleans and the Department of Justice entered into a consent decree to get the city into compliance. The decree stated that the city must notify ICE within 48 hours of releasing an undocumented immigrant from jail and it must allow ICE to interview an undocumented immigrant while in custody. It is my understanding that the city has made progress on the decree but is still not fully compliant. Would you be willing to take away grant funding to sanctuary cities that refuse to enforce federal law?

Senate Judiciary Committee
Hearing on the nomination of the Honorable William P. Barr to be
Attorney General of the United States
Questions for the Record
January 22, 2018
Senator Amy Klobuchar

Questions for the Honorable William Barr, nominee to be Attorney General of the United States

Recusal

During the hearing, you committed to consulting career ethics attorneys at the Department of Justice about whether to recuse yourself from overseeing the Special Counsel's investigation, although you did not commit to following their advice.

- Will you make public what the Department's ethics attorneys' recommendations are for any matter before the Department, including the Special Counsel's investigation?
- I asked whether attorneys at your law firm represented individuals or entities in connection with the Special Counsel's investigation. You told me that because you serve as Of Counsel at the firm, you would need to supplement your answer. Please do so here.

Special Counsel's Report

You have committed to make as much of the Special Counsel's report public as possible. Under 28 C.F.R. § 600.9(a)(3), the Attorney General must send a report to Congress documenting any instances where the Attorney General prohibited the Special Counsel from taking an action.

- Will you allow the White House or the President's personal lawyers to view or make changes to this report?
- Would Congress be within its rights to make some or all of this report public if the Department declined to do so?

Freedom of the Press

I asked you whether the Department of Justice, under your leadership, would ever jail reporters for doing their job. You referenced the Department's guidelines and responded that jail might be appropriate as a last resort. Under Attorney General Sessions, the Department initiated a process to revise the guidelines, which has not been finalized.

- Do you believe that the guidelines need to be changed?
- The current guidelines require the Department to issue an annual report on all subpoenas issued or charges made against journalists. Will you commit to keeping this in place?
- Will you commit to keeping the Judiciary Committee informed of any proposed changes to the guidelines before they are finalized?

Management of the Justice Department

This Administration has reversed its positions in an unprecedented number of cases. I am concerned about the long-term effects of this on the Justice Department.

- Several career lawyers at the Department declined to sign the briefs in the Texas Affordable Care Act case. If you had been Attorney General, would you have directed the briefs to be filed over their objections?

- A former Office of Legal Counsel lawyer wrote an op-ed in *The Washington Post* in which she described her job as “fashioning a pretext, building an alibi” for the White House’s decisions. How will you restore morale among the Department’s career civil servants?

Voting Rights

This Administration suggests that voter fraud is a major threat to the integrity of our elections, but a major *Washington Post* study found only 31 credible instances of voter fraud out of more than 1 billion votes cast over 14 years.

- Will you take an evidence-based approach to ensuring the integrity of our elections?
- Will you commit to enforcing Section 2 of the Voting Rights Act?

Antitrust

You and I had a lengthy talk about antitrust issues when we met, and I was glad to hear from you in our meeting that you are committed to renewed thinking about antitrust law.

- We have heard that the demands of merger enforcement have taken limited resources away from monopolization and other civil conduct cases. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust agencies get the resources they need to tackle both mergers and monopolization cases. Can I count on your support in getting this bill passed and implemented?
- I am concerned about mergers that allow companies to unfairly lower prices that they pay, as buyer power among employers has been linked to stagnant wages. My bill, the Consolidation Prevention and Competition Promotion Act, would forbid these kinds of mergers under the Clayton Act. If you are confirmed, how will you approach the problems posed by monopsonies?
- I have expressed concern regarding the effectiveness of merger consent decrees in protecting competition and consumers. That is why my bill, the Merger Enforcement Improvements Act, would require parties to a consent decree to provide post-settlement data, so that the agencies can measure the effectiveness of their remedies and make improvements. Would post-settlement data be helpful in determining what types of merger remedies are effective and what types are not?
- It is clear that we are seeing trends toward increased vertical integration in certain industries, such as healthcare and video content. But after the challenge to the AT&T/Time Warner transaction was announced, a number of commentators characterized antitrust enforcement against a vertical merger as extremely rare, if not unprecedented. If you are confirmed, how will you evaluate the consequences of vertical integration in mergers?
- The vertical merger guidelines have not been revised for some time despite multiple calls for the Justice Department and FTC to update them and uncertainty as to the agencies’ commitment to vertical merger enforcement. Will you commit to updating the vertical merger guidelines to reflect current Justice Department practices?
- Over the last decade, major online platforms have changed the lives of Americans, allowing them to find information, buy or sell products, and communicate with each other. At the same time, the growing dominance of these companies raises a host of potential antitrust issues, and the lack of competition among platforms appears to keep market forces from disciplining their approaches to consumer privacy. How will you assess the impact of technology platforms on competition?

- In the last two years, the European Commission has issued multi-billion dollar fines against Google for using its dominance in search to give advantages to other Google products and for using its strong position in Android-related markets to maintain its dominance in internet search. According to Assistant Attorney General Makan Delrahim, the European Union (EU) also uses the consumer welfare standard, so why are the levels of enforcement activity so different between the United States and the EU, and what steps will you take to reestablish U.S. leadership in antitrust law?
- Prescription drug costs impose a heavy burden on consumers and are projected to comprise an increasing proportion of health care costs in the years to come. Curbing pay-for-delay settlements is one way to reduce prescription drug costs, and Senator Grassley and I are leading legislation to help put a stop to these anti-consumer deals for years. If you are confirmed, how will you approach the role of antitrust law in reducing high prescription drug costs?
- Antitrust scholars have noted that the threat of private treble damages has driven the courts to constrain the Sherman Act's ability to address anticompetitive conduct by a single firm—which does not just affect private litigants, but government enforcement as well. Will you commit to reevaluating the positions that the Justice Department takes in private enforcement actions in order to expand the scope of enforcement of the antitrust laws?

White Collar Crime

In a November 1993 article in *The Banker*, you argued that the downsides of prosecuting corporations for fraud outweighed the upsides.

- If you are confirmed, will you commit to prosecuting white collar and corporate criminals just as you would street criminals?
- At a 2004 conference held by the Federalist Society, you said prosecutors in white-collar cases were young and inexperienced, and overreached in corporate investigations. If you are confirmed, those young prosecutors will be looking to you for leadership. Do you stand by what you said in 2004?

Presidential Records Act

According to a January 13, 2019 report in *The Washington Post*, the President has destroyed notes from at least one of his meetings with Russian President Vladimir Putin.

- Does the Presidential Records Act apply to the President?
- Do you believe that the Presidential Records Act is constitutional?

Immigration

Attorney General Jeff Sessions narrowed the grounds for asylum claims for victims of private crime. His opinion in *Matter of A-B* makes very difficult for victims of domestic abuse and gang violence to be granted asylum.

- Do you agree with Attorney General Sessions's decision in *Matter of A-B*?
- Asylum statutes dictate that applicants seeking asylum must show that either their "race, religion, nationality, membership in a particular social group, or political opinion" is "at least one of the central reasons for the persecution" of the applicant. Do you interpret the statute's requirement of "membership in a particular social group" to be independent of the requirement that an applicant demonstrate persecution?

Minnesota has a large Liberian refugee population. In 2007, President George W. Bush directed that Deferred Enforced Departure (DED) be provided for 18 months to certain Liberians whose Temporary Protected Status (TPS) was expiring. Every President after George Bush has extended DED for Liberians since the initial 18 month period was set to expire. Last March, President Trump directed Secretary Nielson to begin winding down DED status. On March 31, 2019, DED ends for Liberians.

- Do you agree with President Trump's decision to end DED status?
- What steps will you take to protect Liberians with DED status from being deported?

Trafficking

One of my highest priorities has been working to combat the scourge of human trafficking. I work closely with members of the Judiciary Committee, including Senator Cornyn, to support survivors of human trafficking and provide resources to federal, state, and local law enforcement officials. We recently passed bipartisan legislation called the Abolish Human Trafficking Act.

- If confirmed as Attorney General, what will be your priorities in combating trafficking?

Opioid Epidemic

Congress will need to continue working with the Justice Department and local law enforcement officers combat the opioid epidemic.

- If confirmed as Attorney General, what steps will you take to combat the opioid epidemic?
- How do you plan to work with local law enforcement to combat the opioid epidemic?

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

QUESTIONS FROM SENATOR LEAHY

1. When I asked you whether you would commit to seeking and following the guidance of Justice Department ethics officials on whether to recuse yourself from Russia investigation, you stated that you would “seek” their advice but that you “make the decision as the head of the agency as to my own recusal.” Thus you’ve fallen short of former Attorney General Sessions’ commitment to seek and follow the Department’s ethics officials with respect to his recusal from the Russia investigation – which he did. And your testimony falls even shorter than that of former Attorney General Richardson’s far stronger commitments, which he made because he believed it was “necessary to create the maximum possible degree of public confidence in the integrity of the process.”
 - a. **Whether or not as a technical matter you, as Attorney General, would have the authority to decide whether to recuse yourself, do you agree that following the advice of career ethics officials on the question would help create the “maximum possible degree of public confidence” in the “integrity of the process,” especially given your high profile opinions and writings about Special Counsel Mueller’s investigation?**
 - b. **If you will not agree to seeking and following the guidance of Justice Department ethics officials regarding whether you should recuse yourself from the Russia investigation, will you commit to providing the House and Senate Judiciary Committees with detailed, contemporaneous documentation showing: (1) the analysis and conclusion of the Department’s ethics officials on the question; (2) your own analysis and conclusion on the question; and (3) if you arrive at a different conclusion from the Department’s ethics officials, a written explanation of why your conclusion is better supported by the law and the facts?**
2. I asked during your confirmation hearing about your view, as reported in the New York Times in November 2017, that you saw more basis for a federal investigation of the Uranium One deal than an investigation into potential collusion with Russia. You stated to the New York Times at the time that by not pursuing the Uranium One deal, along with investigating the Clinton Foundation, the Justice Department was “abdicating its responsibility.” In response on Tuesday, you disputed the New York Times’ characterization of your assertion regarding Uranium One. You testified that the Uranium One assertion was not in quotes and you were actually making a broader point about the need for the Department to launch investigations in an even-handed, consistent way. You referenced John Huber, the United States Attorney for Utah, who was later appointed, in the spring of 2018, by then-Attorney General Sessions to investigate multiple matters of political interest to Republicans. After this exchange, the New York

Times took the unusual step of releasing your email revealing your full comment, which included, in relevant part, “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] Foundation, is far stronger than any basis for investigating so-called ‘collusion.’”

- a. **On what basis did you claim in November 2017 that the Uranium One deal was deserving of a federal investigation?**
 - b. **Do you still believe that the Justice Department is “abdicating its responsibility” to the extent that it is not pursuing the Uranium One matter?**
 - c. **Do you still believe that the predicate for investigating Uranium One is “far stronger” than for investigating collusion between Russia and the Trump campaign?**
 - d. **If a president calls for a politically motivated criminal investigation, what is the proper role for the Attorney General? Do you believe an Attorney General must conduct a preliminary review to determine if further investigation is warranted? If so, what could this review entail?**
3. **During any conversation with President Trump, including the one in summer 2017 regarding legal representation and recently regarding your nomination, did you discuss the Russia investigation? If yes, what was said?**
 4. I am very concerned with press freedom around the world, and especially the increasing attacks on journalists in the United States. During your hearing, Senator Klobuchar asked you if the Department of Justice would jail reporters for doing their jobs, and you stated that you could think of a situation where a journalist “could be held in contempt.”
 - a. **Can you give specific examples of situations in which you would consider attempting to jail a journalist?**
 - b. **President Trump regularly expresses his displeasure with many news organizations and reporters by name. How would you ensure that any actions the Department takes are not driven by the President’s politically motivated animosity, or are not tainted by the appearance of a political motivation?**
 5. When President Trump fired former Acting Attorney General Sally Yates for refusing to defend his Muslim Ban, you wrote an op-ed defending his decision and criticizing Yates. You argued that when the “president determines an action is within his authority — even if that conclusion is debatable” — the Attorney General’s responsibility is to “advocate the president’s position in court.”

- a. **Is that how you still see the role of the Attorney General — to execute a president’s policy and defend his actions even when his authority is highly questionable or appears to be flawed?**
 - b. **If an Attorney General cannot support a president’s policy, do you believe the only option available to him or her is to resign?**
6. In the 1990s you often attributed the nationwide spike in crime to a “breakdown of traditional morality” and the “promotion of secularism.” This is how you described it on Larry King Live in 1992: “We have the highest crime rate in the world, and that’s unfortunate. And I think that has to do with a lot of aspects about our society—our heterogeneity, and so forth.” **Can you explain what you meant by this comment? Did you believe that our nation’s diversity led to increased crime?**
7. You’ve long been a proponent of mass incarceration, arguing in 1994 that “increasing prison capacity is the single most effective strategy for controlling crime.” You also testified during your hearing that your views were shaped by the nation confronting a rise in crime during the early 1990s.
 - a. **Do you still believe that increasing prison capacity is the most effective strategy for controlling crime?**
 - b. **In recent years, in dozens of states across the country, prison rates and crime rates have fallen together. How do you explain that?**
8. During a 1995 panel you claimed that social programs fail to reduce crime and may even exacerbate it. In an article you published in the Michigan Law and Policy Review in 1996 titled “A Practical Solution to Crime in our Communities,” you argued, in part, for the reduction of social programs that, in your view, increase rates of crime. **Do you still agree with these ideas?**
9. In 2001, you stated the illicit drug trade should be treated like a national security issue, and that for those involved in trafficking organizations, “there are only two end games: You either lock them up or you shoot them, one or the other.” You also said “I believe you can use law enforcement to some extent, particularly in the U.S., but the best thing to do is not to extradite Pablo Escobar and bring him to the United States and try him. That’s not the most effective way of destroying that organization.” Of course, that is exactly what is happening in the Eastern District of New York right now, with the trial of Joaquin “El Chapo” Guzman. **If the options are to either lock them up or shoot them, and you don’t believe the U.S. government should be extraditing people like Escobar, what exactly were you proposing the U.S. government do?**
10. During your previous confirmation hearing, you testified that you “wouldn’t defend regulations . . . if [you] don’t think the regulation is consistent with Congress’s intent.”

One of the core statutes governing asylum, 8 U.S.C. § 1158, states that any alien who arrives in the United States “whether or not at a designated port of arrival . . . may apply for asylum.” Despite this statute, President Trump recently issued a rule categorically denying asylum claims made outside of ports of entry. The Supreme Court has upheld a nationwide injunction temporarily halting this rule, but the Justice Department is appealing it. **If confirmed, would you instruct the Justice Department to continue defending President Trump’s asylum rule even though it is facially inconsistent with congressional intent and the explicit wording of an unambiguous statute?**

11. The Office of Legal Counsel, which you headed for a year under President George H.W. Bush, is a powerful gatekeeper responsible for determining the legality of the President’s proposed actions. **If the President proposes an action—say, declaring a national emergency—based on a characterization of the facts that is demonstrably false, does the OLC have any responsibility to scrutinize those falsehoods as part of its review?**
12. You have praised former Attorney General Jeff Sessions for “breaking the record for prosecution of illegal-entry cases” and increasing illegal re-entry prosecutions “by 38 percent.” While illegal immigration is no doubt a problem we must address, the Justice Department has finite resources. On November 14, 2018, I wrote a letter to acting Attorney General Matthew Whitaker inquiring whether resources for prosecutions of serious criminal offenses were being re-directed toward immigration prosecutions. Indeed, as immigration prosecutions were ramped up under former Attorney General Sessions, across the border prosecutions of other crimes steadily decreased — without any indication that the rate of these crimes actually subsided. **Would you continue the Department’s recent aggressive focus of prosecutorial resources on low level immigration offenses even if the result is the Department is unable to prosecute other serious crimes it once handled?**
13. I asked you during the hearing about whether your views of the third party doctrine have evolved given the Supreme Court’s recent decision in *Carpenter v. United States*; you testified you had not reviewed the decision. Please do so and respond to the following:
 - a. **Do you still believe that “no person has Fourth Amendment rights in . . . records left in the hands of third parties”?**
 - b. **Do you believe that there comes a point at which collection of data about a person—e.g., metadata, geolocation information, etc.—becomes so pervasive that a warrant would be required, even if collection of one bit of the same data would not?**
14. In 1987, the D.C. Circuit Court of Appeals held that Georgetown University’s refusal to grant equal rights on campus to two LGBTQ affinity groups constituted a violation of D.C.’s Human Rights Act, which prohibits sexual orientation discrimination by educational institutions. In an article published in *The Catholic Lawyer* in 1995, you

wrote that these types of laws seek to “ratify” conduct that was previously considered immoral, and this consequently dissolves any form of moral consensus in society. **Do you still believe that laws granting equal protection to LGBTQ individuals “dissolve any form of moral consensus in society”?**

15. The Violence Against Women Act was enacted in 1994, a year after you left the Department of Justice. Senator Crapo and I worked together to reauthorize the act in 2013. Our 2013 reauthorization expanded protections for many of the most vulnerable among domestic violence and sexual assault survivors – students, immigrants, LGBT victims, and those on tribal lands.
 - a. **Will you commit to support the implementation of these life-saving protections contained in the 2013 reauthorization?**
 - b. **During your prior tenure as Attorney General, how did you approach the Department’s responsibility for prosecuting crimes committed on Indian Reservations? How do you intend to ensure that the investigation and prosecution of crime on Native reservations is a priority going forward?**
 - c. **Will you commit to visiting a tribal court implementing VAWA jurisdiction within your first year, should you be confirmed?**
16. According to Article II, Section 4 of the U.S. Constitution, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” **In your view, what constitutes a high Crime or Misdemeanor?**
17. President Trump has stated many times that voter fraud is rampant in this country and has claimed that millions of votes were illegally cast in favor of Hillary Clinton during the 2016 presidential election. Most recently, President Trump said that people go vote, get back in their cars, put on a disguise and go back in and vote again.
 - a. **Are you aware of any credible evidence to substantiate either of President Trump’s claims?**
 - b. **Is it important that when a president makes assertions relevant to the integrity of our voting systems, as well as relevant to potential federal crimes under the purview of the Justice Department, that he or she have a factual basis for doing so?**
18. When asked by Senator Feinstein about the Constitution’s prohibition on emoluments, you testified that you believed “there is a dispute as to what the emoluments clause relates to,” and that you “couldn’t even tell [Senator Feinstein] what it says.” In 2016, then-Chairman Grassley and Senator Tillis questioned then-Attorney General Lynch on

whether the receipt of any payment “from a foreign government or an instrumentality of a foreign government” by a spouse of an executive branch officer violated the Constitution. Such questions are even more pressing when it is the constitutional officer himself receiving such payments. Given the interest from senators, I trust you have had an opportunity to review the Emoluments Clause since last week. The actual text states that “no person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept of any present, emolument, office, or title . . . from any king, prince, or foreign state.”

- a. **Since President Trump has not divested from his businesses, does the rent paid by the Industrial and Commercial Bank of China to the President-elect for space at Trump Tower in New York raise concerns vis-à-vis the Emoluments Clause? The Bank, which is owned by the Chinese government, is according to news reports the largest tenant in Trump Tower.**
- b. **Does money paid by various foreign governments for the use of event space or lodging at the President’s hotel here in Washington raise concerns vis-à-vis the Emoluments Clause?**
- c. There are currently several lawsuits regarding a potential violation of the Emoluments Clause, including one from the attorneys general of Maryland and the District of Columbia. While subpoenas were issued a month ago, but the Department of Justice is asking for an appeals court to block this lawsuit from continuing. **If confirmed as Attorney General, would you continue to appeal the decision of the District Court and attempt to end the lawsuit?**

19. The General Services Administration (GSA) leases the Old Post Office Building for the Trump International Hotel in Washington, D.C. Recently, the Inspector General for the GSA issued a report stating that the agency lawyers ignored the constitutional issues that arose when they reviewed the lease after President Trump won the election in November 2016. The Inspector General concluded that, “following the 2016 election, it was necessary for GSA to consider whether President-elect Trump’s business interest in the OPO lease might cause a breach of the lease upon his becoming President. The evaluation found that GSA, through its Office of General Counsel (OGC) and its Public Buildings Service, recognized that the President’s business interest in the lease raised issues under the Foreign Emoluments and Presidential Emoluments Clauses of the U.S. Constitution that might cause a breach, but decided not to address those issues.” This seems to suggest that there is a continuing concern with respect to conflicts of interest, the STOCK Act, and the Emoluments Clause.

- a. **What is the Justice Department’s role in enforcing the Emoluments Clause?**
- b. **If there is an apparent violation, would the Department conduct any inquiry or investigation?**

20. Article 36 of the Vienna Convention on Consular Relations (VCCR) requires parties to the treaty to promptly inform, upon arrest, nationals of signatory nations that they have the right to meet with consular officials. The United States is a party to the VCCR, but there are a number of well documented cases in which the U.S. is not in compliance with our Article 36 obligations, and that noncompliance has strained our relationships with a number of important allies including Great Britain and Mexico. To help ensure compliance with Article 36, the U.S. Supreme Court adopted an amendment to Rule 5 of the Federal Rules of Criminal Procedure mandating that a judge presiding at the defendant's initial appearance inform "a defendant who is not a United States citizen [that he or she] may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested."

a. Do you believe full compliance with Article 26 of the VCCR is important?

b. Will you commit to ensuring full compliance with respect to any and all undocumented immigrants who are arrested, including if the arrest was executed by the Department of Homeland Security's Immigration and Customs Enforcement, for "acts that constitute a chargeable criminal offense"?

21. In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Trafficking Victims Protection Reauthorization Act. Among other things, members of Congress worked on the 2008 and 2013 reauthorization bills to ensure that children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings. Not only is it common sense that putting a child alone before a judge is fundamentally unfair and will not result in a just, informed outcome, but legal representation serves as an effective tool to ensure compliance with immigration laws. Studies show that the rate of unaccompanied minors who show up for immigration court increases from 60.9 percent to 92.5 percent when represented by a lawyer.

a. Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many unaccompanied children as possible with legal representation?

b. Similarly, will you commit, if confirmed, to facilitating increased collaboration between the Department of Justice's Executive Office for Immigration Review, known as EOIR, and community-based organizations to provide legal representation for migrant children separated from their parents?

22. The Inspector General for the Department of Health and Human Services released a report stating that the family separation policy began in summer of 2017. Thousands of children may have been separated before a court order forced HHS to keep track of the children they were separating from their parents. HHS also says they face challenges identifying the children.
- a. **Do you believe that “zero tolerance” and family separation served as a useful deterrent to migrant families fleeing Central America?**
 - b. **Would you consider resurrecting such policies under any circumstances?**
23. In April 2001 at the Miller Center, you discussed your decision to intern HIV positive refugees in a separate camp on Guantanamo, stating: “We were using Guantanamo Bay, and it seemed like every other week I would be called over to meet with Colin Powell, [Dick] Cheney, and Brent Scowcroft, and they, of course, were complaining Their position was, Guantanamo is a military base, and why were all these people here, the HIV people, all these other people? How long are you going to be on our property with this unseemly business? I’d say, ‘Until it’s over. But we’re not bringing these people into the United States.’ This is a very convenient base outside the United States, and it’s serving a good function. They were always complaining. I would say, what do you people do at Guantanamo? Maybe this is the highest, best use of Guantanamo. Maybe Guantanamo should be turned over to the INS [Immigration and Naturalization Service] and used as a processing center. Maybe this is the best use for the United States as opposed to whatever you people do with it. We got a little bit feisty.” Ultimately, all Haitian refugees were released from Guantanamo after a federal district court found many of their constitutional rights to have been repeatedly violated. It is reported that the Departments of Justice and Homeland Security are currently considering the extra-territorial processing of asylum seekers in Mexico. Many immigration law experts believe that these proposals, like the failed Guantanamo policy, cannot be lawfully executed. **Will you commit to ensuring that those who seek asylum in the United States or at our borders will have the opportunity to have their claims processed from within the United States, with all the rights provided by the Constitution and federal law accorded to them?**
24. A federal district court judge found that the medical conditions facing HIV positive detainees in Camp Bulkeley - directly under your control - were deplorable and insufficient. In *HCC v. Sale*, Judge Johnson specifically noted that military doctors had made the INS, which was under your control at the time, aware of these problems, but that your agency failed to act: “The military’s own doctors have made INS aware that Haitian detainees with T-cell counts of 200 or below or percentages of 13 or below should be medically evacuated to the United States because of a lack of facilities and specialists at Guantanamo. Despite this knowledge, Defendant INS has repeatedly failed to act on recommendations and deliberately ignored the medical advice of U.S. military doctors that all persons with T-cell count below 200 or percentages below 13 be transported to the United States for treatment. Such actions constitute deliberate

indifference to the Haitians' medical needs in violation of their due process rights." *Haitian Centers Council Inc. v. Sale*, 823 F.Supp. 1028, 1044 (EDNY 1993). During this period, one of your spokespeople at the INS, Duane Austin stated publicly, "We have no policy allowing people with AIDS to come enter the United States for treatment. ... They're just going to die anyway, aren't they?" A federal district court judge found that the agency directly under your control acted with deliberate indifference to the medical needs of migrants in U.S. government care. Today, the Department of Justice oversees the adjudication of the cases of tens of thousands of migrants in facilities operated by ICE where medical care is again suspect. NGOs report that, consistently, at least half of deaths in ICE custody are attributable to medical negligence. Sexual abuse is reported to be rampant, and DHS's own Inspector General has found that conditions in immigration detention "undermine the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment." **What can the Department of Justice take to ensure that there is accountability for medical negligence and malfeasance committed by DHS and/or DOJ officials in the immigration detention setting?**

25. During your hearing, you stated that you would uphold the law of marriage equality, but that there needs to be accommodations made for religious purposes. However, you stated that the Department of Justice would only have a role in banning anti-LGBTQ discrimination only if Congress passes a law.
 - a. **What actions would you take, if any, if a state or local official refuses to issue a marriage license to a same-sex couple?**
 - b. **When is it appropriate, if ever, to disregard a Supreme Court opinion, such as the one that protected same-sex marriage under the Constitution?**
26. In 2016, Congress reformed the Freedom of Information Act, which codified the "presumption of openness" that requires all administrations to operate with transparency as the default setting. **If confirmed as Attorney General, how will you enforce the presumption of openness? Will you commit to fully enforcing the object and purpose of FOIA and to encourage transparency?**
27. Several reports have come out that T-Mobile executives have repeatedly booked rooms at President Trump's Washington, D.C. hotel. Many have suggested that the executives have booked this hotel in the interest of furthering the success of the merger between T-Mobile and Sprint, which is being reviewed by the Department of Justice.
 - a. **Can you guarantee that the decision of the Justice Department's antitrust division merger, if made during your time as Attorney General, will be unaffected by any executives' decision to spend money at the President's hotel?**

b. What steps will you take to ensure reviews of proposed mergers are free of political considerations?

28. In 2005, you testified before Congress that constitutional protections do not apply to Guantanamo detainees because "[t]he determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant." You also argued that even if constitutional protections did apply, the military's "[Combatant Status Review Tribunal] procedures would plainly satisfy any conceivable due process standard that could be found to apply." You recommended that Congress consider legislation to "eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions." Congress ultimately did so in the Military Commissions Act of 2006, which the Supreme Court held to be an unconstitutional suspension of the Writ of Habeas Corpus in *Boumediene v. Bush*. In *Boumediene*, the Court also found the military review procedures to be constitutionally inadequate. **Do you support the holdings in *Boumediene v. Bush* as settled law?**
29. In 2005, you testified that the Geneva Conventions do not apply to captured individuals affiliated with al Qaeda or the Taliban. The Supreme Court in *Hamdan v. Rumsfeld* rejected this view and held that Common Article III of the Geneva Conventions apply to the conflict in question. **Do you support the holdings in *Hamdan v. Rumsfeld* as settled law?**
30. You stated in 2005 that there "does not appear to be any real argument that these [military commission] trials belong in civilian courts." Since 9/11, there have been 8 convictions in military commissions, half of which have been partially or fully overturned. By contrast, there have been over 600 individuals convicted of terrorism-related offenses in civilian courts in that same period. The military commission trials of the individuals suspected of committing the 9/11 and U.S.S. Cole terrorist attacks do not yet have start dates. **Do you still believe that there is not "any real argument" for prosecuting these cases in Article III federal courts?**
31. In recent years, there have been hundreds of cases in which individuals were exonerated based on faulty forensic evidence. This has long been an issue of bipartisan concern, and Senator Grassley and I have raised it on numerous occasions with officials from the Justice Department.
- a. Will you commit to working with Members of this Committee to ensure that law enforcement and criminal justice stakeholders have the strongest and most reliable forensic tools possible to ensure that crimes are solved, public safety is protected, and wrongful convictions are avoided?**

- b. As you know, the FBI reviewed thousands of cases involving erroneous hair analysis testimony, resulting in the exoneration of innocent people and, in some cases, the identification of the true perpetrators of crimes. They then performed a Root Cause Analysis (RCA) to begin to understand what exactly led to the incredible amount of erroneous testimony. Will you work with the FBI and others to ensure that this RCA is completed promptly and that its results are made public for review, and to ensure this type of error is not repeated going forward in this or other forensic disciplines?**

Nomination of William Barr to be Attorney General of the United States
Follow-up Questions for the Record
Submitted by Senator Leahy
January 31, 2019

1. I appreciate that you acknowledged in your testimony that it is “very important that the public and Congress be informed of the results of the Special Counsel’s work.” But I am concerned that, based on some of your other responses to senators, you may believe you are restricted from informing the public or Congress of any potential wrongdoing committed by the President provided the Special Counsel does not recommend he be indicted, consistent with current Department policy governing sitting presidents. In response to Senator Durbin’s questions for the record you cited Department of Justice guidance that the required report under 28 C.F.R. § 600.8 is “handled as a confidential document, as are internal documents relating to any federal criminal investigation.” You also cite to the Justice Manual, § 9-27.760, which “cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties.”
 - a. **As it is current Department policy that a President may not be indicted while in office, do you interpret the Department’s regulations and guidance to require that a report that details misconduct by a President currently in office cannot be released to Congress or the public because the President would be an uncharged third party?**

2. In addition to being a criminal investigation, the investigation led by Special Counsel Mueller consists of a counter-intelligence investigation into foreign interference in the 2016 election. It is not clear that the special counsel regulations contemplated the potential of a counter-intelligence investigation, which would not typically lead to “prosecution or declination decisions” under 28 C.F.R. § 600.8.
 - a. **What standard would you apply in deciding whether to release to Congress findings from a counter-intelligence investigation conducted by the Special Counsel?**

3. The special counsel regulations require that a report be transmitted confidentially to the Attorney General upon the conclusion of an investigation. But the regulations do not state that the Attorney General lacks the discretion to make such report public if it is in the public interest and with required redactions, if any.
 - a. **Do you agree that an Attorney General retains the discretion to transmit the Special Counsel’s report to Congress or make it public with appropriate redactions if it is in the public interest?**

4. During your confirmation hearing, when I asked whether you would commit to both seek and follow the advice of career ethics officials regarding potential recusal from the Special Counsel investigation, you testified that “under the regulations, I make the decision as the head of the agency as to my own recusal.” You later elaborated that you would not follow the ethics officials' recommendation should you disagree with their advice. Like all agency heads, however, the Attorney General is obligated to follow the established ethics protocols as laid out in the Standards of Ethical Conduct for Employees of the Executive Branch to avoid the appearance of loss of impartiality.
 - a. **Given your previous public comments on the Special Counsel’s investigation—including your comment that you saw more basis for investigating the Uranium One deal than “so-called collusion,” and your memo sent to both the Justice Department and President’s lawyers—if you received a recommendation from career, nonpartisan ethics officials that you need to recuse from the Special Counsel’s investigation, wouldn’t the refusal to accept that recommendation not give further rise to an appearance of a conflict?**

Technology and Law Enforcement

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for the deployment of these technologies increased. Most gunshot incidents, for example, go unreported to the police. Gunfire detection and location technology, where it has been deployed, and that includes some communities in my state, has helped police respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and occasionally catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Identification System – NIBIN – law enforcement agencies can determine if the gun has been used in other crimes and can focus their investigation. The use of cameras in public spaces is another positive tool. Will you support increased Federal support to assist localities to deploy these kinds of technologies?

Digital Evidence in Support of Criminal Investigations

Access to digital evidence has grown increasingly important in investigations and prosecutions of criminal cases at the local, state, and federal levels. Investigators increasingly obtain data from mobile communications devices, social media accounts, internet browsing histories, and myriad other data sources to help them generate leads, identify suspects, and build their cases. Yet, as the Center for Strategic and International Studies (CSIS) recently reported, law enforcement agencies are facing significant challenges impeding their ability to effectively access digital evidence to support criminal investigations

The CSIS report found that nearly one-third of law enforcement professionals cited difficulties in identifying which service providers had access to digital evidence as their largest challenge, followed by difficulties in obtaining evidence from providers, and a lack of resources needed to access and analyze data from devices.

1. As Attorney General, what steps will you take to promote digital evidence training programs for federal, state and local law enforcement officers?
2. Will you conduct a review of existing programs to promote digital evidence training and report back to this Committee on those efforts and any steps that can be taken to improve them?

Combatting Sexual Exploitation

1. I'm concerned that the Department of Justice—which has the legal authority to prosecute internet based platforms which promote prostitution and facilitate sex trafficking—rarely does so. While it is encouraging that DOJ finally cracked down on certain bad actors last year, these actions came years too late for many victims of sex-trafficking.
 - a. What steps will you take to continue the Department's work to prosecute existing internet based platforms that promote prostitution and sex-trafficking?
 - b. What will you do as Attorney General to anticipate and crack down on emerging technologies used by sexual exploiters to engage in prostitution and human trafficking?
 - c. What protective measures can you take to increase federal, state and local law enforcement's understanding of emerging modalities of sexual exploitation?
 - d. How can the Department of Justice better coordinate and collaborate with social media companies to eradicate criminal exploitation that may be occurring on their platforms?
2. For the last few decades the federal government has made a concerted effort to fight sex trafficking. We've taken steps to protect victims and help them escape sexual exploitation. We've also cracked down on sex traffickers, enhancing

criminal penalties for sex trafficking and providing the Department with more tools and resources to prosecute them.

Unfortunately, one thing we haven't done well is focus on prosecuting those who solicit and purchase sex. In recognition of this, last year, Congress passed the Abolish Human Trafficking Act of 2017, which requires the Department to create a national strategy to reduce demand for human trafficking victims. The law also requires the Department to issue guidance urging Department components to prosecute those who purchase sex from minors and trafficking victims.

- a. Will you commit to finalizing and issuing the guidance required by the Abolish Human Trafficking Act of 2017?
- b. How will you increase Department efforts to crack down on those who purchase sex commercially?
- c. Will you direct DOJ's criminal division to provide technical and, to the extent allowed by law, financial support to state and local law enforcement efforts aimed at prosecuting commercial sex buyers?

International Parental Child Abduction

1. Every year, hundreds of American-citizen children are abducted to a foreign country by one of their parents. These children are usually taken from the parent who has custody by their ex-spouse. The federal government has several tools to combat international parental child abduction but as Senator Feinstein and I noted in a letter to Secretary Pompeo, we rarely if ever use all of these tools. One of the most underused tools is prosecution of the taking parent—and their accomplices—under the International Parental Kidnapping Crime Act. That law makes it a federal crime to remove an American-citizen child from the United States with intent to obstruct custodial rights and individuals can face up to 3 years in prison for violations of its provisions.

According to conversations my office has had with victim-advocates, it appears the Department rarely prosecutes individuals under the IPKCA.

- a. As Attorney General, will you commit to prosecuting those who commit and assist in international parental child kidnapping to the fullest extent allowed by law?
2. Another complaint victims have brought to my attention is the general lack of knowledge about this issue from federal, state and local law enforcement. Many law enforcement officers don't even realize a parental

kidnapping is a crime. As Attorney General, what will you do to provide better training and information to federal, state and local law enforcement officers? Specifically, what can or will you do to teach our law enforcement officers about how the potential for prosecution under the IPKCA can be both a deterrent and remedy for international parental kidnapping?

Intellectual Property

1. I'd like to commend President Trump and former Attorney General Jeff Sessions for their commitment to protecting the intellectual property rights of American innovators. Domestically and internationally intellectual property crime is on the rise. Intellectual property crime not only threatens our nation's economic health and well-being, but it also poses a national security risk. Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim (DEL RA HEEM) have made great strides in prosecuting intellectual property theft. If confirmed as Attorney General, what will you do to continue the efforts of General Sessions, Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim?

2. As you know, certain countries have been more egregious in their theft of American intellectual property. China is perhaps the most notorious, but India, Brazil and Russia are also bad actors. How will you approach international intellectual property theft and work with your foreign counterparts to preserve and protect the property rights of American innovators?

3. Does the Department need additional tools, resources or legal authorities to better combat international IP crime?

**Faith Based and Community Organization Partnerships in
the Bureau of Prisons**

1. The BOP recently reported over 16,000 prisoners were on a wait-list for basic literacy programs. The First Step Act will provide some funding to support prison programming, but there is also a lot of room for greater partnership with volunteer faith-based and community-based groups that provide programming without government funding.
 - a. How will you go about ensuring there is a focus on increasing the number and quality of programs available through partnerships with programs that do not take direct funding from the government?
 - b. Will you encourage in-prison programs proven to reduce recidivism offered by faith-based organizations to be considered as a reentry program in addition to being offered through the chaplaincy? (Background: Currently, faith-based organizations are generally only considered for programming under the chaplaincy by the BOP. The chaplaincy has strict limits on the number of volunteers and hours provided by each faith tradition, even if the program is holistic, offering more than explicitly religious activities, open to prisoners of any faith, and does not take any government funding. The First Step Act states that the AG shall inform the BOP that faith-based programs proven to reduce recidivism shall qualify as a reentry program outside the chaplaincy).

2. The Second Chance Act provided that, "any person who provides mentoring services to an incarcerated offender is permitted to continue such services after that offender is released from prison." The First STEP Act expands that provision stating that a prisoner in prerelease custody may not be prohibited from receiving mentoring, reentry or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated. "Reentry or spiritual services" was inserted because many people leaving prison without much family support have worked closely with chapel and other faith-based volunteer mentors. These volunteers are in a place to encourage them through the difficult reentry process.

But BOP policies currently only allow specially trained mentors to remain in contact with parishioners after they release. Will you shepherd the implementation of this part of this new law, ensuring that the chapel and other faith-based volunteers are able to play a critical role in the reentry process of the men and women they have come to know and care about?

Bureau of Prisons Director

1. Director: The federal prison system has been without a permanent director since May of last year. The Attorney General is responsible for hiring this non-political position. Given the mandates on the federal prison system obligated under the newly passed First Step Act, how would you prioritize the hiring for this position and what qualities would you look for in a candidate?

**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?

FOLLOW-UP QUESTIONS SUBMITTED TO HON. WILLIAM PELHAM BARR, NOMINEE
TO BE ATTORNEY GENERAL OF THE U.S., BY SENATOR WHITEHOUSE

SHELDON WHITEHOUSE
RHODE ISLAND
COMMITTEES
BUDGET
ENVIRONMENT AND PUBLIC WORKS
FINANCE
JUDICIARY

United States Senate

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February 4, 2019

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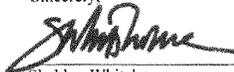
Mr. William P. Barr
Of Counsel
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, D.C. 20005

Dear Mr. Barr:

I write to bring to your attention an exchange between Chairman Graham and myself at last week's Judiciary Committee business meeting. The Chairman recognized the importance of obtaining clarification to your written responses to my questions for the record on (1) the Mueller report and the role of executive privilege; and (2) how the DOJ policy against disclosing derogatory information about uncharged individual applies in cases where charges are prohibited by OLC's internal opinions.

I have attached your answers to my questions as well as the transcript of the above-mentioned exchange. Following the hearing, the Chairman requested that I reach out to you directly to request more fulsome answers to these questions, which I do so now through this letter. Please answer as soon as possible in light of the expected vote on your nomination this Thursday.

Sincerely,



Sheldon Whitehouse
United States Senator

Enclosures (2)

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR WHITEHOUSE

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.

RESPONSE: As I explained at my hearing, the current Department of Justice regulations that govern the Special Counsel were enacted at the end of the Clinton Administration and reflected, to a certain extent, bipartisan dissatisfaction with certain elements of the previous independent counsel regime. If confirmed, I intend to follow the Special Counsel regulations scrupulously and in good faith. I believe that the current regulations appropriately balance the relevant considerations, although I would be open to considering how they can be improved. However, I do not believe that the Special Counsel regulations should be amended during the current Special Counsel's work. Any review of the existing regulations should occur following the conclusion of the Special Counsel's investigation.

2. Will you object to Special Counsel Mueller testifying publicly before Congress if invited (or subpoenaed)?

RESPONSE: I would consult with Special Counsel Mueller and other Department officials about the appropriate response to such a request in light of the Special Counsel's findings and determinations at that time.

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?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. See 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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?

RESPONSE: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

An opinion issued by the Office of Legal Counsel held that an indictment or criminal prosecution of a sitting President would unconstitutionally undermine the capacity of the executive branch to perform its constitutionally assigned functions. To the best of my understanding, the OLC opinion remains operative.

Congress can and does conduct its own investigations, and its right to do so is not precluded by the Department’s decision not to provide certain information about an uncharged individual gathered during the course of a criminal investigation.

As I testified before the Committee, I believe that it is very important that the public and Congress be informed of the results of the Special Counsel’s work. My goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies.

The Constitution grants the legislative branch the power to impeach for, and convict of, treason, bribery, or other high crimes and misdemeanors. I am not in a position to opine or speculate on the manner in which the Congress determines what constitutes a high crime or misdemeanor, or how the Congress gathers evidence in support of or in contradiction to that conclusion.

5. Please describe the nature of your relationship with White House Counsel Pat Cipollone, including any shared organizational affiliations.

RESPONSE: When I served as Attorney General, I hired Mr. Cipollone to serve as an aide in my office. We have been personal and professional acquaintances ever since. I am not aware of the full extent of Mr. Cipollone's organizational affiliations. However, to the best of my recollection and knowledge, we served together on the board of directors of the Catholic Information Center for a period of time, we both were affiliated with Kirkland & Ellis LLP for several months in 2009, and we are both members of the Knights of Columbus.

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.

RESPONSE: To the best of my recollection, I have not had any discussions with Mr. Eisenberg regarding any matters related to, or clients of, Kirkland & Ellis, LLP since he left the firm in 2017.

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?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I would act in accordance with applicable Department of Justice

protocols, including the 2009 Memo on communications with the White House issued by former Attorney General Holder. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. The purpose of these procedures is to prevent inappropriate political influence or the appearance of inappropriate influence on Department of Justice matters. If confirmed, I will be reviewing many of the policies and practices of the Department and making adjustments as appropriate.

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?

RESPONSE: Because I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. Therefore, I am not in a position to comment on this matter.

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?

RESPONSE: I am aware of the referenced conversation only through news media reports and do not know all of the facts and circumstances. Therefore, I am not in a position to comment.

- b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

RESPONSE: Much of the Department's law enforcement work involves non-public, sensitive matters. Disseminating non-public, sensitive information about Department matters could invade individual privacy rights; put a witness or law enforcement officer in danger; jeopardize an investigation or case; prejudice the rights of a defendant; or unfairly damage the reputation of a person among other things. The Department's policies generally prohibit the unauthorized disclosure of such information to members of the public. See Justice Manual § 1-7.100.

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).

RESPONSE: It is well established that the presidential communications privilege applies to communications between the President and the Attorney General. See generally *Confidentiality of the Attorney General's Communications in Counseling the President*, 6 Op. O.L.C. 481 (1982). In the course of holding that communications to and from "presidential advisers in the course of preparing advice for the President come under the presidential communications privilege," *In re Sealed Case*, 121 F.3d at 752, see also *id.* at 757, the D.C. Circuit cautioned (in the language quoted in the question) that "staff outside the White House in executive branch agencies" who may be preparing advice for the President should not be viewed as "presidential advisers" for purposes of the privilege. *Id.* at 752. The quoted language did not suggest that communications between executive branch agencies and White House staff are not subject to the privilege. To the contrary, a subsequent D.C. Circuit case, applying *Sealed Case*, held that communications between Justice Department officials and the President or his White House staff fall within the scope of the privilege. *Judicial Watch v. Department of Justice*, 365 F.3d 1108 (D.C. Cir. 2004).

- 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)*?

RESPONSE: *In re Sealed Case* is an important precedent that the Justice Department regularly applies in its court filings. I cannot speculate on whether circumstances might arise where the Department might seek any modification of that precedent by the D.C. Circuit or the Supreme Court.

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?

RESPONSE: I stand by the statement I made in your office. It was based on my understanding that it has been the longstanding policy of the Executive Branch not to assert executive privilege for the purpose of covering up evidence of 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?

RESPONSE: Please see my response to Question 11(a) above. That response applies whether or not an individual is subject to indictment.

- 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?

RESPONSE: Beyond observing that the hypothetical situation identified in this question seems unlikely to arise, I cannot speculate on how I might proceed other than to say that, as in all matters, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining what the next, appropriate steps might be.

- 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?

RESPONSE: Please see my response to Question 11(c) above.

- 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?

RESPONSE: I would resign.

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?

RESPONSE: I am committed to responding to Congressional requests and inquiries consistent with the law and Department policies and in good faith. Because many of the policies and practices regarding Executive Branch responses to Congressional requests for information have changed since I was Attorney General, I will need to review current practices. I understand that the current practice is that when the Executive Branch sends a congressional committee a letter informing it that the President has asserted executive privilege, the letter encloses a copy of the Attorney General’s letter advising the President that the assertion of privilege is legally permissible. The Attorney General’s letter typically provides a description of the categories of materials that are subject to the privilege assertion and the legal basis for the assertion. Prior to the assertion of the privilege, the Executive Branch will also have described the withheld information in letters to the committee and otherwise. In so doing, the Executive Branch will have made clear what categories of privileged information are involved and identified the confidentiality interests that ultimately were the basis for the executive privilege assertion. My understanding is that the Executive Branch has found that these procedures provide more useful and timely information to committees than a document-by-document privilege log.

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?

RESPONSE: The Executive Branch engages in good faith negotiation with congressional committees in an effort to accommodate legitimate oversight needs, while safeguarding the legitimate confidentiality interests of the Executive Branch. This accommodation process has historically been the primary means for successfully resolving conflicts between the branches and has, except in extraordinary cases, eliminated the need for an executive privilege assertion. Because the effort to accommodate congressional requests for privileged information requires an iterative process, it will often be necessary to withhold information, without any invocation of privilege by the President, in order to permit continued negotiation and to preserve the President's ability to assert 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?

RESPONSE: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

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?

RESPONSE: Please see my response to Question 14 above.

16. Will you commit to responding to oversight requests submitted by the minority party?

RESPONSE: I agree that it is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department's law

enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department's Office of Legislative Affairs.

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?

RESPONSE: I believe it is important to provide thorough and accurate responses to Congress, where appropriate. If confirmed, I will work with the Office of Legislative Affairs to respond in a timely manner to any inquiries from the Committee regarding the work of the Department.

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?

RESPONSE: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation,

and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the investigation, and he has not asked me about what I would do about anything in the investigation.

The Vice President and I are acquainted, and since the spring of 2017, we have had occasional conversations (sometimes joined by his chief of staff) on a variety of subjects, including policy, personnel, and other issues. Our conversations have included, at times, general discussion of the Special Counsel's investigation in which I gave my views on such matters as Bob Mueller's high integrity and various media reports. In these conversations, I did not provide legal advice, nor, to the best of my recollection, did he provide confidential information.

As discussed in my testimony, after drafting my June 8, 2018 memorandum, I sent a copy of the memorandum and discussed my views with White House Special Counsel Emmet Flood. I also provided a copy to Pat Cipollone, who now serves as White House Counsel, and discussed my views with him and others.

Finally, I have spoken with members of the White House staff about numerous issues, including paperwork and logistics, as part of the selection and nomination process for this position.

This answer relates the conversations responsive to the question to the best of my recollection. But I am acquainted with a number of people who serve or have served at the White House. As best I can recall, I have not spoken about the substance of the Special Counsel's investigation with those people, though the investigation is, of course, a constant topic of conversation in Washington legal circles and it may have arisen.

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?

RESPONSE: As I stated in my letter of January 14, 2019 to Chairman Graham, I sent a copy of my June 8, 2018 memorandum to Pat Cipollone and have discussed the issues raised in the memo with him, Marty and Jane Raskin, and Jay Sekulow. The purpose of those discussions was to explain my views. To the best of my recollection, the President's lawyers have not conveyed to me any information 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?

RESPONSE: To the best of my recollection, I had the following conversations with Department of Justice Officials about the Special Counsel's investigation. Before I began writing the memorandum, I provided my views on the issue discussed in the memorandum to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views on the issue discussed in the memorandum to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering, but he later indicated that he was not involved in the Special Counsel's investigation and would not be reading my memorandum. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

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?

RESPONSE: As a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not

just by future Presidents, but by all public officials involved in administering the law, especially those in the Department of Justice. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with a number of lawyer friends; wrote the memo to senior Department officials and sent it to them via email; shared it with other interested parties; and later provided copies to friends.

I was not representing anyone when I wrote the memorandum, no one requested that I draft it, and I was not compensated for my work. I researched and wrote it myself, on my own initiative, without assistance, and based solely on public information.

To the best of my recollection, before I began writing the memorandum, I provided my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. To the best of my recollection, I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views. My letter of January 14, 2019 to Chairman Graham identifies other individuals with whom I can recall sharing the memorandum and/or discussing its contents.

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?

RESPONSE: If confirmed, it is possible that I will be responsible for overseeing the Special Counsel’s investigation under applicable regulations. Accordingly, it would not be appropriate for me to speculate regarding hypothetical scenarios. As a general matter, if presented with novel legal questions of constitutional importance while serving as Attorney General, I would likely consult with the Office of Legal Counsel and other relevant personnel within the Department of Justice to determine the appropriate path forward under applicable law.

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

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. Mintzire*, 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

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? 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?

- d. Your June 8 memo includes no reference to the False Statements Accountability Act of 1996 or its definition of “corruptly.” Why?

RESPONSE: The memorandum that I drafted in June 2018 was narrow in scope. It addressed only a single subsection of one federal obstruction statute – namely, 18 U.S.C. § 1512(c). Nevertheless, the memorandum expressly discussed, and noted the relevance of, other federal obstruction statutes, such as 18 U.S.C. § 1505, to the interpretation of section 1512(c). Specifically, on page 17, the memorandum notes that “when Congress sought to ‘clarify’ the meaning of ‘corruptly’ in the wake of *Poindexter*, it settled on even more vague language – ‘acting with an improper motive’ – and then proceeded to qualify this definition further by adding, ‘including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.’ 18 U.S.C. § 1515(b).” Section 1515(b), in turn, provides the definition of “corruptly” that is used in § 1505, which you refer to as the “codification” of the False Statements Accountability Act of 1996. *See* 18 U.S.C. § 1515(b) (“As used in section 1505, 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.” (Emphasis added)). As the memorandum explained, the “fact that Congress could not define ‘corruptly’” in § 1505 “except through a laundry list of acts of evidence impairment strongly confirms that, in the obstruction context, the word has no intrinsic meaning apart from its transitive sense of compromising the honesty of a decision-maker or impairing evidence.” In other words, when Congress attempted to define the term “corruptly” in § 1505, it could only do so by providing examples that relate to the suppression or impairment of evidence, which supports the conclusion that, outside of that context, it is difficult to define exactly what “corruptly” means.

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’”).

As noted above, my memorandum only addressed the scope of section 1512(c). It did not address the meaning or scope of other federal obstruction statutes. If such issues were to arise during my tenure as Attorney General, I would consult with the Office of Legal Counsel, the Criminal Division, and other relevant Department of Justice personnel to determine the best view of the law and proceed accordingly.

24. On May 12, 2017, you published an op-ed in the Washington Post defending President Trump's firing of FBI Director James Comey.
- Did anyone ask you to write that op-ed, or suggest that you write it? If so, who?
 - 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?
 - Did you discuss the op-ed before its publication with any person currently or formerly associated with the Federalist Society?
 - 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?

RESPONSE: To the best of my recollection, following the removal of former FBI Director Comey, my former Deputy Attorney General, George Terwilliger, asked me to join him in drafting an op-ed on the issue. During the course of drafting, we determined that I would submit the op-ed under my name due to Mr. Terwilliger's busy schedule. It is my understanding that Mr. Terwilliger had been contacted by a publicist who was working with the Federalist Society to assist in placing the op-ed with publications. Although I normally submit opinion pieces to the *Washington Post* directly, in this instance I provided a draft of the op-ed to the publicist, who eventually placed it with *Washington Post*. I also spoke with friends about submitting an op-ed on this topic, but do not recall sending a draft of the op-ed to any person at the White House, on President Trump's legal team, at the Department of Justice, or any Republican House committee members or staff.

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?

RESPONSE: If confirmed, I will be committed to ensuring that all appointees comply with the requirements of the financial disclosure reporting program. I understand that the Ethics in Government Act (EIGA) requires that filers of public financial disclosure reports (SF-278s) report the identity of each source of compensation in excess of \$5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report. 5 U.S.C. app. §102(a)(6). The filer must provide: (1) the identity of each source of compensation, and (2) a brief description of the nature of the duties performed. 5 U.S.C. app. §102(a)(6)(B)(i) and (ii). EIGA does not require filers to report the underlying sources of income that were provided to the filers’ sources of compensation. EIGA specifically excludes from its reporting requirements any “positions held in any religious, social, fraternal, or political entity....” 5 U.S.C. app. §102(a)(6).

At the same time, as I said in my testimony, I understand the underlying concern and intend to explore this issue further with the Department’s ethics officials and the Office of Governmental Ethics.

- 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?

RESPONSE: If confirmed, I will ensure that the Department’s ethics review of financial disclosure reports is consistent with legal requirements. It is also my understanding that if the filer has properly reported all necessary entries on his or her SF-278, an ethics reviewer will not assume that efforts have been made to hide identities.

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?

RESPONSE: I do not believe that it is possible to make a recusal decision unless and until I am confirmed and the specific facts and circumstances of any live controversy are known. If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department's work, and I intend to follow those regulations in good faith.

Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices.

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?

RESPONSE: I am not aware of the nature of the Inspector General's review, should one be occurring, but I have no intent to interfere with the Inspector General's work.

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?

RESPONSE: I did not commit to conduct any investigations; I promised only to look into issues of concern to the Chairman and noted that investigations may be underway right now. In any event, I did not commit in advance to conduct any specific investigation.

In the hearing, Chairman Graham raised the issue of numerous inappropriate text messages exchanged by two FBI employees that appear to document personal or political bias for Secretary Clinton and prejudice against President Trump. Chairman Graham also spoke about the FBI's potential use of the Steele-authored "dossier" as a basis to obtain a Foreign Intelligence Surveillance Act (FISA) warrant from the FISA Court. FBI investigations must be based on the law and the facts and should be conducted without regard to political favoritism. If confirmed, I will seek to better understand what internal reviews of these and related matters were undertaken, including any investigations conducted by the Inspector General, United States Attorney John Huber, and the Department's ethics and professional responsibility offices.

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?

RESPONSE: Please see my response to Question 26 above.

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?

RESPONSE: Acting Attorney General Whitaker and I have had preliminary discussions to explore possible positions both inside and outside of the Department where he may best be able to continue to serve his country. No decisions have been made.

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?

RESPONSE: If confirmed, I will ensure that all Department attorneys, including attorneys within the Office of Legal Counsel, are receiving the appropriate ethical and professional responsibility training. I will address any insufficiency in the current ethics training program, should I discover that one exists.

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 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?

RESPONSE: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC's attorneys since I ran the office nearly 30 years ago. I do not know the author of the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has "seen an unprecedented tide of authoritarian-style politics sweep the country." However, the author's statement that "[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line" certainly reflects my experience with the Office.

- b. Is the OLC conduct described in the op-ed consistent with a lawyer's duty of candor?

RESPONSE: Please see my response to Question 32(a) above.

- 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

RESPONSE: In my experience, when OLC reviews proposed executive orders, it seeks, to the greatest extent possible, to verify the factual and legal predicates for the proposed action, relying upon the experience and expertise of others in the Executive Branch.

- d. Against that backdrop, under your leadership, will the Department continue its traditional practice of deferring to factual findings by the White House?

RESPONSE: Please see my response to Question 32(c) above.

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-9cf62dbb0a8_story.html?utm_term=.b4a7e24ff5da

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

- 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?

RESPONSE: No, I have no reason to believe that, and that is not consistent with my dealings with OLC.

- f. If confirmed, what will you do to address these concerns?

RESPONSE: As I stated in my confirmation hearing, "I love the department ... and all its components.... I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I'd like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity.... And I feel that I'm in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration." As I further stated, "I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I'm going to do what I think is right."

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 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. 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?

RESPONSE: Enforcement of our tax laws and the laws protecting the integrity and transparency of our election process must be a priority for the Department

of Justice. Determining whether there is criminal liability under specific statutes would require an individualized assessment of the facts presented in a specific case, consistent with the Principles of Federal Prosecution. As in all matters, if confirmed, I would look at the individualized facts and circumstances and follow the law and any policies of the Department.

- a. 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?

RESPONSE: If confirmed, I would evaluate any such situation based on actual facts and circumstances if and when presented.

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, 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?

RESPONSE: Yes. My understanding is that when bad actors exploit front companies, shell companies, other legal structures, and nominees, this creates challenges for prosecutors and investigators seeking to identify the true owners of these entities.

- 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?

RESPONSE: If confirmed, I would be pleased to work with you and other Members of Congress, as well as others in the Executive Branch, to discuss ways to combat money laundering more effectively.

- 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?

RESPONSE: If confirmed, I will further familiarize myself with this issue and consult with the Department's subject matter experts.

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.

RESPONSE: As I stated in my January 3, 2019 letter to the Committee, I have never been a member of the Federalist Society, although I have intermittently participated in activities and events organized by the group, including as a speaker. Speeches I have given at Federalist Society events are listed in my answer to Question 12 on the Committee's questionnaire. In addition, as disclosed in my questionnaire, I served on the Federalist Society's 1987 Convention Planning Committee, though I do not recall specifics of my involvement.

36. Please describe the nature of your relationship with Leonard Leo, including any shared organizational affiliations beyond the Federalist Society.

RESPONSE: Mr. Leo is a longtime personal and professional acquaintance. We speak on occasion and see each other from time to time at events in and around Washington, D.C. While I do not know the full extent of Mr. Leo's organizational affiliations, I believe that we have both been affiliated with the Catholic Information Center. In addition, as noted above, I have from time to time attended events organized by the Federalist Society, for which Mr. Leo works. Although I do not at this time recall any other shared organizational affiliations with Mr. Leo, it is possible he has been involved with other groups with which I have been affiliated, including those identified in my Committee questionnaire.

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.

RESPONSE: To the best of my recollection, my only involvement with judicial nominees during the Trump Administration was a brief, informal phone call with then-White House Counsel Donald McGahn in summer 2018 in which I expressed my views regarding then-Judge Brett Kavanaugh and Judge Thomas Hardiman. I do not recall any other involvement, but it is possible that I have expressed support for a judicial candidate at some point.

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?

RESPONSE: If confirmed, I will vigorously enforce the nation’s hate crimes laws to protect all Americans from violence and attacks motivated by their differences. I have not studied the federal definition of “domestic terrorism” or its application to violations of the federal hate crimes laws. If confirmed, I will

be firmly committed to prosecuting all federal hate crimes where warranted by the facts, the governing law, and Department policy.

Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I will be firmly committed to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

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?

RESPONSE: Yes, if confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act consistent with congressional intent.

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?

RESPONSE: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. I also believe that the Department’s charging and sentencing decisions should, to the extent feasible, reflect uniform application of the laws. My understanding is that the current policy facilitates that goal while maintaining flexibility when it is warranted. In that way, we should expect to see similar cases treated similarly, regardless of the district in which the case is brought. I believe these fundamental principles – uniformity, fairness, justice – inure to the public good, promote respect for the rule of law, and promote public safety.

- 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?

RESPONSE: Please see my response to question 40(a) above.

- 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?

RESPONSE: I believe that law-abiding citizens in every community want to live their lives free from violent crime. Mandatory minimum sentences can be an effective tool to take the most violent offenders off the streets for the longest period of time, thereby increasing public safety. I also firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. It is my understanding that the Department’s charging policy allows prosecutors the discretion to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so. If confirmed, I will ensure that the Department’s charging and sentencing policies demand a fair and equal application of the laws passed by this body, while providing the necessary flexibility to serve justice.

- 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?

RESPONSE: It is my understanding that the Department’s charging policy applies to all charging decisions in criminal cases without regard to the nature of the crime(s) to be charged.

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?

RESPONSE: I take seriously the Department’s role in protecting Americans’ civil rights. As I stated during the hearing, I generally support the policies reflected in former Attorney General Sessions’ memorandum. However, because I am not currently at the Department, I recognize that I do not have access to all information. As in all matters, if confirmed, I would look at the individualized facts of the situation as well as the governing law and the policies of the Department in determining what the next, appropriate steps might be with respect to Attorney General Sessions’ memorandum.

- 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?

RESPONSE: Yes. My belief remains that the Department should defend the constitutionality of congressional enactments except when they are clearly unconstitutional or impinge on executive prerogative. The Metropolitan Washington Airports Act Amendments of 1991, Pub. L. No. 102-240, Title VII, 103 Stat. 2197 (Dec. 18, 1991), is an example of such a statute. When I was Attorney General, the Department declined to defend certain provisions of the statute because they raised serious separation of powers concerns and violated the Appointments Clause. On July 13, 1992, Stuart M. Garson, then-Assistant Attorney General for the Civil Division, sent a letter to Senator Robert C. Byrd, pursuant to 28 U.S.C. § 530D, explaining this decision.

- 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?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the

Department's position in this case.

43. Do you believe that voter impersonation is a widespread problem? If so, what is the empirical basis for that belief?

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it.

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?

RESPONSE: I cannot comment on a hypothetical question. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

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.
- a. Do you agree with Attorney General Sessions's interpretation of Title VII? Why or why not?
 - b. Should you be confirmed as Attorney General, would DOJ continue to take the position that Title VII does not prohibit discrimination against transgender employees?

RESPONSE: I understand that the question of whether Title VII's prohibition on sex-based discrimination in the workplace covers gender identity is currently pending in litigation, and the Department's position is that it does not. Of course, the scope of Title VII and the question whether transgender individuals should be protected from workplace discrimination as a matter of policy are two different issues.

[Questions numbered 46 and 47 were missing in the submission of Questions for the Record that were received from the Senate Committee on the Judiciary.]

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.”
- a. 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?
 - b. Do you still believe that secularism causes juvenile crime and venereal disease? If not, what changed your mind?

RESPONSE: The reports you quote take substantial parts of my speech out of context and are inaccurate. Contemporary societal problems are complex and caused by many factors. I have never claimed that societal problems are caused by specific individuals or specific classes of individuals.

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?

RESPONSE: If confirmed, I will be firmly committed to fostering a fair, open, and equitable workplace for all Department employees, including non-religious attorneys and staff, in accordance with all applicable laws and Department policies.

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?

RESPONSE: I am not currently at the Department, and I am unfamiliar with the work of that Task Force, so I am unable to comment at this time.

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?

RESPONSE: I cannot speculate on a hypothetical question. I believe people should be hired based on their qualifications and performance, but I also believe it is vital that we not use governmental power to suppress the freedoms of religious communities in our country.

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?

RESPONSE: Because I am not currently at the Department, I am not familiar with all the circumstances referenced in your question and therefore am not in a position to make a commitment at this time. However, it is my understanding that the Environment and Natural Resources Division has issued guidance, available at <https://www.justice.gov/enrd/page/file/1043726/download>, on the implementation of Attorney General Sessions’ memorandum in environmental cases. That guidance indicates that the Sessions memorandum did not change preexisting policy regarding SEPs, as it “does not prohibit, as part of a settlement, a defendant from agreeing to undertake a supplemental environmental project related to the violation, so long as it is consistent with EPA’s Supplemental Environmental Projects (SEP) Policy, which already expressly prohibits all third-party payments.”

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

- a. Will you commit to investigate this dramatic drop-off in corporate fines for violations

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>).

of federal law and commit to reversing these trends?

RESPONSE: I am not familiar with the source of these statistics, and so have no basis to agree or disagree with them. I am committed to the fair and evenhanded enforcement of the laws within the Department's jurisdiction, including by assessing appropriate penalties to punish and deter unlawful conduct.

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?

RESPONSE: It is not uncommon for the Justice Department to change litigation positions in a small number of cases following a change in presidential administrations. The Department changed position in four significant cases during the Supreme Court's last term, and the Court ultimately agreed with the Department in each of those cases.

- b. Did DOJ reverse any prior litigation positions during your previous tenure as Attorney General?

RESPONSE: I do not recall any significant changes in litigation positions during my tenure as Attorney General, although I cannot say categorically that no changes occurred.

- c. If confirmed, what process will you use to determine whether the Department should reverse a prior litigation position?

RESPONSE: I believe the Justice Department should change litigating positions only after weighing the importance of the issue, how erroneous the prior position was, the Department's reasoning in reaching the prior position, and any other relevant factors depending on the facts of the case. If confirmed, I would consult with other members of the Department and the Executive Branch to ensure that those and any other relevant and appropriate factors are carefully considered before making any change in position.

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?

RESPONSE: When the President announced his intent to nominate me to serve as Attorney General, I stopped actively working on matters relating to Caterpillar. It is likely that my prior representation of Caterpillar will present conflicts, and it is my understanding that certain types of conflicts cannot be waived. If confirmed, I commit to following all applicable laws, regulations, and rules with respect to my prior representation of Caterpillar and, if necessary, recusing from any matters relating to the company. Other than information that is publicly available, I am unable to provide further details regarding the nature and specifics of my work for Caterpillar due to applicable privileges and confidentiality obligations.

56. If confirmed as Attorney General, will you commit to providing the resources necessary to pursue complex criminal tax abuse investigations and prosecutions?

RESPONSE: Tax enforcement, whether criminal or civil, is critical to both specific and general deterrence. When wrongdoers are held responsible for their misconduct it helps strength the compliant taxpayer's confidence in the fairness of the tax system. If I am fortunate to be confirmed I will seek to strategically deploy the Department's resources to ensure the equitable enforcement of our tax laws.

Exchange between Senator Whitehouse and Senator Graham Regarding Further Questioning of Attorney General Nominee William Barr on Executive Privilege, Indictment of a Sitting President and Releasing Derogatory Information

Senator Whitehouse: I wanted to make a point that follows on Senator Feinstein's point about the Attorney General Nominee's comments related to transparency and release of the special counsel report. As Senator Feinstein noted his top line was terrific. He wants to be as absolutely transparent as possible consistent with the law but we're both lawyers and we know that there are weasel words that can be put into sentences; and the question of what transparency is consistent with the law is a ginormous loophole in his transparency pledge. And there are two specific areas where we should have concern about that ginormous loophole. The first is the department's tradition that it does not release derogatory investigative information about an uncharged person. This is the rule that James Comey violated so flagrantly and so inexcusably. The question how that rule applies to this report is an interesting one. And the particular question that is of interest is, what if the reason that President Trump is an uncharged person within the meaning of that department's tradition is the OLC opinion that says 'you can't indict a sitting president.' What if there actually is an indictment worthy case to be made and they then take the position that, well he's an uncharged person and therefore this is derogatory information and we're not going to talk about it. There are a million reasons why in the special counsel context when the President of the United States is a target that rule creates. . . there are a whole bunch of new considerations. But it ought to be a very simple one that if the only reason he is an uncharged person is because OLC's internal, untested, never signed off on by any judge policy it makes him an uncharged person. We got to get to the bottom of that. That's I think a worthy question for this committee to settle before we're asked to vote on this guy.

The second is what if the reason that he refuses to be transparent about the special counsel report by reason of the law has to do with an assertion of Executive Privilege by the White House. Particularly again, an assertion by the White House completely untested in any court. He just says we're going with it. That takes the transparency of the report out of the special counsel process and the hands of the Attorney General and moves it over to White House counsel. And I think we have a serious concern about that problem because in this committee we have seen such fragrant, sorry fragrantly false and bogus assertions of Executive Privilege by this administration already. So again, these are two enormous windows that could be closed with clear answers and I hope very much that we can get those answers before we're obliged to vote on Mr. Barr.

[...]

I think we need to get to the bottom of Executive Privilege and come up with a committee process and rule for when we'll accept the assertion and when we won't because we've been extraordinarily sloppy about allowing executive officials to get away with non-assertion assertions of the privilege.

[...]

Senator Graham : That's a good point I haven't thought about that. What if the legal counsel said OLC folks said, you can't indict a sitting president so therefore, yeah so we'll talk to . . . I think that's a good question to get an answer. . .

Senator Whitehouse: And I think getting a responsible review of the executive privilege assertion if that's going to be an assertion that prevents release of the transcript. I don't know why they're being dodgy about those answers but one looks suspiciously. . .

Senator Graham : We'll give him a call.

Senator Whitehouse: . . .at dodging those answers.

Senator Graham : We'll give him a call.

Senator Whitehouse: Thank you.

[. . .]

Senator Graham: Senator Durbin, Senator Whitehouse mentioned two things I haven't really thought about; we'll call Mr. Barr and see if we can get a phone call or maybe a meeting to ask about executive privilege and OLC determinations as a basis to deny transparency. . . see what he says.

[. . .]

Senator Graham: Thank you, and I'll just reiterate again that Russia did it along with other people could do it, but Russia did it. The emails were stolen by Russian operatives. Mr. Mueller in my view is not on a witch hunt. He'll be allowed to do his job and it'll be good for the country. When that report is finished I want to find out as much about it as you do. But the regulation doesn't prohibit him from giving us the report you're right. But he does have discretion and I just trust the guy to make good judgments. But I do want to talk to him about the OLC concept institution . . . that's a pretty interesting. . . If you don't. . . if you agree you can't indict the President that's probably not a good reason not to share with us the derogatory information. In executive privilege you have to really watch about that being used to deny transparency cause that's a pretty easy way to stop things. So we'll talk to Mr. Barr about that.

[. . .]

Senator Graham: I'll try to be fair, the best I know how to be the OLC office being used to knock out information to the public is really a legitimate question. Executive privilege claim by any White House has reason not to divulge information is a legitimate question. Because you could use those two things to really shut down what the public gets and I'll talk to Mr. Barr about that with some members of the committee here interested but we'll have a lively debate next Tuesday and hopefully we'll send the nominee to the floor but everybody's got to vote their conscious and I expect. . . and if you vote against him I'm not questioning your motives. The one thing that Senator Thurmond and Biden told me, which is pretty good advice. You can disagree violently with the conclusion but don't question people's motives.

**Questions for the Record for Chuck Canterbury
From Senator Mazie K. Hirono**

In response to a question from Sen. Hawley, you testified that a “collaborative effort” between the Justice Department and local police departments can “have real consequences in the cities” when addressing police misconduct. You used Cincinnati, Ohio as an example. You testified that “when the administration entered a collaborative agreement and all parties were at the table, we came out with a plan to help bring that city back together.”

Former Attorney General Jeff Sessions eliminated a program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that focused on these types of “collaborative” efforts. The COPS Office’s Collaborative Reform Initiative allowed local police departments to voluntarily work with Justice Department officials to improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department’s Civil Rights Division Vanita Gupta criticized Former Attorney General Sessions’s decision, saying “[e]nding programs that help build trust between police and the communities they serve will only hurt public safety.”

- a. Do you agree with Ms. Gupta’s criticism?**
- b. If Mr. Barr is confirmed as Attorney General, would you recommend that he reinstitute the COPS Office’s Collaborative Reform Initiative?**

Senate Judiciary Committee
Hearing on the nomination of the Honorable William P. Barr to be
Attorney General of the United States
Questions for the Record
January 22, 2019
Senator Amy Klobuchar

For Mr. Canterbury, National President, Fraternal Order of Police

I have appreciated working with you and the Fraternal Order of Police on the important role the Department of Justice has in supporting local law enforcement through the Community Orientated Policing Services (COPS) office, which Senator Murkowski and I have worked to reauthorize.

- How has the COPS program supported your membership and what steps can the Attorney General take to maintain and improve that support?

**Questions for the Record for Derrick Johnson
From Senator Mazie K. Hirono**

In your opening statement, you criticized the Trump Administration for curtailing the use of consent decrees to address abuse by police agencies. I specifically asked Mr. Barr about this topic during his confirmation hearing. I asked him whether he agreed with former Attorney General Jeff Sessions's memo in which he made it harder for the Justice Department's Civil Rights Division to enter into consent decrees to address systemic police misconduct. He responded that he "agree[d] with that policy."

Please describe the importance of consent decrees in addressing police abuse and the impact continuing former Attorney General Sessions's policy would have on civil rights enforcement more generally.

**Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2019**

QUESTIONS FROM SENATOR LEAHY FOR DERRICK JOHNSON

1. During his first stint as Attorney General under President George H.W. Bush, Mr. Barr was adamant that “increasing prison capacity is the single most effective strategy for controlling crime.”
 - a. **In your view, is increasing prison capacity really the most effective strategy to control crime? If not, what in your opinion are the most effective strategies?**

2. Mr. Barr also stated that he thought our justice system was “fair and didn’t treat people differently.”
 - a. **Based upon your own experience, does our justice system really treat every person the same regardless of the race or background of the individual?**

3. Mr. Barr stated before this committee that while he once supported strong penalties on drug offenders, he now understands that things have changed since 1992.
 - a. **Are you concerned about Mr. Barr’s historic approach to drug crimes, and how he would handle such issues as Attorney General?**

 - b. **What in your opinion is the best way to lower crime rates associated with drug use?**

4. As indicated in Mr. Barr’s discussion with Senator Blumenthal, Mr. Barr stated that he believed it was the right thing under the law to segregate people with HIV who were seeking asylum in Guantanamo Bay.
 - a. **Was Mr. Barr correct when he said this policy was right under the law?**

 - b. **Do you believe Mr. Barr handled that situation appropriately?**

**Questions for the Record for Prof. Neil J. Kinkopf
From Senator Mazie Hirono**

Section 1 of the 14th Amendment states that “[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” During Mr. Barr’s confirmation hearing, I asked him whether he believed birthright citizenship is guaranteed by the 14th Amendment. He responded that he “ha[d] not looked at that issue” and that he would have to ask the Office of Legal Counsel whether eliminating birthright citizenship is “something that is appropriate for legislation.”

- a. Is birthright citizenship guaranteed by the 14th Amendment?**
- b. Can birthright citizenship be eliminated by legislation?**

**Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2019**

QUESTIONS FROM SENATOR LEAHY FOR PROF. NEIL KINKOPF

1. In your written testimony, you expressed your opinion that the Barr Memo argues that “[the President] alone is the Executive branch,” which you claim moves the executive from a Unitary Executive to an Imperial Executive.
 - a. **Do you believe Mr. Barr’s views on executive power are outside the mainstream of legal thought? Were his view of an “imperial presidency” to come to fruition, what checks would remain on the President’s power?**
 - b. Mr. Barr claimed that he would support the release of the Special Counsel’s report as far as he was able to under the law. **In your view, what implications does Mr. Barr’s expansive view of executive power have for his ability to ensure the Special Counsel’s report is released to the public and not subject to, for example, unwarranted claims of executive privilege?**
2. In your written statement, you stated that the Barr Memo is clear that anyone who exercises prosecutorial discretion is subject to the President’s supervision and control. But in his testimony before the committee, Mr. Barr also gave several assertions that he would allow the Special Counsel to do his job and would not allow interference with the investigation.
 - a. **Do these assertions assure you that Mr. Barr would allow the Special Counsel to finish his investigation and potentially any subsequent prosecutions?**
 - b. **Does the Barr memo potentially undermine Mr. Barr’s ability to prevent presidential interference in the Special Counsel’s investigation – under his own analysis that anyone who exercise prosecutorial discretion falls under the control of the President?**
3. The President has expressed interest in declaring a national emergency in order to use funds allocated to other departments to build a “border wall” along the Southern Border.
 - a. **In your academic and professional view, do you believe that President Trump declaring a national emergency to build the border wall would constitute an exercise of power by the “Imperial Executive”?**
 - b. **Do you believe that Mr. Barr, as Attorney General and given his views on executive power, would push back on President Trump declaring a national**

emergency to seize funds to build his border wall as a violation of the powers granted to the Executive Branch?

4. Mr. Barr stated before the Senate Judiciary Committee that politics degenerating into investigating political officials would lead us to a banana republic.
 - a. **Do you believe there is a legal basis to indict a sitting president if there is clear evidence of wrongdoing? Would this lead us to a banana republic, or would this be upholding the rule of law?**

**Questions for the Record for Marc H. Morial
From Senator Mazie K. Hirono**

In your opening statement, you criticized former Attorney General Jeff Sessions's review of the Justice Department's use of consent decrees to address police misconduct, calling it "a subterfuge to undermine a crucial tool in the Justice Department's efforts to ensure constitutional and accountable policing." I specifically asked Mr. Barr about this topic during his confirmation hearing. I asked him whether he agreed with former Attorney General Sessions's memo in which he made it harder for the Justice Department's Civil Rights Division to enter into consent decrees to address systemic police misconduct. He responded that he "agree[d] with that policy."

Please describe the importance of consent decrees in addressing police abuse and the impact continuing former Attorney General Sessions's policy would have on civil rights enforcement more generally.

**Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2019**

QUESTIONS FROM SENATOR LEAHY FOR MARC MORIAL

1. During his first stint as Attorney General under President George H.W. Bush, Mr. Barr was adamant that “increasing prison capacity is the single most effective strategy for controlling crime.”
 - a. **In your view, is increasing prison capacity really the most effective strategy to control crime? If not, what in your opinion are the most effective strategies?**
2. Mr. Barr also stated that he thought our justice system was “fair and didn’t treat people differently.”
 - a. **Based upon your own experience, does our justice system really treat every person the same regardless of the race or background of the individual?**
3. Mr. Barr stated before this Committee that while he once supported strong penalties on drug offenders, he now understands that things have changed since 1992.
 - a. **Are you concerned about Mr. Barr’s historic approach to drug crimes, and how he would handle such issues as Attorney General?**
 - b. **What in your opinion is the best way to lower crime rates associated with drug use?**
4. As indicated in Mr. Barr’s exchange with Senator Blumenthal, Mr. Barr stated that he believed it was the right thing under the law to segregate people with HIV who were seeking asylum in Guantanamo Bay.
 - a. **Was Mr. Barr correct when he said this policy was right under the law?**
 - b. **Do you believe Mr. Barr handled that situation appropriately?**

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Senator Amy Klobuchar

For Reverend Risher, Gun Violence Prevention Activist

Thank you for calling attention to loopholes in federal gun laws that must be addressed. I introduced a bill on Tuesday called the Preventing Domestic Violence and Stalking Victims Act, which would close the so-called “boyfriend loophole” and prevent those convicted of stalking from possessing a gun.

- What other steps would you like to see Congress and the Department of Justice take to further close loopholes?

**Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2019**

QUESTIONS FROM SENATOR LEAHY FOR REV. SHARON RISHER

1. Mr. Barr testified before the Judiciary Committee that he believes “the problem of our time is to get an effective system into place to get firearms out of the hands of mentally ill people. That should be priority number one.” He then said this is the single most important thing to do in the gun control area.
 - a. **Do you agree? Do you have other suggestions for what Congress should also focus on to reduce mass shootings and gun violence?**

582

January 27, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

Enclosed please find responses to Questions for the Record that I received from Ranking Member Feinstein, as well as Senators Grassley, Cornyn, Tillis, Crapo, Kennedy, Leahy, Durbin, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, and Harris, following my appearance before the Senate Committee on the Judiciary on January 15, 2019.

Sincerely,



William P. Barr

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR GRASSLEY

1. At the hearing, I pointed out my concerns about concentration and consolidation in the health care industry and my concerns about the high cost of drugs. I have written and expressed my concerns to the Department of Justice (DOJ) Antitrust Division about certain mergers, and have raised concerns with DOJ and the Federal Trade Commission (FTC) about certain practices in the health care and pharmaceutical industries that I have heard could be anti-competitive.

- a. If confirmed, will you make sure that the Antitrust Division carefully scrutinizes transactions and mergers in the health care and pharmaceutical industries? Will you make sure that the Antitrust Division looks into anti-competitive and abusive practices in these sectors that reduce choice and keep costs high for consumers?

RESPONSE: I believe that the healthcare sector is vital to Americans and that competition is an important factor in containing the costs of healthcare. I understand that, pursuant to long-standing procedures, the Department and FTC share civil enforcement responsibilities in the healthcare sector, whereas the Department has an exclusive responsibility to enforce the antitrust laws criminally. If confirmed, I will work with the Antitrust Division to ensure appropriate and effective criminal and civil enforcement to protect Americans' interests in low-cost, high-quality healthcare.

- b. If confirmed, will you commit to ensuring that health care and prescription drug antitrust issues are a top priority for the DOJ?

RESPONSE: Yes. If I am confirmed, enforcing the antitrust laws in the healthcare and pharmaceutical sectors will remain a priority for the Department of Justice.

- c. If confirmed, will you commit to collaborating with the FTC in their efforts in this area?

RESPONSE: Yes. Because the FTC and the Department share civil enforcement responsibilities in the healthcare sector, I believe it is important to collaborate with the FTC to ensure effective and consistent enforcement of the antitrust laws in this sector.

2. As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I

have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector. I believe that the Antitrust Division needs to dedicate more time and resources to agriculture competition issues. DOJ must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

- a. If confirmed, can you assure me that agriculture antitrust issues will be a priority for DOJ?

RESPONSE: Yes. If I am confirmed, enforcing the antitrust laws in the agriculture sector will remain a priority for the Department.

3. During consideration of the Hatch-Goodlatte Music Modernization Act (MMA), several colleagues and I inquired about the DOJ Antitrust Division's Judgement Termination Program, specifically as it relates to the consent decrees governing ASCAP and BMI, the two largest performing rights organizations. Because of concerns about the impact that a potential termination of these decrees would have on music industry stakeholders, DOJ assured us that there would be a process of timely consultation and substantial stakeholder input under which these consent decrees would be considered prior to any possible termination. The MMA also provides for congressional consultation and oversight of any DOJ action regarding these consent decrees.

- a. If confirmed, can you ensure that DOJ will provide this Committee with ongoing updates and meaningful advanced notice regarding any proposed modification or termination of the ASCAP and BMI consent decrees?

RESPONSE: I recognize the importance of these issues, particularly in working to minimize disruption to the music industry. If confirmed, I will work with the Antitrust Division to ensure that this Committee is informed of the Division's intentions a reasonable time before it takes any action to modify or terminate the decrees.

- b. If confirmed, will you commit to working closely with this Committee if DOJ decides to modify or terminate these consent decrees so that Congress can take any necessary legislative action prior to modification or termination of the decrees?

RESPONSE: I commit that, if I am confirmed, the Department will stand ready to provide this Committee with technical assistance on any legislative proposal regarding music licensing. If confirmed, I will work with the Antitrust Division to ensure that this Committee is informed of the Division's intentions with respect to these decrees.

4. The *First Step Act* requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will

lead to more inmates being put in prerelease custody, such as residential reentry centers (RRCs). That means we have to make sure that RRCs are appropriately funded.

- a. Will you commit to making sure that there is enough space in RRCs to meeting the needs of prisoners who qualify through earned and good time credits for prerelease custody?

RESPONSE: Because I am not currently at the Department, I am not familiar with the current capacity of Residential Reentry Centers (RRC) within the Bureau of Prisons (Bureau). If confirmed, I look forward to reviewing the Bureau's RRC capacity, needs, and funding to fully comply with the law.

5. The *First Step Act* requires the Bureau of Prisons (BOP) to recalculate good behavior credits for all inmates. Previously, inmates could earn up to 47 days per year toward early release for good behavior. The new law allows BOP to apply 54 days per year. However, it now seems BOP plans to delay this recalculation for months which could impact thousands of inmates who should be released under the new law. I don't see any reason to keep people in prison when the law clearly states they should be released.

- a. In your opinion, what are the justifications for delaying this recalculation and would you foresee any issues if Congress made this good time credit recalculation effective immediately?

RESPONSE: Because I am not currently at the Department, I am not in a position to speak to the Bureau of Prisons' justifications or to predict implementation issues. That said, my understanding is that the FIRST STEP Act states that the recalculation amendments will go into effect when the Department "completes and releases the risk and needs assessment system," and that the Act further provides 210 days for that system to be completed. In any event, as I explained at my hearing, if confirmed, I am committed to diligently enforcing and implementing the FIRST STEP Act.

6. Since 2007, DOJ has used the Justice Reinvestment Initiative to support states that want to take a fresh look at their sentencing and corrections systems in order to improve the public safety return-on-investment on each taxpayer dollar. The Department has supported these states as they implement policies to reinvest savings from reduced correctional populations into evidence-based programs that reduce recidivism, helping states to both cut costs and crime at the same time.

- a. Do you support the Justice Reinvestment Initiative and do you anticipate any modifications in its administration?

RESPONSE: If confirmed, I would seek to ensure that the Department effectively implements the programs Congress funds. I support the goals of the Justice Reinvestment Initiative as described and do not at this time have

specific ideas for modifications. That said, if I am confirmed, I will work to ensure that the Justice Reinvestment Initiative, like any other congressionally funded program, is efficient and effective at achieving its goals.

7. Over the years, Congress has appropriated billions of dollars to be used for DOJ grants. These grants are then awarded by DOJ to fund state, local, and tribal governments and nonprofit organizations for a variety of important criminal justice-related purposes. However, at times there have been reports of duplicative grant programs, as well as fraud and abuse.
- a. If confirmed, will you commit to working with this committee to remove these duplicative programs as well as root out waste, fraud, and abuse in DOJ grant programs?

RESPONSE: If I am confirmed, effective and proper stewardship of taxpayer dollars will be a top priority of mine, and I would look forward to working both internally within the Department, and with the Committee, to ensure Department grant programs are streamlined and efficient.

8. Illegal drug traffickers and importers can currently circumvent the existing scheduling regime established in the Controlled Substances Act by altering substances in a lab, which thereby creates a drug that is legal but often dangerous. Under the Controlled Substances Act, an eight-factor analysis of a substance must be conducted to determine potential abuse and accepted medical use. Unfortunately, this is a time-consuming process. With the onslaught of dangerous synthetic drugs continuing to affect thousands of Americans, we must be more proactive and efficient in identifying and prosecuting cases with these substances.
- a. What do you see as an effective way to address the increasing number of synthetic analogues that enter our country?

RESPONSE: I am concerned about the proliferation of dangerous new psychoactive substances entering our country. As I understand it, the existing process to schedule a substance temporarily is reactionary and not agile enough to keep up with bad actors engineering illicit substances for the express purpose of skirting our laws. If confirmed, I would be pleased to work with the Committee on legislation that would streamline the existing drug scheduling process for new synthetic analogues.

- b. How can a balance be struck between analyzing drugs for medical use while protecting Americans from these substances' potential dangers and holding drug traffickers responsible for distributing synthetic drugs?

RESPONSE: The Department of Health and Human Services (HHS) plays an important role in the research and scheduling of new substances. The

Department of Justice should work with Congress and with HHS on legislation that would streamline the drug scheduling process for new psychoactive substances, while also allowing for appropriate access to such substances for legitimate medical research.

9. For nearly fifty years, the University of Mississippi has had the sole contract with the National Institute on Drug Abuse (NIDA) to grow cannabis for research purposes. To expand the number of manufacturers, the Drug Enforcement Administration (DEA) submitted a notice in the Federal Register on August 11, 2016, soliciting applications for licenses to manufacture marijuana for research purposes. However, over two years have passed without any new schedule I marijuana manufacturer registrations. Your predecessor, Attorney General Sessions, testified on April 25, 2018 at the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, stating that “[w]e are moving forward and we will add, fairly soon . . . additional suppliers of marijuana under the Controlled [Substances Act].” On July 25, 2018, I sent a letter with other Senators to Attorney General Sessions asking for an update on marijuana manufacturer applications.

- a. Will you review this letter and assess the status of the pending marijuana manufacturer applications?

RESPONSE: Yes. If confirmed, I will review your letter and the status of the pending applications.

- b. Do you intend to support the expansion of marijuana manufacturers for scientific research?

RESPONSE: Yes. I support the expansion of marijuana manufacturers for scientific research consistent with law. If confirmed, I will review the matter and take appropriate steps.

10. Along with Senator Feinstein, I introduced legislation that expands research into a derivative of marijuana known as cannabidiol, or CBD. The Food and Drug Administration (FDA) recently approved Epidiolex, whose main active ingredient is CBD. This FDA-approved drug has since been placed in Schedule V of the Controlled Substances Act. While this is a positive step and will provide a new treatment option for those with two types of intractable epilepsy, it is my understanding that this scheduling action relates only to CBD in an FDA-approved formulation. Senator Feinstein and I wrote to DOJ and Health and Human Services (HHS) on two occasions requesting that a scientific and medical evaluation of CBD be conducted. The first letter was sent on May 13, 2015, and the second letter was sent on November 18, 2018. Both DOJ and HHS agreed to conduct a medical and scientific evaluation of CBD independent of marijuana in 2015.

- a. What is the status of this request?

RESPONSE: I am not familiar with the details of this request or with the status of any response from DOJ and HHS. If confirmed, I will look into the matter.

- b. What is the anticipated date of completion?

RESPONSE: I am not familiar with the details of this request or with the status of any response from the Department and HHS. I have no insight into the anticipated date of completion for any response from HHS or Department. If confirmed, I will look into the matter.

- c. Do you view the substance CBD as in Epidiolex as a separate substance from CBD in marijuana?

RESPONSE: I have not studied this issue closely. I am aware, however, that the FDA has approved the drug Epidiolex, which contains CBD, and that DEA has placed Epidiolex on Schedule V under the Controlled Substances Act. Epidiolex is therefore subject to different legal and regulatory restrictions than marijuana-derived CBD generally, which is listed on Schedule I.

- d. Do you believe that marijuana-derived CBD is separate and distinct from hemp-derived CBD?

RESPONSE: I have not studied this issue closely. I am aware that, as part of the most recent Farm Bill, Congress enacted new provisions that authorize the cultivation of hemp plants and the distribution of hemp-derived products, subject to certain restrictions and limitations. Products derived from hemp, including CBD, are therefore subject to different legal and regulatory restrictions than those derived from non-hemp marijuana plants under certain circumstances.

11. Today's global economy facilitates commerce and a strong American financial system. However, most money within global transactions flows through U.S. banks, which unfortunately makes our financial institutions prone to exploitation by terrorists, drug kingpins, and human traffickers who need to fund their operations. Congress has made efforts to strengthen our laws and make it more difficult for terrorists to move money. However, it has been almost 15 years since Congress took action and updated anti-money laundering laws.

- a. What do you see as the biggest challenges for DOJ in combatting money laundering in our current age of digital currency, global economies, and terrorist financing?

RESPONSE: My understanding is that the challenges to anti-money laundering enforcement include, as you allude to, virtual currencies, lax compliance at financial institutions, and complicit financial services employees. If confirmed, I look forward to consulting with the experts within the Department, including in the Money Laundering and Asset Recovery Section of the Criminal Division, to learn more about current efforts to combat money laundering techniques and what additional tools they believe are needed.

- b. What additional tools do you believe would be helpful in addressing money laundering?

RESPONSE: Please see my response to Question 11(a) above.

- c. My bill, the *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act*, seeks to improve our nation's anti-money laundering laws. If confirmed, will you commit to working with me to pass meaningful legislation to address money laundering?

RESPONSE: If confirmed, I would be happy to work with you and other Members of Congress to ensure that all necessary tools are provided to support the Department's efforts to combat money laundering.

12. China recently stated that it plans to place all fentanyl-like substances on Schedule I in China. This could dramatically decrease the amount of fentanyl and its analogues that flow into the United States.

- a. What can you do in your role as Attorney General to ensure that China executes its promise to place these drugs in Schedule I?

RESPONSE: I understand from news reports that President Xi agreed to schedule all fentanyl class substances in China. Such a step will ensure that China has the legal and regulatory framework to hold manufacturers and distributors of fentanyl analogues accountable. If confirmed, I will support the Administration's efforts to engage China on this issue.

- b. What can we do within our own borders to hold China accountable? Do you have any legislative recommendations?

RESPONSE: I believe we should use diplomacy, sanctions, and other forms of national power, if necessary and where appropriate, to engage China on this issue. In recent years, the Justice Department has indicted a number of Chinese nationals in relation to trafficking in fentanyl and fentanyl analogues. Additionally, in February 2018, the DEA temporarily scheduled fentanyl substances as a class on an emergency basis. I believe that

permanent class-wide scheduling of fentanyl related substances is critical to our engagement with China. The U.S. should permanently schedule analogues of fentanyl as a class, and hold China accountable to fulfilling their promise to do the same.

13. DOJ is the administrator of immigration laws and the Attorney General has statutory authority to implement and execute these laws, including asylum claims. Over the past few years, we've seen the number of asylum claims filed increase drastically. As many as 80% of these claims are eventually denied as having no legal merit. At the same time, DOJ recently reported that the total asylum backlog exceeds 700,000 cases. 8 U.S. Code Section 1158 clearly states that grants of asylum should only be extended to those applicants who can show that their home country government persecuted them on the base of race, religion, nationality, membership in a particular social group, or political opinion. Last year, then-Attorney General Sessions took up the case of *Matter of A-B*, which restored asylum adjudications to original congressional intent, reversing an Obama-era decision to expand grounds of asylum without Congressional approval.

- a. What is your position for defining the threshold for an initial positive finding of credible fear and the grant of asylum?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- b. What are the implications for legitimate asylum seekers when our asylum backlog is in this dire state?

RESPONSE: It is my understanding that there are more than 800,000 immigration cases pending before our nation's immigration courts, many of which involved applications for asylum. It is also my understanding that many of those cases do not come close to meeting the statutory standards to be granted asylum, and that such cases can overburden the system and cause extensive delays for legitimate claims.

- c. If confirmed, will you commit to working with Congress to achieve meaningful bipartisan asylum reform?

RESPONSE: If confirmed, I will work with this Committee regarding legislation that supports the Department's mission and priorities, including improving our overburdened asylum and immigration court systems.

14. Previous administrations have refused to prosecute many previously deported aliens who illegally re-entered the United States. If confirmed, will you prioritize felony illegal re-entry cases?

RESPONSE: As I said at the hearing, the role of the Department of Justice is to enforce the law. I will continue to prioritize the prosecution of these and other serious criminal offenses.

15. There's an ongoing debate about the legality of so-called "sanctuary jurisdictions." Can DOJ and federal law enforcement effectively do their jobs when states and cities across the country refuse to comply with the law?

RESPONSE: I am committed to fully and fairly enforcing federal law, and I do not believe that law enforcement should pick and choose which laws to enforce. As I said at the hearing, sanctuary cities create numerous problems, particularly when these jurisdictions do not give the federal government information about criminal aliens they have in their custody.

16. Will you commit to enforcing immigration detainer statutes and regulations, and will you use all available tools at your disposal to encourage compliance?

RESPONSE: If I am confirmed, the Department will use the lawful tools at its disposal to support the Department of Homeland Security's enforcement efforts, and to ensure that state and local jurisdictions provide the level of cooperation required by law.

17. In 2018, DOJ announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work.

- a. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

RESPONSE: If confirmed, I look forward to learning more about the Department's efforts to investigate and combat waste, fraud, and abuse, including potential abuse of asbestos trusts, and continuing the Department's good work in this area. I will exercise my best efforts to keep this Committee informed about these efforts through the Office of Legislative Affairs, consistent with the Department's policies and practices related to ongoing investigations and cases, as well as closed matters.

18. Current DOJ regulations give the Attorney General the discretion to release certain reports to the public concerning the work of a Special Counsel. If confirmed, will you commit to erring on the side of transparency in releasing information that's in the public interest?

RESPONSE: I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision.

19. In February 2018, then-Associate Attorney General Rachel Brand announced that DOJ would begin reviewing the fairness of class action settlements, pursuant to the Attorney General's authority under the Class Action Fairness Act of 2005 (CAFA)—a bill on which I was the lead sponsor. Congress passed CAFA with bipartisan support to push back against certain abuses in the class action system, particularly where lawyers were cashing in at the expense of class members. I was pleased to hear that DOJ began exercising its review authority under CAFA last year by filing statements of interest where certain proposed settlements appeared unfair to class members.
- a. If confirmed, will you ensure DOJ continues this work in protecting class members from unfair settlements?

RESPONSE: I agree that this is an important issue. I am not familiar with this particular program. If confirmed, I look forward to learning more about this issue and the Department's efforts.

20. Every day, the Americans with Disabilities Act (ADA) protects countless individuals with disabilities, ensuring physical access to "any place of public accommodation." For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.
- a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?
- b. More broadly, what other steps will you recommend DOJ take under your leadership to combat abusive litigation practices under the ADA?

RESPONSE: I have not studied these issues and therefore have no basis to reach a conclusion regarding them. If confirmed, I would be pleased to study this issue in greater detail and consult with you on these issues.

21. In 2010, I authored a change to the False Claims Act that prevents the dismissal of a qui tam action if the government is in opposition to such dismissal and if the action is based on information that may have been publicly disclosed. The purpose of 31 U.S.C. 3730(e)(4) is to allow the federal government to maximize recoveries for taxpayers by

using qui tam relators as a source of information regarding fraud about which the government may not be fully aware. Will you commit to use this provision to prevent unnecessary dismissals of meritorious qui tam cases, especially those where the affected agency supports the continuation of the litigation?

RESPONSE: As I confirmed at my hearing, I will diligently enforce the False Claims Act.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR CORNYN

1. In your testimony, you discussed "red flag laws" and the concept of Extreme Risk Protection Orders (ERPOs) as a possible means of keeping firearms out of the hands of dangerously mentally-ill individuals. Of course that is a goal we all share. As I'm sure you are aware, several states have enacted ERPO laws to date; however, these laws have included varying levels of due process protections, some of which have been subject to abuse. As a result, this issue has become a cause of concern for many law-abiding gun owners. Would you agree that at a minimum, state ERPO laws should include robust front-end due process protections, penalties against the filing of frivolous charges, and mental health treatment for those who pose a significant danger to themselves or others?

RESPONSE: As I testified during my hearing, it is critical that we get an effective system in place that keeps firearms out of the hands of mentally ill people who pose a danger to themselves or others. A key part of any such system are laws that allow "Extreme Risk Protection Orders" to be obtained in appropriate circumstances. At the same time, we must take steps to ensure that any laws that restrict possession of firearms by law-abiding persons, even if only temporarily, conform to constitutional rights and standards – including those embodied in the Second, Fifth, and Fourteenth Amendments. To the extent that these laws also incorporate features that minimize the likelihood of their abuse, I would support that approach as well.

2. In your testimony, you stated that you have opposed bans on certain semi-automatic firearms (often misnamed as "assault weapons"). You also stated your long standing belief that the Second Amendment guarantees the fundamental, individual right to keep and bear arms for all law-abiding Americans - a belief that predates the Supreme Court's *Heller* and *McDonald* decisions. You also mentioned that, in looking at firearms regulations, it is appropriate to consider whether the burden on law-abiding individuals is proportionate to any general benefit to public safety. Would you further clarify that last statement, in light of Justice Scalia's holding in *Heller*, that the enumeration of the Second Amendment right "takes out of the hands of government the power to decide whether the right is really worth insisting upon"?

RESPONSE: When I was the Assistant Attorney General of the Office of Legal Counsel, I concluded that the Second Amendment creates a personal right under the Constitution. My analysis drew in part on the right of self-preservation set forth in John Locke's *Second Treatise of Government*. I was pleased to see that *Heller* vindicated my view, and there is no question following *Heller* that the right to keep and bear firearms is protected under the Second Amendment and that this is a personal right. As I stated during my hearing, what I would look for in assessing a gun-control measure is what burden it would impose on the constitutional rights of

law-abiding citizens and whether that burden has a sufficiently meaningful impact on crime to justify burdening a fundamental right. I would not favor pursuing gun-control measures that burden the Second Amendment rights of law-abiding citizens without having any meaningful impact on crime or public safety.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR TILLIS

Technology and Law Enforcement

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for the deployment of these technologies increased. Most gunshot incidents, for example, go unreported to the police. Gunfire detection and location technology, where it has been deployed, and that includes some communities in my state, has helped police respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and occasionally catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Identification System – NIBIN – law enforcement agencies can determine if the gun has been used in other crimes and can focus their investigation. The use of cameras in public spaces is another positive tool. Will you support increased Federal support to assist localities to deploy these kinds of technologies?

RESPONSE: Although I am not fully versed in current law enforcement technologies, I generally appreciate and understand the great benefits they can provide to law enforcement and would work to support their use where appropriate and consistent with law. Because I am not familiar with the Department's current budget and funding requests and allocations, I do not have sufficient information to commit to specific financial support from the Department for our local and state partners to expand use of these technologies. If confirmed, I look forward to learning more about this issue.

Digital Evidence in Support of Criminal Investigations

2. Access to digital evidence has grown increasingly important in investigations and prosecutions of criminal cases at the local, state, and federal levels. Investigators increasingly obtain data from mobile communications devices, social media accounts, internet browsing histories, and myriad other data sources to help them generate leads, identify suspects, and build their cases. Yet, as the Center for Strategic and International Studies (CSIS) recently reported, law enforcement agencies are facing significant challenges impeding their ability to effectively access digital evidence to support criminal investigations.

The CSIS report found that nearly one-third of law enforcement professionals cited difficulties in identifying which service providers had access to digital evidence as their

largest challenge, followed by difficulties in obtaining evidence from providers, and a lack of resources needed to access and analyze data from devices.

- a. As Attorney General, what steps will you take to promote digital evidence training programs for federal, state and local law enforcement officers?

RESPONSE: I am not familiar with the specific CSIS report you cite, but generally understand the importance of accessing digital evidence in criminal investigations and would support digital evidence training programs consistent with available resources. However, because I am not familiar with the Department's current budget and funding requests and allocations, I do not have sufficient information to commit to the specific steps I would take to support such training.

- b. Will you conduct a review of existing programs to promote digital evidence training and report back to this Committee on those efforts and any steps that can be taken to improve them?

RESPONSE: If confirmed, I will review the issue of support for digital evidence training along with other issues affecting public safety, and would look forward to working with the Committee.

Combatting Sexual Exploitation

3. I'm concerned that the Department of Justice—which has the legal authority to prosecute internet based platforms which promote prostitution and facilitate sex trafficking—rarely does so. While it is encouraging that DOJ finally cracked down on certain bad actors last year, these actions came years too late for many victims of sex-trafficking.

- a. What steps will you take to continue the Department's work to prosecute existing internet based platforms that promote prostitution and sex-trafficking?

RESPONSE: As I noted at my hearing, Internet-based platforms and other emerging technologies that facilitate sex trafficking, prostitution, and human trafficking are a particularly abhorrent form of criminality. If confirmed, Americans can count on me examining this issue closely to learn more about the Department's current efforts and to ensure that appropriate steps are being taken to address this scourge.

- b. What will you do as Attorney General to anticipate and crack down on emerging technologies used by sexual exploiters to engage in prostitution and human trafficking?

RESPONSE: Please see my response to Question 3(a) above.

- c. What protective measures can you take to increase federal, state and local law enforcement's understanding of emerging modalities of sexual exploitation?

RESPONSE: State and local investigators and prosecutors have an important role to play in addressing this terrible problem. If confirmed, I will ensure that the Department is appropriately collaborating with state and local officials to effectively pursue sexual exploitation crimes. With regard to federal enforcement, please see my response to Question 3(a) above.

- d. How can the Department of Justice better coordinate and collaborate with social media companies to eradicate criminal exploitation that may be occurring on their platforms?

RESPONSE: Because I am not currently at the Department, I am unaware of the degree and nature of federal coordination and/or collaboration with social media companies on these issues. Given the role of Internet-based platforms in facilitating such activities, social media companies do have a responsibility to help us address the problem. If confirmed, I will ensure that the Department is appropriately working with social media companies to seek the most effective response.

4. For the last few decades the federal government has made a concerted effort to fight sex trafficking. We've taken steps to protect victims and help them escape sexual exploitation. We've also cracked down on sex traffickers, enhancing criminal penalties for sex trafficking and providing the Department with more tools and resources to prosecute them.

Unfortunately, one thing we haven't done well is focus on prosecuting those who solicit and purchase sex. In recognition of this, last year, Congress passed the Abolish Human Trafficking Act of 2017, which requires the Department to create a national strategy to reduce demand for human trafficking victims. The law also requires the Department to issue guidance urging Department components to prosecute those who purchase sex from minors and trafficking victims.

- a. Will you commit to finalizing and issuing the guidance required by the Abolish Human Trafficking Act of 2017?

RESPONSE: If confirmed, I will ensure that the Department complies with any statutory requirements, including in this area.

- b. How will you increase Department efforts to crack down on those who purchase sex commercially?

RESPONSE: Because I am not currently at the Department, I am not familiar with the Department's current efforts in this area. Sex trafficking and sexual exploitation are important problems that need to be addressed and that I intend to examine closely if confirmed.

- c. Will you direct DOJ's criminal division to provide technical and, to the extent allowed by law, financial support to state and local law enforcement efforts aimed at prosecuting commercial sex buyers?

RESPONSE: Please see my response to Question 4(b) above.

International Parental Child Abduction

- 5. Every year, hundreds of American-citizen children are abducted to a foreign country by one of their parents. These children are usually taken from the parent who has custody by their ex-spouse. The federal government has several tools to combat international parental child abduction but as Senator Feinstein and I noted in a letter to Secretary Pompeo, we rarely if ever use all of these tools. One of the most underused tools is prosecution of the taking parent—and their accomplices—under the International Parental Kidnapping Crime Act. That law makes it a federal crime to remove an American-citizen child from the United States with intent to obstruct custodial rights and individuals can face up to 3 years in prison for violations of its provisions.

According to conversations my office has had with victim-advocates, it appears the Department rarely prosecutes individuals under the IPKCA.

- a. As Attorney General, will you commit to prosecuting those who commit and assist in international parental child kidnapping to the fullest extent allowed by law?

RESPONSE: International parental child kidnapping is a concerning issue, and I appreciate your leadership on this. If confirmed, I will examine this issue more closely and ensure that the Department is taking appropriate steps to combat it.

- 6. Another complaint victims have brought to my attention is the general lack of knowledge about this issue from federal, state and local law enforcement. Many law enforcement officers don't even realize a parental kidnapping is a crime. As Attorney General, what will you do to provide better training and information to federal, state and local law enforcement officers? Specifically, what can or will you do to teach our law enforcement officers about how the potential for prosecution under the IPKCA can be both a deterrent and remedy for international parental kidnapping?

RESPONSE: Please see my response to Question 5(a) above.

Intellectual Property

7. I'd like to commend President Trump and former Attorney General Jeff Sessions for their commitment to protecting the intellectual property rights of American innovators. Domestically and internationally intellectual property crime is on the rise. Intellectual property crime not only threatens our nation's economic health and well-being, but it also poses a national security risk. Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim (DEL RA HEEM) have made great strides in prosecuting intellectual property theft. If confirmed as Attorney General, what will you do to continue the efforts of General Sessions, Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim?

RESPONSE: I am aware that the Department has identified intellectual property crime as a priority area due to the wide-ranging economic impact on U.S. businesses and, in some situations, the very real threat to the health, safety, and security of the American public. If confirmed, I look forward to examining this issue in greater depth and will ensure the Department continues to combat these significant harms.

8. As you know, certain countries have been more egregious in their theft of American intellectual property. China is perhaps the most notorious, but India, Brazil and Russia are also bad actors. How will you approach international intellectual property theft and work with your foreign counterparts to preserve and protect the property rights of American innovators?

RESPONSE: I understand that the Department works with our law enforcement counterparts across the globe to ensure they are prepared to address crimes involving intellectual property, cyber intrusions, and digital evidence. In addition, prosecutors in the Criminal, Civil and National Security Divisions work closely with U.S. Attorneys' Offices throughout the country on a wide range of cases involving foreign theft of intellectual property. If confirmed, I will examine these and other efforts to ensure that the Department is effectively building relationships with foreign partners to counter foreign threats to our intellectual property.

9. Does the Department need additional tools, resources or legal authorities to better combat international IP crime?

RESPONSE: I appreciate your interest in this important area, which is vital to protecting American interests here and abroad. If confirmed, I look forward to working with you on ways to enhance the Department's current enforcement efforts on international IP theft.

Faith Based and Community Organization Partnerships in the Bureau of Prisons

10. The BOP recently reported over 16,000 prisoners were on a wait-list for basic literacy programs. The First Step Act will provide some funding to support prison programming, but there is also a lot of room for greater partnership with volunteer faith-based and community-based groups that provide programming without government funding.

- a. How will you go about ensuring there is a focus on increasing the number and quality of programs available through partnerships with programs that do not take direct funding from the government?

RESPONSE: As I am not currently at the Department, I have not had the opportunity to study programming capacity in the Bureau of Prisons. If confirmed, I look forward to learning more about this issue and the Bureau's programs to ensure compliance with the law.

- b. Will you encourage in-prison programs proven to reduce recidivism offered by faith-based organizations to be considered as a reentry program in addition to being offered through the chaplaincy? (Background: Currently, faith-based organizations are generally only considered for programming under the chaplaincy by the BOP. The chaplaincy has strict limits on the number of volunteers and hours provided by each faith tradition, even if the program is holistic, offering more than explicitly religious activities, open to prisoners of any faith, and does not take any government funding. The First Step Act states that the AG shall inform the BOP that faith-based programs proven to reduce recidivism shall qualify as a reentry program outside the chaplaincy).

RESPONSE: While I am aware generally of this provision within the FIRST STEP Act, I am not currently at the Department, and I am not familiar with details regarding how this provision can best be legally effectuated by the Bureau of Prisons. If confirmed, I look forward to learning more about the provision and its implementation to ensure compliance with applicable law.

11. The Second Chance Act provided that, "any person who provides mentoring services to an incarcerated offender is permitted to continue such services after that offender is released from prison." The First STEP Act expands that provision stating that a prisoner in prerelease custody may not be prohibited from receiving mentoring, reentry or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated. "Reentry or spiritual services" was inserted because many people leaving prison without much family support have worked closely with chapel and other faith-based volunteer mentors. These volunteers are in a place to encourage them through the difficult reentry process.

But BOP policies currently only allow specially trained mentors to remain in contact with parishioners after they release. Will you shepherd the implementation of this part of this

new law, ensuring that the chapel and other faith-based volunteers are able to play a critical role in the reentry process of the men and women they have come to know and care about?

RESPONSE: While I am aware generally of this provision within the FIRST STEP Act, I am not currently at the Department, and I am not familiar with the details regarding volunteer services for inmates in pre-release custody. It is my understanding that BOP program considerations that might be affected include contracts with Residential Reentry Centers as well as public safety considerations. If confirmed, I look forward to learning more about the provision and its implementation to ensure compliance with law.

Bureau of Prisons Director

12. Director: The federal prison system has been without a permanent director since May of last year. The Attorney General is responsible for hiring this non-political position. Given the mandates on the federal prison system obligated under the newly passed First Step Act, how would you prioritize the hiring for this position and what qualities would you look for in a candidate?

RESPONSE: If confirmed, I will be committed to finding high-quality candidates to serve in the Department of Justice and ensuring the Department's staffing decisions are made with integrity and without political, ideological, or any other prohibited consideration and consistent with civil service law and Departmental policies. It is my understanding that the Director position at the Bureau of Prisons has been open for some time. I believe it is important to fill this position, particularly in light of the recently-passed FIRST STEP Act, and I will make it a priority to do so.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR CRAPO

Operation Choke Point was an Obama-era initiative that targeted “high risk” industries and prevented them from fully participating in the economy. Employees of the DOJ coordinated with federal bank examiners to press financial institutions who provided financial services to certain targeted industries (including firearms and ammunition) to end these relationships. This program effectively operated as an end-run around the Second Amendment. Some Idaho businesses were directly impacted by this effort.

In July 2017, Senator Tillis and I sent a letter to your predecessor, then-Attorney General Sessions, requesting a review of all options available to ensure lawful businesses are able to continue to operate without fear of significant financial consequences, and asked for a statement ensuring that Operation Choke Point would no longer be in effect. We received a commitment from the Department that it had ended Operation Choke Point. Last November, my republican Banking Committee colleagues and I wrote FDIC Chairman Jelena McWilliams to again confirm that banks are not cutting off lawful businesses simply because they were viewed as unfavorable by certain administrations.

1. Do you believe Operation Choke Point was inappropriate and should not have been initiated?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media, but I do not believe the Justice Department should operate programs aimed to cut off access to payment systems and banking services for merchants because they conduct business in politically disfavored industries.

2. Will you commit to review whether DOJ has actually ended Operation Choke Point?

RESPONSE: Yes.

3. Will you assure that, if confirmed, you will not resurrect Operation Choke Point or any other program aimed to cut off access to payment systems and banking services for merchants in politically disfavored industries?

RESPONSE: Yes. Please also see my responses to Questions 1 and 2 above.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR KENNEDY

1. The 2014 Supreme Court Case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, addressed the use of disparate-impact as a theory for determining discriminatory practices. While the case addressed the Fair Housing Act, the analysis has applicability to the Equal Credit Opportunity Act and the banking regulators' use of disparate impact as a theory for determining discriminatory practices. The Court held that a disparate impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing the disparity.

The Department of Justice's 1996 memorandum on identifying lender practices that may form the basis of a pattern or practice referral remains in effect. The memo references a de minimis violation, which would be of pattern or practice referral that would return the investigation from the DOJ back to the referring agency. Will you commit, upon your confirmation, to expeditiously update the 1996 guidance and clarify what the DOJ views to be a de minimis violation?

RESPONSE: I am not aware of this memorandum and have not studied this issue. Therefore, I have no basis to reach a conclusion regarding it. If confirmed, I commit to studying this issue in greater detail.

2. President Trump just signed my bill called the JACK Act (Justice Against Corruption on K Street) into law. This bill requires lobbyists convicted of bribery, extortion, fraud and embezzlement to disclose it. The law falls short of prohibiting corrupt lobbyists from lobbying the government. Would you support a full prohibition on lobbying by those convicted of these crimes?

RESPONSE: The Department has long been committed to ensuring that our political process is free from corruption, including by lobbyists and other advocates. I am not familiar with the specific details of this new law and have not thought in detail about whether those convicted of corruption offenses could be banned from lobbying activities. If confirmed, I would be happy to work with you and the Committee on appropriate legislation that supports the Department's mission and priorities.

3. Last time you were here, you said in your hearing you would be in favor of an amendment banning certain types of semiautomatic rifles. You also said you "would prefer a limitation on the clip size." Will you uphold our second amendment rights as our Attorney General and have your views changed since that hearing?

RESPONSE: I will uphold Second Amendment rights, as I will uphold all rights established by the Constitution. When I was the Assistant Attorney General of the Office of Legal Counsel, I concluded that the Second Amendment creates a personal right under the Constitution. My analysis drew in part on the right of self-preservation set forth in John Locke's Second Treatise of Government. I was pleased to see that *Heller* vindicated my view, and there is no question following *Heller* that the right to keep and bear firearms is protected under the Second Amendment and that this is a personal right. As I stated during my hearing, what I would look for in assessing a gun-control measure is what burden it would impose on the constitutional rights of law-abiding citizens and whether that burden has a sufficiently meaningful impact on crime to justify burdening a fundamental right. I would not favor pursuing gun-control measures that burden the Second Amendment rights of law-abiding citizens without having any meaningful impact on crime or public safety.

4. In 2010, Live Nation and Ticketmaster completed a merger of the world's largest concert promoter and with the world's leading ticket provider. The consent decree--set to expire in 2020--was designed to increase competition and prohibit Live Nation from leveraging its market power in live entertainment to obtain primary ticketing contracts. There is little dispute that the consent decree has been unsuccessful meeting that goal. Since the merger, Live Nation Entertainment has solidified its dominant position in ticketing: some estimates suggest Ticketmaster controls 80% of primary ticketing. Today, its footprint extends beyond concert promotion and primary ticketing services to artist management, venue ownership, and secondary ticketing services. As the consent decree comes close to expiration, how will the Department of Justice be reviewing this matter? Do you think that the consent decree should be extended? In what ways could the consent decree be modified to account for TM/Live Nation's increased anti-competitive behavior?

RESPONSE: I have not studied the Ticketmaster/LiveNation consent decree and therefore do not have an opinion on the matter. If confirmed, I look forward to discussing this issue with the Antitrust Division and working with the Division to protect competition and prevent any continued anticompetitive behavior.

5. Last year the US Attorney for the Western District of Louisiana announced that three different illegal aliens were deported for the third time to Mexico and Honduras in November alone. How can we stop illegal aliens from reentering the country repeatedly, especially in cases where they are violent criminals? These deportations are costly and use our already limited resources. Would you support deported individuals' country of origin to pay for these efforts?

RESPONSE: As you note, repeated illegal reentry is a serious problem that unnecessarily burdens our system. If confirmed, I can commit to working with this Committee regarding legislation that supports the Department's mission and priorities.

6. I arranged for several meetings with local officials and the Attorney General regarding New Orleans' sanctuary city status. The city of New Orleans and the Department of Justice entered into a consent decree to get the city into compliance. The decree stated that the city must notify ICE within 48 hours of releasing an undocumented immigrant from jail and it must allow ICE to interview an undocumented immigrant while in custody. It is my understanding that the city has made progress on the decree but is still not fully compliant. Would you be willing to take away grant funding to sanctuary cities that refuse to enforce federal law?

RESPONSE: I am not familiar with the particular situation in New Orleans. But, I am generally aware that the Department has sought to require law enforcement grant recipients to provide this cooperation, and as a general matter, I believe that, where authority exists to do so, this is a common sense requirement that should be continued. If confirmed, I would expect to use lawful tools available to the Department to ensure that all jurisdictions provide the level of cooperation required by law.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR FEINSTEIN

1. In your written testimony, you said that your “goal will be to provide as much transparency as I can consistent with the law” with respect to any report produced by Special Counsel Mueller. You also said that “where judgments are to be made by me,” you would make those judgments based solely on the law. As you may be aware, recent reports suggested that President Trump’s legal team is “gearing up” to “strongly assert the president’s executive privilege” in an effort to prevent information in the report from becoming public. (Carol D. Leonnig, *A beefed-up White House legal team prepares aggressive defense of Trump’s executive privilege as investigations loom large*, WASH. POST (Jan. 9, 2019))
 - a. Have you discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?
 - b. If confirmed, what standards would you apply and what process would you follow in evaluating any claims of executive privilege asserted by the President?
 - c. How will you ensure your desire to grant the public and Congress “as much transparency” as possible is not impeded by the White House’s interest in preventing full disclosure of the report?

RESPONSE: I do not know what will be included in any report prepared by the Special Counsel, what form such a report will take, or whether it will contain confidential or privileged material. In the course of preparing for my hearing before the Committee, I recall having general discussions about the possibility that any Special Counsel report may include categories of information that could be subject to certain privileges or confidentiality interests, including classified information, grand jury information, and information subject to executive privilege. I do not recall any discussions regarding the use of executive privilege to prevent the public release of any such report. If confirmed, I will follow the law, Department policy, and established practices, to the extent applicable, in determining whether any confidentiality interests or privileges may apply and how they should be evaluated and asserted. If it turns out that any report contains material information that is privileged or confidential, I would not tolerate an effort to withhold such information for any improper purpose, such as to cover up wrongdoing.

2. Despite your pledge at your hearing “to provide as much transparency as [you] can,” you

also indicated that you might not provide the report that Special Counsel Mueller will prepare at the conclusion of his investigation pursuant to the Justice Department's Special Counsel regulations. Rather, you committed only to providing your own "report based on that report." Will you commit, if confirmed, to provide to Congress the full report that Special Counsel Mueller prepares at the end of his investigation?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

3. In June 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Steve Engel, the head of the Department of Justice Office of Legal Counsel, and to President Trump's personal attorneys criticizing Special Counsel Robert Mueller's investigation. (Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel re: Mueller's "Obstruction" Theory (June 8, 2018)) Please provide a complete list of everyone to whom you gave the memo, when it was provided, whether there was any communication about the memo before or after it was delivered, and why you provided it.

RESPONSE: Please find attached my January 14, 2019 letter to Senate Committee on the Judiciary Chairman Lindsey Graham, which answers this question.

4. You testified that “It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down the road.” Please provide a list of all other topics under the Justice Department’s jurisdiction where you submitted a legal memo to the Department or the White House, the dates the memos were provided, and whom they were submitted to.

RESPONSE: As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials in both the Executive branch and Congress. For example, following the attacks of September 11, 2001, I contacted numerous officials within the administration of President George W. Bush, including officials at the White House and the Department of Justice, to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. As a more recent example, I expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

5. I wrote to you about the June 2018 Mueller memo in December, but I’d like you to clarify your answers for the record.
- a. You testified no one asked you to write the memo. Why did you decide to do so?
 - b. At the time you submitted this memo to officials at the Justice Department and President Trump’s attorneys, had you talked to anyone about a possible Attorney General nomination? If so, with whom, when, and what was discussed?
 - c. Did you consult anyone during the process of drafting this memo? If so, whom?
 - d. Did you discuss this memorandum or its contents with Mr. Rosenstein, Mr. Engel, or anyone at the Department of Justice before or after you submitted it? If so, with whom, when, and what was discussed? Was there any follow- up communication about the memo, its contents, or the subject matter?
 - e. Did you discuss this memorandum or its contents with anyone else? If so, with whom and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?

RESPONSE: As I explained in my January 10, 2019 letter to you and my January 14, 2019 letter to Chairman Graham, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public

officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department of Justice. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with many lawyer friends; wrote the memo to senior Department officials; shared it with other interested parties; and later provided copies to friends.

To the best of my recollection, the first time anyone in the Trump administration contacted me about a potential nomination to be Attorney General was in fall 2018, months after I completed my memorandum.

To the best of my recollection, before I began writing the memorandum, I provided my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. There was no follow up from any of these Department officials, except that Solicitor General Francisco called me to say that he was not involved in the Special Counsel's investigation and would not be reading my memorandum. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views.

For further information on these issues, please see my letters of January 10 and January 14, 2019, attached and referenced above.

6. During your hearing, you reserved the right not to follow advice from career Department ethics officials.
 - a. If you are confirmed, will you commit to providing to the Committee any advice career Department ethics officials give you about recusal related to this memo or

any other matter related to the Special Counsel's investigation?

- b. If you disregard or disagree with advice from career ethics officials, will you also commit to providing an explanation of the basis for your disagreement and how you plan to address any concerns raised?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my intent will be to be as transparent as possible while following the Department's established policies and practices.

7. What steps will you take if you are confronted with a legal question or matter where the outcome might implicate the President's business or other financial interests?

RESPONSE: The Attorney General's job is to fairly enforce the laws of the United States. On any matter I consider, I will thoroughly review the applicable law and facts and will, as appropriate, consult with relevant officials at the Department before making a good-faith decision based on the law and the facts.

8. Longstanding Justice Department policies limit communications between the Justice Department and the White House about pending or contemplated investigations to a select few officials. (Memorandum from the Attorney General for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009)) This policy helps insulate Justice Department decisionmaking from political influence and protects potentially sensitive law enforcement information. At his nomination hearing, Deputy Attorney General Rosenstein confirmed that this policy was still in place and committed to enforcing it. (S. Hrg. *Confirmation Hearing on the Nomination of Rod Rosenstein to be Deputy Attorney General* (Mar. 7, 2017))

When you were asked at your hearing what the current Justice Department communications policy is, you said, "Well, it depends -- it depends what it is, but on criminal matters I would just have the AG and the deputy."

- a. Are you familiar with the longstanding Justice Department policy memorialized in a May 2009 letter from Attorney General Holder? If you are confirmed, do you commit to enforcing this policy and ensuring that both the Justice Department and the White House know the rules?
- b. You also stated in the hearing, you thought you would strengthen the policy. What did you mean by that?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I would act in accordance with Department of Justice protocols, including the 2009 Memo on

communications with the White House issued by former Attorney General Holder. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. If I am confirmed, I will be reviewing many of the policies and practices of the Department and making adjustments as appropriate.

9. The Justice Department and FBI consistently decline to comment publicly or to Congress about open investigations. The Inspector General calls this the “stay silent” rule and says that rule, among other things, protects “the integrity of an ongoing investigation” and “the Department’s ability to effectively administer justice without political or other undue outside influences.” (Department of Justice, Office of the Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) at p. 371) For similar reasons, nearly two decades ago, the Justice Department informed Congress in a letter to Rep. John Linder that “[t]he Department’s longstanding policy is to decline to provide Congressional committees with access to open law enforcement files.” (Linder Letter, 1/27/00)
 - a. Are you familiar with this longstanding Justice Department policy against public disclosure of information about open investigations?
 - b. If you are confirmed, do you commit to enforcing this policy against public disclosure of information about open investigations?
 - c. Is the disclosure of information about a confidential source consistent with this policy?
 - d. Is providing FISA applications relevant to an ongoing investigation consistent with this policy?

RESPONSE: I am generally familiar with the Department’s policy with regard to open investigations and, if confirmed, look forward to more closely reviewing this and other Department policies. As a general matter, I believe the Department should refrain from commenting on ongoing investigations and cases. However, there are exceptional circumstances where it may be appropriate, consistent with Department policy, and in the public’s interest, to provide information in a public setting regarding ongoing matters before indictment or formal charge. Whether particular information related to an open investigation should be publicly disclosed would depend on the facts and circumstances of the individual case.

10. You have repeatedly endorsed an expansive view of presidential power, referred to as the “unitary executive theory.” (William P. Barr, Assistant Attorney General, Office of Legal Counsel, *Common Legislative Encroachments On Executive Branch Authority*, (July 27, 1989)) Under this theory, the President would have virtually limitless control over the Executive Branch, and very few, if any, checks on his constitutional authorities.

At your hearing, you promised to allow Special Counsel Mueller’s investigation to continue unimpeded if you are confirmed as Attorney General and committed to complying with the Justice Department’s Special Counsel regulations. Under the unitary executive theory, would the President have the power to direct the Attorney General’s to rewrite the regulations?

RESPONSE: The unitary executive theory simply recognizes, as the Supreme Court has repeatedly held, that Article II of the Constitution “‘makes a single President responsible for the actions of the Executive Branch.’” *Free Ent. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496-97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)). To that end, the President must have plenary control over the Executive Branch to implement his constitutional obligations, and he may remove the Attorney General, if he disagrees with the Attorney General’s decisions. If confirmed, I intend to scrupulously follow Department regulations and to allow the Special Counsel to complete his investigation.

As I made clear at the hearing, I would not countenance changing the existing regulations for the purpose of removing Special Counsel Mueller without good cause.

11. The Supreme Court rejected the unitary executive theory in *Morrison v. Olson*, 487 U.S. 654 (1988).

- a. Do you believe *Morrison v. Olson* was correctly decided?

RESPONSE: *Morrison* held that the good-cause removal restrictions on the independent counsel were constitutionally permissible because she was an inferior officer with limited jurisdiction. As the Supreme Court reiterated in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 495 (2010), *Morrison* concerned the “status of inferior officers” and the specific “circumstances” of the independent counsel statute. While, as an original matter, I thought *Morrison* was not correct, it is my understanding that the Supreme Court has not overruled that decision. If confirmed, and if the issue arose, I would need to consult with the Office of Legal Counsel and review subsequent decisions by the Supreme Court to determine whether they have any bearing on the decision.

- b. In your view, are laws requiring the President to have “good cause” before removing heads of independent agencies constitutional?

RESPONSE: Under the Supreme Court’s precedents, including *Morrison v. Olson*, the constitutionality of such restrictions would depend on facts such as the precise nature of the for-cause removal provision and the structure of the agency in question.

- c. During your hearing you said, “the President can fire a U.S. Attorney. They are a presidential appointment.” Was it acceptable for the President to dismiss seven U.S. Attorneys for prosecuting Republican elected officials or not prosecuting Democratic elected officials in 2006?

RESPONSE: I am not aware of the reasons why the George W. Bush Administration requested the resignations of the U.S. Attorneys in question, but I believe it is uncontroversial that U.S. Attorneys are political appointees freely removable by the President. See 28 U.S.C. § 541(c) (“Each United States attorney is subject to removal by the President.”).

12. You have said that, as Attorney General, you advised President George H.W. Bush that you “favored the broadest” pardon for Caspar Weinberger and several other individuals implicated in the Iran-Contra Affair. (Miller Center Interview, 4/5/01) Then- Independent Counsel Lawrence Walsh said the decision to issue these pardons “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust without consequence.” (David Johnston, *Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails ‘Cover-Up’*, N.Y. TIMES (Dec. 25, 1992))
- Do you believe the President’s pardon authority is subject to any limits? What would constitute an abuse of presidential pardon authority?
 - Could a President under criminal investigation pardon his co-conspirators?
 - Could a President offer a pardon in exchange for a witness’s agreement not to cooperate with investigators?
 - Could the President grant pardons in exchange for bribes?

RESPONSE: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President’s power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President’s actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President’s pardon authority.

13. In your view, what are the options for holding a president accountable for abuse of the

pardon authority? During your hearing, you were asked if the President has authority to use money appropriated to the Defense Department to build a wall on the border. You responded, "without looking at the statute, I really could not answer that."

- a. Now that you have had the opportunity to review any relevant statutes, please state whether you believe the President can use money currently appropriated to the Defense Department to build a border wall.
- b. Putting aside the statute, do you believe the President has inherent authority under the Constitution to use appropriated funds regardless of what Congress dedicated the funds for?

RESPONSE: While news media reports have identified certain statutory provisions that the Administration may be considering, I have not studied this issue sufficiently to form an opinion about their availability, which would depend in part on determinations made by various decision makers. If I were Attorney General, this is the kind of question on which I would expect to be able to rely on advice from the Office of Legal Counsel and from attorneys working at the various agencies whose programs were implicated by the statutes.

As I stated at the hearing, I do not believe that the President, as a general proposition, can ignore congressional limits on appropriations. The interplay between Congress's spending powers and the President's own constitutional duties is a complex issue that would have to be resolved within the bounds of the specific facts and circumstances raised by a particular question.

14. In 2005, the George W. Bush Administration issued a signing statement reserving the President's right to decline to enforce the Detainee Treatment Act's ban on torture. The statement argued the ban could infringe on the President's Commander in Chief authority. (Bush Signing Statement (Dec. 30, 2005))
 - a. Do you agree with this signing statement?
 - b. Do you believe it was lawful?

RESPONSE: I have not studied this signing statement and therefore do not have an opinion on it. As I said at the hearing, I do not believe that torture is ever lawful.

15. Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence's Study into the CIA's Detention and Interrogation Program? If confirmed, will you commit to reviewing the full, classified study before you work on any matter regarding detainee treatment or interpretation of the Convention Against Torture or Geneva Conventions?

RESPONSE: I have not reviewed the Executive Summary of the Senate Select

Committee on Intelligence’s Study into the CIA’s Detention and Interrogation Program. If confirmed, I will review the study.

16. During your hearing, you told Senator Grassley that, if confirmed, you will ensure that the Justice Department will respond in a timely manner to requests from both Committee Chairs and Members of Congress.

- a. Will you specifically commit to timely responding to minority requests—not just requests from a Chair or members of the majority?

RESPONSE: I agree that it is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department’s law enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department’s Office of Legislative Affairs.

- b. When Congress requests information from the Executive Branch, how and in what circumstances is executive privilege properly invoked? What standards and process will you use to evaluate the legitimacy of presidential executive privilege claims?

RESPONSE: The Executive Branch engages in good-faith negotiation with congressional committees in an effort to accommodate legitimate oversight needs, while safeguarding the legitimate confidentiality interests of the Executive Branch. This accommodation process has historically been the primary means for successfully resolving conflicts between the branches and has eliminated the need for an executive privilege assertion in most cases. If an assertion of executive privilege is being considered, I will follow the established process of ensuring that the Department thoroughly reviews the legal basis for the privilege claim, and if I am satisfied that that assertion of the privilege would be legally permissible, I would so advise the President in a letter that would be provided to the requesting committee at the time it is informed of the privilege assertion.

17. On January 16, 2019, the U.S. General Services Administration (GSA) Office of Inspector General released a report regarding the Old Post Office Building that GSA leases to President Trump and a corporation he wholly owns. The report concluded that GSA attorneys acted improperly when they “agreed [that the lease presented] a possible violation of the Foreign Emoluments Clause but decided not to address the issue.” This conclusion was based, in part, on the GSA attorneys’ “fail[ure] to seek OLC’s guidance, even though [they] knew that OLC issued opinions on the Foreign and Presidential Emoluments Clauses.” (GSA OIG Report at p. 16) During your hearing, you repeatedly discussed the importance of seeking the Office of Legal Counsel’s guidance when faced with complex constitutional questions.

- a. The Justice Department has also been confronted with issues related to President Trump's financial holdings and the Emoluments Clauses. If confirmed, do you commit to seeking guidance from OLC on the applicability of the Emoluments Clauses to President Trump's personal financial interests?

RESPONSE: I know that the Department of Justice is defending certain lawsuits in which the President has been sued for alleged violations of the Emoluments Clause, but I am not aware of other issues relating to the Emoluments Clause that may be before the Department. If confirmed, I will consult with the Office of Legal Counsel and all appropriate offices within the Department, to the extent questions may arise.

- b. Do you commit to make public any OLC opinion on the applicability of the Emoluments Clauses to President Trump's personal financial interests to enable the public to understand OLC's reasoning and conclusions about the issue?

RESPONSE: I cannot make any commitments about disclosure of any existing opinions or hypothetical future opinions until I have had the opportunity to review such opinions. As a general matter, I would expect OLC to make public its opinions, on any subject, in accordance with the general practices of the Office.

18. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: To the best of my recollection, on or about November 6, 2018, I was contacted by the White House Counsel regarding whether I would be willing to serve as Attorney General. I indicated during that discussion that I was not then in a position to serve and instead recommended several other potential candidates. I believe I may have had follow up conversations in November with the White House Counsel about other possible candidates. At some point prior to Thanksgiving 2018, I communicated to the White House Counsel that I had reconsidered and would be willing to be considered for the position. On November 27, 2018, I participated in an interview at the White House with the White House Counsel and the President. During that interview, the President offered me the position, and I accepted. The President publicly announced his intent to nominate me on December 7, 2018 and formally nominated me on January 3, 2019.

19. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

RESPONSE: To the best of my recollection, my response to Question 18 above includes all interviews and related communications about my potential nomination to be Attorney General prior to my selection by the President. In addition to those

communications, I have spoken with individuals at the White House and Department of Justice about numerous issues, including paperwork and logistics, throughout the selection and nomination process for this position. Finally, I have periodically received words of support, encouragement, or congratulations from individuals I know who work at the Department of Justice.

20. Have you spoken with anyone about possible recusal from the Special Counsel's investigation? If so, with whom, when, and what was discussed?

RESPONSE: To the best of my recollection, I have not discussed the possibility of recusal from the Special Counsel's investigation with anyone at the White House. After the President announced that he intended to nominate me to serve as Attorney General, I discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest.

21. Did President Trump or anyone else ever ask you to promise not to recuse from the Special Counsel's investigation?

RESPONSE: No.

22. You previously wrote: "The fact that terrorists' actions have been made criminal does not preclude the government from treating them as enemy combatants without any rights under our criminal justice system." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Do you still hold that view?

RESPONSE: Congress and the courts have endorsed the view, held by multiple Administrations, that terrorists who are engaged in an armed conflict with the United States can be detained by the military as enemy combatants. While such individuals may be entitled in some contexts to challenge their detention by writ of habeas corpus, they need not be criminally prosecuted. Terrorists who have committed crimes under U.S. law can also be prosecuted in our criminal justice system, and if so, they are afforded the constitutional and statutory rights that apply in criminal proceedings. Those same rights do not apply when terrorists are held as enemy combatants.

23. You previously wrote: "Thus, where the government sees an *individual* foreign person apparently acting as a terrorist, that should be a sufficient basis to conclude that the individual is not part of 'the people' and thus not protected by the Fourth Amendment." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Is it your position that non-citizens, even those located in the United States, are not protected by the Fourth Amendment of the Constitution? If so, what is the basis for that view?

RESPONSE: The cited portion of my 2003 testimony concerned the requirement in

the Foreign Intelligence Surveillance Act (FISA) to establish probable cause that an individual is an agent of a foreign power. In 2004, Congress expanded FISA to reach foreign individuals who are engaged in international terrorism, consistent with my recommendation. I believe that provision is consistent with the Fourth Amendment.

In terms of the application of the Fourth Amendment more generally to foreign persons, my understanding is that the answer might depend on a number of factors, including the lawfulness of the non-citizen's presence in the country and the non-citizen's connections to the country. See generally *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990). The position of the Department in a particular case will be based on an assessment of the specific facts and the law.

24. Is the President authorized under Article II of the Constitution to conduct warrantless domestic security surveillance? Please explain your answer.

RESPONSE: The President has authority to conduct "domestic security surveillances" consistent with the requirements of the Fourth Amendment. *United States v. U.S. District Court*, 407 U.S. 297 (1972) (*Keith*). In that case, the Court held that there is no general exception to the Warrant Clause of the Fourth Amendment for domestic security surveillance, while expressing no opinion as to the issues that would be presented with respect to surveillance of the activities of foreign powers or their agents. After *Keith* was decided, a number of courts of appeal determined that a foreign intelligence exception exists to the Fourth Amendment's Warrant Clause. See, e.g., *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980); *United States v. Buck*, 548 F.3d 871 (9th Cir. 1977). In 1978, Congress enacted the Foreign Intelligence Surveillance Act, in addition to the previously enacted Wiretap Act and other provisions of Title 18 of the U.S. Code, to address domestic collection for foreign intelligence purposes and for criminal investigations.

25. Does the President have authority under Article II of the Constitution to conduct bulk collection of Americans' telephone metadata? Please explain your answer.

RESPONSE: Collection of telephone metadata is regulated by provisions of the USA Freedom Act and other statutes, which address the circumstances under which the government can compel the collection of telephone metadata within the United States and the means by which the government can collect such records from telecommunications providers.

26. You previously wrote: "Numerous statutes were passed, such as FISA, that purported to supplant Presidential discretion with Congressionally crafted schemes whereby judges become the arbiter of national security decisions." (*Testimony of William P. Barr before the House Select Committee on Intelligence* (Oct. 30, 2003))
- a. In your view, is the President required to follow laws enacted by Congress governing surveillance? If not, please explain the basis for this conclusion.

RESPONSE: The President must follow the surveillance laws consistent with his constitutional responsibilities. I am not aware of any aspect of current law that is inconsistent with those responsibilities.

- b. Are there any aspects of existing surveillance law, including the Foreign Intelligence Surveillance Act (FISA), that you believe the President can disregard? Please identify specific legal provisions and the basis for your conclusion that these provisions do not apply to the President.

RESPONSE: The President must follow the surveillance laws consistent with his constitutional responsibilities. I am not aware of any aspect of current law that is inconsistent with those responsibilities.

- c. Is the Foreign Intelligence Surveillance Act (FISA) the exclusive means for the President to conduct foreign intelligence electronic surveillance in the United States? Please explain your answer.

RESPONSE: FISA provides that it and the authorities of Title 18, or any other express authorization by statute, are the exclusive means for domestic electronic surveillance, as that term is defined in FISA. See 50 U.S.C. § 1812 (“Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.”).

27. Previous Attorney General nominees, including your predecessor, agreed to seek and follow the advice of career ethics officials about questions of recusal that may arise during service in the Justice Department.
- a. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of the companies — private and public, including parent companies, subsidiaries, and related entities — for which you have served on the board of directors or advisors? These companies include Och-Ziff Capital Management Group, LLC; Dominion Energy, Inc.; Time Warner, Inc.; Holcim (US) Inc. and Aggregate Industries Management, Inc.; Selected Funds; and Dalkeith Corporation.
- b. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of your legal and consulting clients, including but not limited to Caterpillar and Credit Agricole?
- c. If you will not commit to following the advice of career ethics officials, will you commit to providing to Congress the advice that they provided to you along with an explanation of why you are not following their advice?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my intent will be to be as transparent as possible while following the Department's established policies and practices.

28. According to the ethics agreement prepared by the Justice Department's Justice Management Division on January 11, 2019, you agree if confirmed to "not participate personally and substantially in any particular matter involving specific parties in which" the law firm Kirkland & Ellis "is a party or represents a party," unless you first receive authorization to participate. That prohibition applies for a period of one year after your resignation from Kirkland.
- a. If confirmed, will you commit to following this agreement even if it applies to investigations conducted by Special Counsel Mueller?
 - b. If confirmed, will you commit to following this agreement even if it applies more broadly to investigations into potential interference in the 2016 Presidential election, including but not limited to investigations into collusion and/or obstruction of justice?

RESPONSE: If confirmed, I commit to abide by the terms of my ethics agreement with the Department of Justice.

29. During your confirmation hearing to be Attorney General in 1991, you said that the right to privacy in the Constitution does not "extend[] to abortion" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-505, Pt. 2, *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General* (Nov. 12, 1991) at p. 63) In a June 1992 hearing before the Senate Judiciary Committee, you echoed these comments and said the Supreme Court's 1992 decision in *Planned Parenthood v. Casey* "didn't go far enough" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-1121, *Proposed Authorizations for Fiscal Year 1993 for the Department of Justice* (June 30, 1992) at p. 47) At the time you made these remarks *Roe v. Wade* had been established precedent for 18 years. *Roe v. Wade* is now more than 40 years old and has survived more than three dozen attempts to overturn it.

- a. Is *Roe v. Wade* settled law? Do you still believe that *Roe v. Wade* should be overruled?

RESPONSE: *Roe v. Wade* is precedent of the Supreme Court and has been reaffirmed many times. I understand that the Department has stopped, as a routine matter, asking that *Roe* be overruled.

- b. Do you believe that the Due Process Clause of the Fourteenth Amendment

includes a right to privacy?

RESPONSE: The Supreme Court has repeatedly held that the Due Process Clause of the Fourteenth Amendment contains a right to privacy.

30. As Attorney General, you argued that it was proper for the Justice Department to urge the Supreme Court to overturn established precedent. You said that “urging the Court to reconsider a prior decision serves the executive branch’s obligation to the Constitution, without diminishing the Court’s constitutional role.” (15 CARDOZO L. REV. 31 (1993)).

When is it proper for the Justice Department to urge the Court to overturn precedent?

What factors should the Department take into account before urging the Court to overturn precedent?

RESPONSE: Respect for precedent is critical to the rule of law. At the same time, the Supreme Court has made clear that *stare decisis* is not an inexorable command. The Court has explained that deciding whether to overrule precedent requires weighing (among other factors) whether a prior decision is correctly decided, well-reasoned, practically workable, consistent with subsequent legal developments, and subject to legitimate reliance interests. The Justice Department should take all of those factors into account when deciding whether to argue that the Court should overrule precedent.

31. During an appearance on CNN in July 1992, while you were Attorney General, you said “I think this [Justice] Department will continue to do what it’s done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation.” (Evans and Novak, CNN Television Broadcast (July 4, 1992))

- a. Will you commit to ensuring that the Department of Justice does not call for reconsideration and overturning of *Roe v. Wade*, if you are confirmed as Attorney General?

RESPONSE: In the Reagan and Bush Administrations, the Solicitor General routinely asked the Supreme Court to overrule *Roe v. Wade*. But at that time, *Roe v. Wade* was less than 20 years old.

Since then, the Supreme Court has reaffirmed *Roe* in a number of cases, and *Roe* is now 46 years old. Moreover, a number of Justices have made clear they believe that *Roe* is settled precedent of the Supreme Court under *stare decisis*.

In addition, the Department has stopped routinely asking the Court to overrule *Roe*. I think the issues in abortion cases today are likely to relate to the reasonableness of particular state regulations, and I would expect the Solicitor General will craft his positions to address those issues. At the end of the day, I will be guided by what the Solicitor General determines is appropriate in a

particular case.

- b. Will you commit to ensuring that the Department does not seek ways, short of overturning *Roe*, to limit reproductive rights?

RESPONSE: The Department of Justice will enforce existing law.

32. At your confirmation hearing, Senator Blumenthal asked whether you would defend *Roe v. Wade* if it were challenged. You responded that “usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that.” (S. Hrg., *Confirmation Hearing on the Nomination of William Barr to Be Attorney General* (Jan. 15, 2019) Tr. at 145)
- a. If confirmed, will you ensure that the Justice Department defends *Roe v. Wade* in court?
- b. Will you ensure that the Department does not argue that state restrictions do not constitute a “substantial burden” on a woman’s right to abortion?

RESPONSE: Please see my responses to Question 31 above.

33. At any point before or after your nomination to be Attorney General, has anyone from the Trump Administration discussed with you your views on *Roe v. Wade*? If so, please describe these discussions, including when they took place, who was involved, and what was discussed.

RESPONSE: To the best of my recollection, I have not discussed my views on *Roe v. Wade* with anyone in the Trump Administration apart from general discussions with Department personnel assisting me in preparing for my hearing and drafting these answers.

34. In the summer of 1991, while you were Deputy Attorney General, the anti-choice group Operation Rescue organized a six-week long protest of three abortion clinics in Wichita, Kansas. The protests resulted in 2,600 arrests. Judge Patrick Kelly, a federal district court judge in Kansas, entered a preliminary injunction barring Operation Rescue and its protestors from blocking access to abortion clinics and physically harassing staff and patients. The Justice Department intervened in the litigation on behalf of Operation Rescue and sought to stay Judge Kelly’s preliminary injunction order.

According to news reports, the Justice Department argued that the abortion clinics had not demonstrated that they would prevail in their lawsuit and that the specific requirements of the order intruded on the Marshals Service’s discretion to enforce court orders. Although Judge Kelly granted the Justice Department’s request to intervene in the lawsuit, he reportedly said he was “disgusted by this move” and he characterized the Justice Department’s involvement as political. (*U.S. Backs Wichita Abortion Protestors*,

ASSOCIATED PRESS (Aug. 7, 1991)).

During this time, the Justice Department was involved in a similar case in Virginia – *Bray v. Alexandria Women's Health*. This case concerned a lawsuit by several abortion clinics to prevent protesters from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protesters.

Please describe the nature and extent of your involvement in cases involving abortion clinic protests – including the Kansas and Virginia cases mentioned above – during your tenure as Deputy Attorney General and Attorney General under President George H.W. Bush.

RESPONSE: As Deputy Attorney General and, later, as Attorney General in the administration of President George H.W. Bush, I had broad supervisory responsibilities over the Department of Justice. My involvement in *Women's Health Care Services v. Operation Rescue* was discussed in detail during my 1991 confirmation hearing to be Attorney General. My colloquy with Senator Edward Kennedy on this issue can be found at pages 29-34 of the November 12, 1991 transcript, which I have attached for your reference. To the best of my recollection, I did not play a role in formulating the Department of Justice's position in *Bray v. Alexandria Women's Health*.

35. There has been significant reporting about young migrants being forced to appear in immigration court hearings without adequate representation. For example, there have been reports of toddlers sipping milk bottles as they defend themselves in immigration court without their parents or guardians. (Sasha Ingber, *1-Year-Old Shows Up in Immigration Court*, NPR (July 8, 2018)) Courts have consistently held that anyone on United States soil is protected by the Constitution's right to due process. (*See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to [the] constitutional protection" in the Fifth and Fourteenth Amendments))
- a. Are toddlers receiving due process when they appear alone in immigration court?
 - b. If confirmed, what specific steps will you take to ensure that minors are adequately represented in immigration court proceedings?

RESPONSE: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I also understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. It is the longstanding policy of the Department of Justice not to comment on pending matters,

and thus it would not be appropriate for me to comment on this matter.

36. At your hearing, Senator Durbin discussed the zero-tolerance policy implemented by then-Attorney General Sessions that led to the separation of over 2,000 children from their parents at the Southern border. Specifically, he asked you whether you agree with the zero-tolerance policy decision. You acknowledged that the Administration walked back its family separation policy in a June 2018 executive order, but you did not directly answer Senator Durbin's question.

- a. Do you agree with the Zero Tolerance policy?
- b. Do you agree with separating children from their parents when they arrive in the United States? If yes, why? If not, why not?
- c. If confirmed, will you commit that the Justice Department will not continue, reinstate, and/or defend policies that lead to family separations?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they apprehend, whom they refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

37. If confirmed, will you enact policies that restrict asylum law or lead to prolonged or indefinite detention of children and families? Such policies include changing the definition of "particular social group" to exclude families or forcing parents to choose between being detained with their children and being separated but allowing their children to apply for asylum.

RESPONSE: If confirmed, it will be my job as Attorney General to enforce immigration laws as they are enacted by Congress and to support policies set by the President consistent with the law. As to consideration of any hypothetical policies, I would look at the individualized facts of a situation and follow the law in determining what to do. As I stated above, President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

38. President Trump has determined that asylum seekers who have already filed asylum claims within the United States will be forced to wait in Mexico while their claims are adjudicated. In Mexico, many of these asylum seekers, including small children, have no fixed address, but instead camp out in stadiums or on the street.

An asylum seeker who demonstrates a credible fear of persecution must receive an opportunity to make his or her case before an immigration judge. This means the asylum

applicant will need to receive documents from the Justice Department, including hearing notices, in Mexico, where they have no fixed address and where legal requirements for service of documents differ from the requirements for service in the United States.

How will the Justice Department ensure that asylum seekers with no fixed address in Mexico receive notice of the time and place of the hearings before the immigration judge, and receive documents regarding their case, including notices of changes in the Immigration Court calendar?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I expect that the Department of Homeland Security and the Department of Justice will comply with applicable legal requirements regarding notice and the service of documents in immigration proceedings.

39. At your hearing, Senator Hirono asked whether you believe the 14th Amendment to the U.S. Constitution guarantees birthright citizenship. You responded that you “have not looked at that issue.” The Citizenship Clause of the 14th Amendment states that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”
- a. Do you agree that the 14th Amendment to the U.S. Constitution guarantees birthright citizenship? If not, on what basis did you reach that conclusion?
 - b. Do you agree that a child born in the United States to undocumented parents is a citizen of the United States? If not, on what basis did you reach that conclusion?

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

40. Last October, President Trump announced plans to prepare an executive order ending birthright citizenship. Do you believe the President has the authority to nullify birthright citizenship by executive order?

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

41. A longstanding principle of U.S. asylum law is that a group of family members constitutes the “‘prototypical example’ of a particular social group” *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985). Nonetheless, the Acting Attorney General referred an immigration case to himself and asked the parties to brief “whether, and under what

circumstances, an alien may establish persecution on account of membership in a particular social group under 8 U.S.C. 1101(a)(42)(A) based on the alien's membership in a family unit." (*Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018)) If confirmed, will you review the grounds for certifying this question to the Attorney General and, if you agree with the decision to do so, explain the basis for that decision to this Committee?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about it.

42. Under federal law, fugitives cannot legally purchase or possess guns. I am deeply troubled that the Justice Department has now issued guidance that forced the FBI National Instant Criminal Background Check System database — also called NICS — to drop more than 500,000 names of fugitives with outstanding arrest warrants. I know that local law enforcement shares these concerns. Apparently, the FBI was forced to drop these names because the Justice Department has further narrowed the definition of "fugitive" to include only those who cross state lines to avoid prosecution.
- a. If confirmed, will you commit to reviewing the Justice Department's decision about who qualifies as a "fugitive"?
 - b. Do you think this decision put public safety at risk? Why or why not?

RESPONSE: I am not familiar with this specific issue, but if confirmed, I will review the policies and procedures at the Department and make changes as appropriate. I am committed to using all the tools at the Department's disposal to ensure that firearms do not end up in the hands of dangerous people prohibited by law from having them.

43. Following the murders of nine churchgoers at Emanuel AME church in South Carolina in 2015, the FBI admitted it did not properly obtain information regarding the gunman's drug arrest record, which should have prohibited him from buying a handgun. Because the FBI had not received the correct information within 3 days, the dealer was legally permitted to complete the sale to the gunman. As a result, 9 were killed.

Would you support extending or eliminating the three-day requirement that allows a gun dealer to transfer a gun without a completed background check? If not, please explain why you would not support this change.

RESPONSE: I have no knowledge of the facts and circumstances surrounding the tragedy at the Emanuel AME church beyond what I have seen reported in the news media and the testimony given on Day 2 of my Nomination Hearing. I also have not studied whether changes to the three-day waiting period are advisable. If confirmed, I will review this issue along with other issues affecting public safety.

44. I am increasingly concerned about legislation that would imperil police officers in California and nationwide, specifically a proposal to force every state to recognize

concealed-carry permits issued by other states, even those states that have less stringent standards for issuing concealed carry permits. Major national law enforcement organizations, such as the International Association of Chiefs of Police and the Major Cities Chiefs Association, have recognized how dangerous such a proposal would be for officers nationwide.

- a. Do you believe the Second Amendment requires California to recognize a concealed-carry permit from Alabama or Texas? Do you believe that this is required by any other constitutional provision? Please provide a yes or no answer and explain your reasoning.
- b. What is your position on legislation that requires one state to recognize concealed-carry permits issued by other states? Please explain the basis for your views.

RESPONSE: I have not studied this specific issue and am not currently in a position to opine. As I noted in my testimony, even before the Supreme Court decided the *Heller* case, I had worked on Second Amendment issues and believed that the Second Amendment confers an individual right under the Constitution. Of course, that issue has now been settled by the Supreme Court, and applied to the states as well. The question of whether the Second Amendment, or any other provision of the Constitution, would require one state to recognize another's concealed carry permit is one I have not considered.

45. The Administration recently issued a regulation to ban bump stocks, which essentially transform semi-automatic rifles into machineguns. In 2017, bump stocks enabled the shooter in Las Vegas to carry out the most catastrophic mass shooting in American history. That regulation, however, has now been challenged in court, and it may not be upheld. A law, however, would not be vulnerable to the same sort of challenge. If confirmed, do you commit to support legislation to ban bump stocks?

RESPONSE: If confirmed, I would be pleased to review any legislation on this issue.

46. Many domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are still able to stockpile an arsenal of firearms and ammunition. That is despite being prohibited from possessing firearms or ammunition under federal firearms law. Local domestic violence programs often attempt to help victims by seeking enforcement of federal law and removal of the firearms, but they are unable to get assistance from the Department of Justice and other federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer number of firearms in the possession of domestic violence offenders.

If you are confirmed, how will the Department of Justice improve its response to cases like these, which are likely to lead to homicides, and what kind of resources will you devote to make sure that guns are not as accessible to domestic abusers?

RESPONSE: I am committed to using all the tools at the Department's disposal to ensure that firearms do not end up in the hands of dangerous people prohibited by law from having them. I am not familiar with the specific issues you raise with regard to federal assistance to local officials in these matters, but if confirmed, I look forward to working with you and the Committee on this important issue.

47. We are at an important moment in our nation with regarding to addressing sexual assault and the MeToo movement. If confirmed as Attorney General, what will the Department of Justice's role and priorities be with regards to addressing sexual assault through the Office on Violence Against Women and the Office for Victims of Crime?

RESPONSE: If I am confirmed, addressing sexual assault will continue to be a priority for the Department of Justice. It is my understanding that the Department has made combatting sexual assault a priority for grant funding, implemented statutory set-asides for projects focused on improving responses to sexual assault, and administered grant programs dedicated exclusively to providing sexual assault services. I look forward to learning more about the important work the Department is doing in the field.

48. If confirmed as Attorney General, will you commit to working with Congress to reauthorize the Violence Against Women Act, including improvements to support the national response to domestic violence, dating violence, sexual assault, and stalking?

RESPONSE: I recognize the importance of the Violence Against Women Act. If confirmed, I would be pleased to work with the Committee on reauthorization legislation that supports the Department's mission and priorities.

49. As Attorney General, you will be responsible for enforcing the landmark Voting Rights Act, which has proven instrumental to expanding the right to vote for all Americans, and minorities in particular. But with its 2013 decision in *Shelby County v. Holder*, the Supreme Court gutted the law by severely limiting the ability of the Justice Department to block discriminatory voting laws from taking effect in states with a history of limiting minority voting rights. This majority based its decision on its conclusion that "the conditions that originally justified these measures no longer characterize voting" in states with a history of discriminatory voting practices.

- a. Do you agree that "the conditions that originally justified [the application of preclearance provisions in the Voting Rights Act to certain states] no longer characterize voting" in states with a history of discriminatory voting practices?
- b. If confirmed, would you support legislation to restore the preclearance provisions struck down by the Court in *Shelby County*?

RESPONSE: I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, and, as I stated in my written testimony, would make

these issues a priority for the Department if confirmed. The Department of Justice is bound to enforce the laws that Congress enacts, subject to the authoritative interpretations of the Supreme Court. If confirmed, I will be committed to working with Congress regarding legislation that supports the Department's mission and priorities in this important area.

50. On October 20, just weeks before the 2018 election, President Trump tweeted: "All levels of government and Law Enforcement are watching carefully for VOTER FRAUD, including during EARLY VOTING." (President Donald Trump, (@realDonaldTrump), Twitter (Oct. 20, 2018, 8:36 AM)) And the day before the election, President Trump said: "All you have to do is go around, take a look at what's happened over the years, and you'll see. There are a lot of people — a lot of people — my opinion, and based on proof — that try and get in illegally and actually vote illegally." (Amy Gardner, *Without evidence, Trump and Sessions warn of voter fraud in Tuesday's elections*, WASHINGTON POST, (Nov. 5, 2018))

Are you aware of any evidence that "a lot of people" vote illegally? If not, are you concerned about statements like this undermining the public's faith in election results?

RESPONSE: I have not studied the issues raised by this question in great detail and am not familiar with data and statistics on this matter. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

51. Remarkably, in Texas, a voter can show a handgun license to vote, but not a student ID. And in Georgia, the name on a voter registration form must be identical to the applicant's name as it appears on his or her ID. Any minor discrepancy or clerical error — for example, a hyphen on the voting application that does not appear on the ID — could be grounds for blocking voters from registering or for kicking voters off of the voting rolls. (Janell Ross, *It's Time for a New Voting Rights Act*, THE NEW REPUBLIC (Nov. 13, 2018))
- a. What is the basis to allow someone to vote if they show a handgun license, but not a student ID?
 - b. Is a minor discrepancy between a voter registration form and a photo ID — for instance, a hyphen in the name on a voting application that does not appear on the voter's ID — a valid reason to purge a registered voter from the voting rolls?

RESPONSE: States have enacted various photographic voter identification laws, and those laws vary from state to state. Generally, the question of which forms of identification state and local officials may accept at the polling place is a question of state law, not federal law. Additionally, questions regarding the removal of individuals from voter registration lists based upon a discrepancy between a voter registration

form and a photographic identification are generally questions of state law, not federal law.

52. Under longstanding policy, the Justice Department will defend the constitutionality of any statute so long as a reasonable argument can be made in its defense. Attorney General Sessions concluded that no reasonable argument could be made in defense of the ACA and, specifically, the ACA's guaranteed-issue provision. During your confirmation hearing, you told Senator Harris that if you are confirmed, you "would like to review the Department's position" in *Texas v. United States*, which challenges the ACA's constitutionality. You also said that you were open to reconsidering the Department's position in the case. (S. Hrg. Confirmation Hearing on the Nomination of William Barr to Be Attorney General (Jan. 15, 2019) Tr. at 301)
- a. Will you commit, if confirmed, to notifying Congress when you start and when you complete your review of the Department's position in *Texas v. United States*? Will you commit to notifying Congress what the basis is for your decision?
 - b. If confirmed, do you commit to consulting with career Justice Department attorneys before making any final decision as to the Department's position in the case?

RESPONSE: As I stated at my hearing, if confirmed, I will review the Department's position in *Texas v. United States*. I intend to engage in a thorough review, which will include receiving input from individuals throughout the Department and from other relevant agencies within the federal government.

53. The Justice Department announced in October 2018 that it planned to close the San Francisco field office of the Environment and Natural Resources Division. This office has focused on enforcing environmental laws and protecting public resources on the West Coast, particularly in California. I am deeply concerned that the closure of this office will allow polluters in California to avoid complying with our environmental laws.

If confirmed, will you commit to seeing if an alternative location can be identified to keep the office in Northern California?

RESPONSE: I am not familiar with the Department's decision to close the San Francisco field office of the Environment and Natural Resources Division, and therefore am not in a position to comment or make a commitment at this time. I am committed to the fair and evenhanded enforcement of federal environmental laws, in California and in all states.

54. You served in the Department of Justice at the time the Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush, on July 26, 1990. As you know, the ADA received broad, bipartisan support, passing the Senate by a vote of 91-6 and the House of Representatives by a vote of 377-28. When he signed the ADA,

President Bush said the following: “Today we’re here to rejoice in and celebrate another ‘independence day,’ one that is long overdue. With today’s signing . . . every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom.” (*Remarks of President George Bush at the Signing of the Americans with Disabilities Act*, (July 26, 1990)) But, of course, that equality, independence, and freedom depend on vigorous enforcement of the ADA. If confirmed, what specific steps will you take to ensure that the ADA is vigorously enforced?

RESPONSE: If confirmed, I will enforce all federal civil rights law enacted by Congress, including the ADA.

55. I have long been a proponent of funding for anti-methamphetamine programs. I established the COPS Anti-Methamphetamine grants program in 2014 and later supported its authorization in the Substance Abuse Prevention Act. In 2018, 9 states were awarded COPS Anti-Methamphetamine grants, totaling more than \$7 million. These funds go to state law enforcement agencies and enable them to participate in meth-related investigative activities.

In fiscal year 2018, the Justice Department’s budget proposed eliminating funding for this program. Given the increase in methamphetamine related deaths, if you are confirmed as Attorney General, will you commit to prioritizing and requesting funds for this program?

RESPONSE: As I stated at my hearing, I recognize that there are numerous dimensions to the drug problem, and the job of the Department of Justice is primarily enforcement, while other agencies have a role to play as well in addressing the issue. While I am not familiar with the Department’s current budget and funding requests, if confirmed, I look forward to reviewing the Department’s resource allocations, needs, and funding proposals.

56. It is well established that former Attorney General Sessions opposes the legalization of marijuana, regardless of whether it is for medical or recreational purposes. In January of last year, he issued a memorandum to U.S. Attorneys, titled “Marijuana Enforcement.” In this memo, the former Attorney General rescinded what is known as the “Cole Memorandum,” which allowed states to implement their own marijuana laws without fear of federal interference, provided that they were in compliance with eight priority enforcement efforts.

In rescinding this memo, the Attorney General maintained that opioids and fentanyl, not marijuana, were the Department’s primary focus. I agree that other drugs of abuse should be prioritized over marijuana, and do not want to see Californians arrested if they are acting in compliance with State law.

You discussed this issue with Senator Booker at your confirmation hearing, when you said the following: “I am not going to go after companies that have relied on the Cole Memorand[um]. However, we either should have a Federal law that prohibits marijuana everywhere – which I would support myself because I think it is a mistake to back off on marijuana. However, if we want a Federal approach, if we want States to have their own laws, then let us get there and let us get there the right way.” (Hearing Tr. at 171) To clarify your position, please answer the following questions:

What is your position on the legalization of marijuana, whether for medical or recreational purposes?

RESPONSE: I believe that the Federal Government should address whether to legalize marijuana the right way, which is through the legislative process. An approach based solely on executive discretion fails to provide the certainty and predictability that regulated parties deserve and threatens to undermine the rule of law. If confirmed, I can commit to working with the Committee and the rest of Congress on these issues, including any specific legislative proposals. As I have said, however, I do not support the wholesale legalization of marijuana.

57. In August 2016, the Department of Justice posted a notice in the Federal Register to solicit applications for the bulk manufacture of marijuana, intended to supply legitimate researchers in the United States. I understand that 26 applications, including 3 from California, were submitted in response. It has now been almost 3 years, and the Department has failed to take action on any of these applications. This delay could hinder important research that may lead to the development of FDA-approved drugs. (*Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States*, Federal Register (Aug. 12, 2016))

I asked former Attorney General Sessions about this delay on multiple occasions - both in questions for the record and through staff contact – and still have yet to receive a response as to when a final decision will be made on these pending applications.

If you are confirmed, will you commit to taking immediate action on these applications?

RESPONSE: I am not familiar with the details of these applications or the status of their review. If confirmed, I can commit to reviewing the matter. As stated above in response to Senator Grassley’s question, I support the expansion of marijuana manufacturers for scientific research consistent with law.

58. Studies by the National Institute of Justice have found that drug courts are more effective in reducing rates of recidivism among offenders and cost less per participant as compared to the traditional criminal justice system. (*Do Drug Courts Work? Findings from Drug*

Court Research, National Institute of Justice)

Do you support drug court programs, and if confirmed, will you prioritize funding for these programs?

RESPONSE: The Department has long been a leader in supporting the development and expansion of drug courts, and would continue to serve in that role if I am confirmed. I am not familiar with the Department's current budget and funding requests and allocations. If confirmed, I will study this issue and would be pleased to work with Congress on funding priorities.

59. On March 26, 2018, Commerce Secretary Wilbur Ross issued a memorandum directing the Census Bureau to add a question on citizenship status on the 2020 Census. Secretary Ross said that this question was requested by the Justice Department, which argued that the information is needed to enforce the Voting Rights Act (VRA). (Memorandum from Secretary Ross to Karen Dunn Kelley (Mar. 26, 2018))

The Census Bureau's decision is currently being challenged in *New York Immigration Coalition v. United States Department of Commerce*. As part of that case, John Gore, the then-Acting Assistant Attorney General for the Civil Rights Division, was recently deposed. In his deposition, Mr. Gore was asked the following: "You agree, right, Mr. Gore, that [citizenship] data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts?" Mr. Gore responded: "I do agree with that. Yes." (Gore Dep. Tr. at 300, *New York Immigration Coalition v. United States Dept. of Commerce*)

- a. Do you support the inclusion of a question on citizenship in the Census? If so, why?
- b. Do you agree with Mr. Gore that citizenship "data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts"? If not, on what basis do you disagree with his assessment?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

60. According to Mr. Gore, after the Census Bureau received the Justice Department's request to add a citizenship question, the Census Bureau suggested that there might be a method *other* than a citizenship question to get citizen voting age population data — also known as CVAP data — to the Justice Department for purposes of VRA enforcement. (Gore Dep. Tr. at 264-265) The Census Bureau's plan, as detailed by the Census Bureau's acting director, Dr. Ron Jarmin, in an email to Justice Department officials, was to "utilize[e] a linked file of administrative and survey data the Census Bureau already possesses," rather than to add a citizenship question. According to Dr. Jarmin, this approach "would result in

higher quality data produced at lower cost.” (Email from Ron S. Jarmin to Arthur Gary re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 22, 2017)) The Justice Department rejected Dr. Jarmin’s offer to meet. According to Mr. Gore, Attorney General Sessions personally directed Mr. Gore to deny the meeting request. (Gore Dep. Tr. at 274 (“Q. And who informed you that the Department of Justice should not meet with the Census Bureau to discuss the Census Bureau’s alternative proposal for producing block-level CVAP data? A. The Attorney General.”))

- a. Should the Justice Department have the best available data for purposes of enforcing the Voting Rights Act? If not, why not?
- b. If confirmed, do you commit to allowing the Justice Department to meet with the Census Bureau to discuss the Bureau’s views as to how to provide the best citizenship data?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR LEAHY

1. When I asked you whether you would commit to seeking and following the guidance of Justice Department ethics officials on whether to recuse yourself from Russia investigation, you stated that you would “seek” their advice but that you “make the decision as the head of the agency as to my own recusal.” Thus you’ve fallen short of former Attorney General Sessions’ commitment to seek and follow the Department’s ethics officials with respect to his recusal from the Russia investigation – which he did. And your testimony falls even shorter than that of former Attorney General Richardson’s far stronger commitments, which he made because he believed it was “necessary to create the maximum possible degree of public confidence in the integrity of the process.”
 - a. Whether or not as a technical matter you, as Attorney General, would have the authority to decide whether to recuse yourself, do you agree that following the advice of career ethics officials on the question would help create the “maximum possible degree of public confidence” in the “integrity of the process,” especially given your high profile opinions and writings about Special Counsel Mueller’s investigation?
 - b. If you will not agree to seeking and following the guidance of Justice Department ethics officials regarding whether you should recuse yourself from the Russia investigation, will you commit to providing the House and Senate Judiciary Committees with detailed, contemporaneous documentation showing: (1) the analysis and conclusion of the Department’s ethics officials on the question; (2) your own analysis and conclusion on the question; and (3) if you arrive at a different conclusion from the Department’s ethics officials, a written explanation of why your conclusion is better supported by the law and the facts?

RESPONSE: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department’s work, and I intend to follow those regulations in good faith.

Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be

as transparent as possible while following the Department's established policies and practices.

2. I asked during your confirmation hearing about your view, as reported in the New York Times in November 2017, that you saw more basis for a federal investigation of the Uranium One deal than an investigation into potential collusion with Russia. You stated to the New York Times at the time that by not pursuing the Uranium One deal, along with investigating the Clinton Foundation, the Justice Department was "abdicating its responsibility." In response on Tuesday, you disputed the New York Times' characterization of your assertion regarding Uranium One. You testified that the Uranium One assertion was not in quotes and you were actually making a broader point about the need for the Department to launch investigations in an even-handed, consistent way. You referenced John Huber, the United States Attorney for Utah, who was later appointed, in the spring of 2018, by then-Attorney General Sessions to investigate multiple matters of political interest to Republicans. After this exchange, the New York Times took the unusual step of releasing your email revealing your full comment, which included, in relevant part, "I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] Foundation, is far stronger than any basis for investigating so-called 'collusion.'"
 - a. On what basis did you claim in November 2017 that the Uranium One deal was deserving of a federal investigation?
 - b. Do you still believe that the Justice Department is "abdicating its responsibility" to the extent that it is not pursuing the Uranium One matter?
 - c. Do you still believe that the predicate for investigating Uranium One is "far stronger" than for investigating collusion between Russia and the Trump campaign?
 - d. If a president calls for a politically motivated criminal investigation, what is the proper role for the Attorney General? Do you believe an Attorney General must conduct a preliminary review to determine if further investigation is warranted? If so, what could this review entail?

RESPONSE: My November 2017 comments to the New York Times were based on media reporting regarding the Uranium One case and the Special Counsel's investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. Politics should never be part of the analysis of whether to launch a particular criminal investigation or

prosecution. I am not aware of the extent to which the Uranium One case has been pursued by the Department of Justice, but as I noted during my hearing, it is my understanding from public reporting that U.S. Attorney John Huber may be looking into the matter.

Finally, although it is not inappropriate per se for the President to express a view on the need for a criminal investigation, the Department must always ensure that any investigation is appropriate on the law and the facts before moving forward.

3. During any conversation with President Trump, including the one in summer 2017 regarding legal representation and recently regarding your nomination, did you discuss the Russia investigation? If yes, what was said?

RESPONSE: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the

investigation, and he has not asked me about what I would do about anything in the investigation.

4. I am very concerned with press freedom around the world, and especially the increasing attacks on journalists in the United States. During your hearing, Senator Klobuchar asked you if the Department of Justice would jail reporters for doing their jobs, and you stated that you could think of a situation where a journalist “could be held in contempt.”
 - a. Can you give specific examples of situations in which you would consider attempting to jail a journalist?

RESPONSE: As I noted during my confirmation hearing, I understand that the Department has policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. I take these policies seriously and did not mean to suggest I would deviate from the existing restrictions. As I mentioned, in light of the importance of the newsgathering process, as well as the First Amendment, I understand that the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure, using such tools only after all reasonable alternative investigative steps have been taken, and when the information sought is reasonably required for a successful investigation or prosecution.

- b. President Trump regularly expresses his displeasure with many news organizations and reporters by name. How would you ensure that any actions the Department takes are not driven by the President’s politically motivated animosity, or are not tainted by the appearance of a political motivation?

RESPONSE: As I stated many times throughout my hearing, every enforcement decision at the Department of Justice must be based strictly on the laws and the facts, not on partisan, political, or personal interests. If confirmed, I will ensure that the Department abides by this principle.

5. When President Trump fired former Acting Attorney General Sally Yates for refusing to defend his Muslim Ban, you wrote an op-ed defending his decision and criticizing Yates. You argued that when the “president determines an action is within his authority — even if that conclusion is debatable” — the Attorney General’s responsibility is to “advocate the president’s position in court.”
 - a. Is that how you still see the role of the Attorney General — to execute a president’s policy and defend his actions even when his authority is highly questionable or appears to be flawed?

RESPONSE: As I wrote in the op-ed, “[w]hile an official is always free to resign if she does not agree with, or has doubts about, the legality of a presidential order,” the Attorney General has “no authority and no conceivable justification for directing the department’s lawyers not to advocate the president’s position in court.”

- b. If an Attorney General cannot support a president’s policy, do you believe the only option available to him or her is to resign?

RESPONSE: As I’ve stated elsewhere, one role of the Attorney General is to serve as a legal and policy adviser to the President. Indeed, that is one of the roles that Congress has envisioned for the Attorney General since the Judiciary Act of 1789. If the Attorney General does not support a policy, he can also press his case with the President.

6. In the 1990s you often attributed the nationwide spike in crime to a “breakdown of traditional morality” and the “promotion of secularism.” This is how you described it on Larry King Live in 1992: “We have the highest crime rate in the world, and that’s unfortunate. And I think that has to do with a lot of aspects about our society—our heterogeneity, and so forth.” Can you explain what you meant by this comment? Did you believe that our nation’s diversity led to increased crime?

RESPONSE: As I explained in my opening statement, we are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. The quote from the 1990s to which you refer was part of a larger conversation in which I was discussing the Department of Justice’s policies to combat crime, and Mr. King asked “[w]hat kind of statement is that about our society?” After that quote, I continued to note that “the fact remains that if you commit a crime in the United States your chances of going to prison are the same as in Canada and the United Kingdom. So we’re not more punitive than other countries. The problem that we have is that we have a higher crime rate. But still, when all is said and done, we have less than 1 percent of the population that’s committing most of the predatory violence in our society, and they’re repeat offenders.” As I have said in this and other contexts, the determinants of higher crime rates are complex and include many factors. During my tenure as Attorney General, the Department fought crime and directed that fight at what we believed were the root causes of crime. In the intervening years, I believe it can be demonstrated that our nation has brought down the crime rate due to many of these policies, all while diversity has increased in our country. I do not believe that our nation’s diversity led to increased crime.

7. You’ve long been a proponent of mass incarceration, arguing in 1994 that “increasing prison capacity is the single most effective strategy for controlling crime.” You also

testified during your hearing that your views were shaped by the nation confronting a rise in crime during the early 1990s.

- a. Do you still believe that increasing prison capacity is the most effective strategy for controlling crime?
- b. In recent years, in dozens of states across the country, prison rates and crime rates have fallen together. How do you explain that?

RESPONSE: When I was Attorney General, violent crime had been surging throughout the United States. During my time as Attorney General, the Department implemented a concept called “Weed and Seed.” This program focused on removing violent criminals and repeat offenders from high-crime areas while delivering vital social services to improve neighborhoods in partnership with local communities. This program, among other enforcement actions, helped reduce crime rates and was an effective strategy for controlling crime. By 2017, the violent crime rate was only a quarter of what it was in the early 1990s. I continue to believe that this, and other similar programs, was an effective strategy for controlling crime.

8. During a 1995 panel you claimed that social programs fail to reduce crime and may even exacerbate it. In an article you published in the Michigan Law and Policy Review in 1996 titled “A Practical Solution to Crime in our Communities,” you argued, in part, for the reduction of social programs that, in your view, increase rates of crime. Do you still agree with these ideas?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement.

9. In 2001, you stated the illicit drug trade should be treated like a national security issue, and that for those involved in trafficking organizations, “there are only two end games: You either lock them up or you shoot them, one or the other.” You also said “I believe you can use law enforcement to some extent, particularly in the U.S., but the best thing to do is not to extradite Pablo Escobar and bring him to the United States and try him. That’s not the most effective way of destroying that organization.” Of course, that is exactly what is happening in the Eastern District of New York right now, with the trial of Joaquin “El Chapo” Guzman. If the options are to either lock them up or shoot them, and you don’t believe the U.S. government should be extraditing people like Escobar, what exactly were you proposing the U.S. government do?

RESPONSE: The point I was raising in 2001 was that in combatting transnational drug trafficking organizations (DTOs), we should always evaluate, based on all the facts and circumstances, how we can most effectively neutralize a specific threat being posed to the United States and our citizens, consistent with our laws and Constitution. Extradition and prosecution in the United States of drug traffickers, including senior DTO leaders, have of course played a critical role in furthering American security and safety.

10. During your previous confirmation hearing, you testified that you “wouldn’t defend regulations . . . if [you] don’t think the regulation is consistent with Congress’s intent.” One of the core statutes governing asylum, 8 U.S.C. § 1158, states that any alien who arrives in the United States “whether or not at a designated port of arrival . . . may apply for asylum.” Despite this statute, President Trump recently issued a rule categorically denying asylum claims made outside of ports of entry. The Supreme Court has upheld a nationwide injunction temporarily halting this rule, but the Justice Department is appealing it. If confirmed, would you instruct the Justice Department to continue defending President Trump’s asylum rule even though it is facially inconsistent with congressional intent and the explicit wording of an unambiguous statute?

RESPONSE: Because this issue is in active litigation, it would not be appropriate for me to comment on it specifically. I am committed to ensuring that the Department faithfully enforces the immigration laws enacted by Congress and supports policies set by the President consistent with the law.

11. The Office of Legal Counsel, which you headed for a year under President George H.W. Bush, is a powerful gatekeeper responsible for determining the legality of the President’s proposed actions. If the President proposes an action—say, declaring a national emergency—based on a characterization of the facts that is demonstrably false, does the OLC have any responsibility to scrutinize those falsehoods as part of its review?

RESPONSE: In my experience, when the Office of Legal Counsel reviews proposed executive orders, it seeks, to the greatest extent possible, to verify the factual and legal predicates for the proposed action, relying upon the experience and expertise of others in the Executive Branch.

12. You have praised former Attorney General Jeff Sessions for “breaking the record for prosecution of illegal-entry cases” and increasing illegal re-entry prosecutions “by 38 percent.” While illegal immigration is no doubt a problem we must address, the Justice Department has finite resources. On November 14, 2018, I wrote a letter to acting Attorney General Matthew Whitaker inquiring whether resources for prosecutions of serious criminal offenses were being re-directed toward immigration prosecutions. Indeed, as immigration prosecutions were ramped up under former Attorney General Sessions, across the border prosecutions of other crimes steadily decreased — without any indication that the rate of these crimes actually subsided. Would you continue the

Department's recent aggressive focus of prosecutorial resources on low level immigration offenses even if the result is the Department is unable to prosecute other serious crimes it once handled?

RESPONSE: The Administration has deemed enforcement of immigration-related offenses a priority. Immigration offenses should be considered for prosecution just as any referral from a law enforcement partner would be considered. As to the remainder of this question, I cannot speculate on a hypothetical question about how I would respond to such a situation, particularly since, as a private citizen, I have little knowledge of particular facts relevant to Department prosecutorial decision-making. As in all matters, I would look at the individualized facts in determining an appropriate course of action.

13. I asked you during the hearing about whether your views of the third party doctrine have evolved given the Supreme Court's recent decision in *Carpenter v. United States*; you testified you had not reviewed the decision. Please do so and respond to the following:

- a. Do you still believe that "no person has Fourth Amendment rights in . . . records left in the hands of third parties"?

RESPONSE: In *Carpenter*, the Supreme Court carved out a narrow exception to the longstanding third-party doctrine for cell-site location information possessed by the service provider. That decision is now the law, and I am committed to following it if I am confirmed as Attorney General.

- b. Do you believe that there comes a point at which collection of data about a person—e.g., metadata, geolocation information, etc.—becomes so pervasive that a warrant would be required, even if collection of one bit of the same data would not?

RESPONSE: I cannot speculate on a hypothetical question. As in all matters, if confirmed, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining, in consultation with the Solicitor General, the appropriate legal position in any particular case.

14. In 1987, the D.C. Circuit Court of Appeals held that Georgetown University's refusal to grant equal rights on campus to two LGBTQ affinity groups constituted a violation of D.C.'s Human Rights Act, which prohibits sexual orientation discrimination by educational institutions. In an article published in *The Catholic Lawyer* in 1995, you wrote that these types of laws seek to "ratify" conduct that was previously considered immoral, and this consequently dissolves any form of moral consensus in society. Do you

still believe that laws granting equal protection to LGBTQ individuals “dissolve any form of moral consensus in society”?

RESPONSE: This question does not accurately convey my views as expressed in the article. If confirmed, I would faithfully enforce federal laws that protect LGBTQ individuals against discrimination.

15. The Violence Against Women Act was enacted in 1994, a year after you left the Department of Justice. Senator Crapo and I worked together to reauthorize the act in 2013. Our 2013 reauthorization expanded protections for many of the most vulnerable among domestic violence and sexual assault survivors – students, immigrants, LGBT victims, and those on tribal lands.

- a. Will you commit to support the implementation of these life-saving protections contained in the 2013 reauthorization?

RESPONSE: If I am confirmed, I will enforce all federal laws, including the 2013 reauthorization of VAWA. It is my understanding that VAWA’s grant programs contain a number of provisions designed to ensure that services reach vulnerable victims, including funding for outreach and services to underserved populations, culturally specific victim services, specialized programming for children and youth, and tribal governments’ strategies to combat violence against Native women. I am firmly committed to ensuring that VAWA programs, and the funds made available by Congress, are employed in the most effective manner possible in furtherance of their stated missions.

- b. During your prior tenure as Attorney General, how did you approach the Department’s responsibility for prosecuting crimes committed on Indian Reservations? How do you intend to ensure that the investigation and prosecution of crime on Native reservations is a priority going forward?

RESPONSE: Then, as now, the U.S. Attorneys were primarily responsible for prosecuting serious crimes in Indian country. In my first tenure as Attorney General, I relied on the Native American Issues Subcommittee (NAIS) of the Attorney General Advisory Committee regarding matters concerning Indian country crime. I will look to the NAIS again, as well as the Office of Tribal Justice, to ensure that prosecution of crime in Indian country continues to be a priority at the Department. I also support innovative projects such as the Office on Violence Against Women’s Tribal Special Assistant US Attorneys program, which encourages joint tribal and federal prosecution of domestic violence and sexual assault offenses.

- c. Will you commit to visiting a tribal court implementing VAWA jurisdiction within your first year, should you be confirmed?

RESPONSE: I would be very interested in visiting Indian country. If confirmed, I will work with relevant components at the Department, including the Office of Tribal Justice and the Office of Violence Against Women, to determine an appropriate time and place for a visit.

16. According to Article II, Section 4 of the U.S. Constitution, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” In your view, what constitutes a high Crime or Misdemeanor?

RESPONSE: I have not studied this question in any detail. If confirmed, and if the matter came before the Department, I would likely consult with the Office of Legal Counsel on the matter.

17. President Trump has stated many times that voter fraud is rampant in this country and has claimed that millions of votes were illegally cast in favor of Hillary Clinton during the 2016 presidential election. Most recently, President Trump said that people go vote, get back in their cars, put on a disguise and go back in and vote again.

- a. Are you aware of any credible evidence to substantiate either of President Trump’s claims?
- b. Is it important that when a president makes assertions relevant to the integrity of our voting systems, as well as relevant to potential federal crimes under the purview of the Justice Department, that he or she have a factual basis for doing so?

RESPONSE: I have not studied the issues raised by this question in great detail and therefore am not familiar with data and statistics on this matter. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

18. When asked by Senator Feinstein about the Constitution’s prohibition on emoluments, you testified that you believed “there is a dispute as to what the emoluments clause relates to,” and that you “couldn’t even tell [Senator Feinstein] what it says.” In 2016, then-Chairman Grassley and Senator Tillis questioned then-Attorney General Lynch on whether the receipt of any payment “from a foreign government or an instrumentality of a foreign government” by a spouse of an executive branch officer violated the Constitution.

Such questions are even more pressing when it is the constitutional officer himself receiving such payments. Given the interest from senators, I trust you have had an opportunity to review the Emoluments Clause since last week. The actual text states that “no person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept of any present, emolument, office, or title . . . from any king, prince, or foreign state.”

- a. Since President Trump has not divested from his businesses, does the rent paid by the Industrial and Commercial Bank of China to the President-elect for space at Trump Tower in New York raise concerns vis-à-vis the Emoluments Clause? The Bank, which is owned by the Chinese government, is according to news reports the largest tenant in Trump Tower.
- b. Does money paid by various foreign governments for the use of event space or lodging at the President’s hotel here in Washington raise concerns vis-à-vis the Emoluments Clause?
- c. There are currently several lawsuits regarding a potential violation of the Emoluments Clause, including one from the attorneys general of Maryland and the District of Columbia. While subpoenas were issued a month ago, but the Department of Justice is asking for an appeals court to block this lawsuit from continuing. If confirmed as Attorney General, would you continue to appeal the decision of the District Court and attempt to end the lawsuit?

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment.

19. The General Services Administration (GSA) leases the Old Post Office Building for the Trump International Hotel in Washington, D.C. Recently, the Inspector General for the GSA issued a report stating that the agency lawyers ignored the constitutional issues that arose when they reviewed the lease after President Trump won the election in November 2016. The Inspector General concluded that, “following the 2016 election, it was necessary for GSA to consider whether President-elect Trump’s business interest in the OPO lease might cause a breach of the lease upon his becoming President. The evaluation found that GSA, through its Office of General Counsel (OGC) and its Public Buildings Service, recognized that the President’s business interest in the lease raised issues under the Foreign Emoluments and Presidential Emoluments Clauses of the U.S. Constitution that might cause a breach, but decided not to address those issues.” This seems to suggest that there is a continuing concern with respect to conflicts of interest, the STOCK Act, and the Emoluments Clause.

- a. What is the Justice Department's role in enforcing the Emoluments Clause?
- b. If there is an apparent violation, would the Department conduct any inquiry or investigation?

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment. Moreover, I am not familiar with the circumstances referenced in your question and therefore am not in a position to comment or make a commitment at this time.

20. Article 36 of the Vienna Convention on Consular Relations (VCCR) requires parties to the treaty to promptly inform, upon arrest, nationals of signatory nations that they have the right to meet with consular officials. The United States is a party to the VCCR, but there are a number of well documented cases in which the U.S. is not in compliance with our Article 36 obligations, and that noncompliance has strained our relationships with a number of important allies including Great Britain and Mexico. To help ensure compliance with Article 36, the U.S. Supreme Court adopted an amendment to Rule 5 of the Federal Rules of Criminal Procedure mandating that a judge presiding at the defendant's initial appearance inform "a defendant who is not a United States citizen [that he or she] may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested."

- a. Do you believe full compliance with Article 26 of the VCCR is important?
- b. Will you commit to ensuring full compliance with respect to any and all undocumented immigrants who are arrested, including if the arrest was executed by the Department of Homeland Security's Immigration and Customs Enforcement, for "acts that constitute a chargeable criminal offense"?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

21. In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Trafficking Victims Protection Reauthorization Act. Among other things, members of Congress worked on the 2008 and 2013 reauthorization bills to ensure that children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings. Not only is it common sense that putting a child alone before a judge is fundamentally unfair and will not result in a just, informed outcome, but legal representation serves as an effective tool to ensure compliance with immigration laws. Studies show that the rate of

unaccompanied minors who show up for immigration court increases from 60.9 percent to 92.5 percent when represented by a lawyer.

- a. Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many unaccompanied children as possible with legal representation?
- b. Similarly, will you commit, if confirmed, to facilitating increased collaboration between the Department of Justice's Executive Office for Immigration Review, known as EOIR, and community-based organizations to provide legal representation for migrant children separated from their parents?

RESPONSE: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I also understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. It is the longstanding policy of the Department of Justice not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

22. The Inspector General for the Department of Health and Human Services released a report stating that the family separation policy began in summer of 2017. Thousands of children may have been separated before a court order forced HHS to keep track of the children they were separating from their parents. HHS also says they face challenges identifying the children.

- a. Do you believe that "zero tolerance" and family separation served as a useful deterrent to migrant families fleeing Central America?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units, and therefore, I am not in a position to comment on its deterrent effects.

- b. Would you consider resurrecting such policies under any circumstances?

RESPONSE: If confirmed, it will be my job as Attorney General to enforce immigration laws as they are enacted by Congress and to support policies set by the President consistent with the law. I cannot speculate on a hypothetical question about future policy decisions made "under any circumstances." President Trump's June 20, 2018, Executive Order directed that families

should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

23. In April 2001 at the Miller Center, you discussed your decision to intern HIV positive refugees in a separate camp on Guantanamo, stating: "We were using Guantanamo Bay, and it seemed like every other week I would be called over to meet with Colin Powell, [Dick] Cheney, and Brent Scowcroft, and they, of course, were complaining Their position was, Guantanamo is a military base, and why were all these people here, the HIV people, all these other people? How long are you going to be on our property with this unseemly business? I'd say, 'Until it's over. But we're not bringing these people into the United States.' This is a very convenient base outside the United States, and it's serving a good function. They were always complaining. I would say, what do you people do at Guantanamo? Maybe this is the highest, best use of Guantanamo. Maybe Guantanamo should be turned over to the INS [Immigration and Naturalization Service] and used as a processing center. Maybe this is the best use for the United States as opposed to whatever you people do with it. We got a little bit feisty." Ultimately, all Haitian refugees were released from Guantanamo after a federal district court found many of their constitutional rights to have been repeatedly violated. It is reported that the Departments of Justice and Homeland Security are currently considering the extra-territorial processing of asylum seekers in Mexico. Many immigration law experts believe that these proposals, like the failed Guantanamo policy, cannot be lawfully executed. Will you commit to ensuring that those who seek asylum in the United States or at our borders will have the opportunity to have their claims processed from within the United States, with all the rights provided by the Constitution and federal law accorded to them?

RESPONSE: I have no knowledge of the facts and circumstances surrounding the proposal you mention beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter. If confirmed, it will be my job as Attorney General to enforce asylum laws as they are enacted by Congress and support policies set by the President consistent with the law.

24. A federal district court judge found that the medical conditions facing HIV positive detainees in Camp Bulkeley - directly under your control - were deplorable and insufficient. In *HCC v. Sale*, Judge Johnson specifically noted that military doctors had made the INS, which was under your control at the time, aware of these problems, but that your agency failed to act: "The military's own doctors have made INS aware that Haitian detainees with T-cell counts of 200 or below or percentages of 13 or below should be medically evacuated to the United States because of a lack of facilities and specialists at Guantanamo. Despite this knowledge, Defendant INS has repeatedly failed to act on recommendations and deliberately ignored the medical advice of U.S. military doctors that all persons with T-cell count below 200 or percentages below 13 be transported to the United States for treatment. Such actions constitute deliberate indifference to the Haitians' medical needs in violation of their due process rights." *Haitian Centers Council Inc. v. Sale*, 823 F.Supp. 1028, 1044 (EDNY 1993). During this

period, one of your spokespeople at the INS, Duane Austin stated publicly, “We have no policy allowing people with AIDS to come enter the United States for treatment. . . . They’re just going to die anyway, aren’t they?” A federal district court judge found that the agency directly under your control acted with deliberate indifference to the medical needs of migrants in U.S. government care. Today, the Department of Justice oversees the adjudication of the cases of tens of thousands of migrants in facilities operated by ICE where medical care is again suspect. NGOs report that, consistently, at least half of deaths in ICE custody are attributable to medical negligence. Sexual abuse is reported to be rampant, and DHS’s own Inspector General has found that conditions in immigration detention “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.” What can the Department of Justice take to ensure that there is accountability for medical negligence and malfeasance committed by DHS and/or DOJ officials in the immigration detention setting?

RESPONSE: I discussed these issues in my testimony and disagree with Judge Johnson’s characterization. I have no knowledge of these assertions relating to current conditions, and therefore, am not in a position to comment on this matter—particularly insofar as it relates to the operations of another department in the Executive Branch.

25. During your hearing, you stated that you would uphold the law of marriage equality, but that there needs to be accommodations made for religious purposes. However, you stated that the Department of Justice would only have a role in banning anti-LGBTQ discrimination only if Congress passes a law.
- a. What actions would you take, if any, if a state or local official refuses to issue a marriage license to a same-sex couple?

RESPONSE: It would not be appropriate for me to speculate on particular responses to a hypothetical situation. As in all matters, I would look at the facts and follow the law and any policies of the Department in determining what the appropriate steps might be.

- b. When is it appropriate, if ever, to disregard a Supreme Court opinion, such as the one that protected same-sex marriage under the Constitution?

RESPONSE: The Supreme Court has the final word on the interpretation of the Constitution. As I stated at my hearing, I am perfectly fine with the law as it is with respect to same-sex marriage, but accommodation of religion is also necessary.

26. In 2016, Congress reformed the Freedom of Information Act, which codified the “presumption of openness” that requires all administrations to operate with transparency as the default setting. If confirmed as Attorney General, how will you enforce the

presumption of openness? Will you commit to fully enforcing the object and purpose of FOIA and to encourage transparency?

RESPONSE: If confirmed, it will be my goal to be as transparent as possible, consistent with Department policies and practices, applicable laws and regulations, and recognized Executive Branch confidentiality interests. I will ensure that all applicable Freedom of Information Act laws and regulations are properly followed and fully enforced.

27. Several reports have come out that T-Mobile executives have repeatedly booked rooms at President Trump's Washington, D.C. hotel. Many have suggested that the executives have booked this hotel in the interest of furthering the success of the merger between T-Mobile and Sprint, which is being reviewed by the Department of Justice.
- a. Can you guarantee that the decision of the Justice Department's antitrust division merger, if made during your time as Attorney General, will be unaffected by any executives' decision to spend money at the President's hotel?
 - b. What steps will you take to ensure reviews of proposed mergers are free of political considerations?

RESPONSE: As I mentioned at my confirmation hearing, if I am confirmed, I will ensure that all political considerations, including those you mention, will play no role in the Department's law enforcement activities.

28. In 2005, you testified before Congress that constitutional protections do not apply to Guantanamo detainees because "[t]he determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant." You also argued that even if constitutional protections did apply, the military's "[Combatant Status Review Tribunal] procedures would plainly satisfy any conceivable due process standard that could be found to apply." You recommended that Congress consider legislation to "eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions." Congress ultimately did so in the Military Commissions Act of 2006, which the Supreme Court held to be an unconstitutional suspension of the Writ of Habeas Corpus in *Boumediene v. Bush*. In *Boumediene*, the Court also found the military review procedures to be constitutionally inadequate. Do you support the holdings in *Boumediene v. Bush* as settled law?

RESPONSE: Yes, the holding in *Boumediene* is binding Supreme Court precedent that the Department of Justice must follow.

29. In 2005, you testified that the Geneva Conventions do not apply to captured individuals affiliated with al Qaeda or the Taliban. The Supreme Court in *Hamdan v. Rumsfeld* rejected this view and held that Common Article III of the Geneva Conventions apply to the conflict in question. Do you support the holdings in *Hamdan v. Rumsfeld* as settled law?

RESPONSE: Yes, the holding in *Hamdan* is binding Supreme Court precedent that the Department of Justice must follow.

30. You stated in 2005 that there “does not appear to be any real argument that these [military commission] trials belong in civilian courts.” Since 9/11, there have been 8 convictions in military commissions, half of which have been partially or fully overturned. By contrast, there have been over 600 individuals convicted of terrorism-related offenses in civilian courts in that same period. The military commission trials of the individuals suspected of committing the 9/11 and U.S.S. Cole terrorist attacks do not yet have start dates. Do you still believe that there is not “any real argument” for prosecuting these cases in Article III federal courts?

RESPONSE: I support the use of both Article III courts and military commissions, as appropriate, for prosecuting perpetrators of terrorism against the United States. In deciding which forum to use in any particular case, the government should evaluate all the facts and circumstances and the law to determine which options are legally and practically available and best serve our national security interests.

31. In recent years, there have been hundreds of cases in which individuals were exonerated based on faulty forensic evidence. This has long been an issue of bipartisan concern, and Senator Grassley and I have raised it on numerous occasions with officials from the Justice Department.

- a. Will you commit to working with Members of this Committee to ensure that law enforcement and criminal justice stakeholders have the strongest and most reliable forensic tools possible to ensure that crimes are solved, public safety is protected, and wrongful convictions are avoided?

RESPONSE: I would be pleased to work with the Committee on these issues.

- b. As you know, the FBI reviewed thousands of cases involving erroneous hair analysis testimony, resulting in the exoneration of innocent people and, in some cases, the identification of the true perpetrators of crimes. They then performed a Root Cause Analysis (RCA) to begin to understand what exactly led to the incredible amount of erroneous testimony. Will you work with the FBI and others to ensure that this RCA is completed promptly and that its results are made public

for review, and to ensure this type of error is not repeated going forward in this or other forensic disciplines?

RESPONSE: Accurate scientific and forensic analysis is important to ensuring and maintaining the integrity of our criminal justice system. I am unfamiliar with the details surrounding the FBI's hair analysis review. If confirmed, I look forward to learning more about this important issue.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR DURBIN

1. In your June 8, 2018 memo, you acknowledge that there are many ways in which a President could commit obstruction of justice – for example by altering evidence, suborning perjury, or inducing a witness to change testimony. But your memo makes an assumption that Special Counsel Mueller’s obstruction theory relies on one particular obstruction of justice statute, 18 U.S.C. 1512—a statute you believe should not be used to investigate actions that you feel are within a President’s lawful authority.

Based on this assumption about Special Counsel Mueller’s obstruction theory, your memo concludes that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.” In other words, you urge Special Counsel Mueller’s supervisor not to allow Mueller to take a certain action in an ongoing investigation and not to allow Mueller to ask the President any questions about obstruction, even though you concede that you are “in the dark about many facts” and that you are making assumptions about the legal obstruction theory.

- a. Is it appropriate for you to urge Special Counsel Mueller’s supervisor to block Mueller from taking an action in an ongoing criminal investigation when you do not know all the facts and were speculating about Mueller’s legal theory?
- b. Is it appropriate for you to flatly urge Special Counsel Mueller’s supervisor that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” when there are numerous potential obstruction theories besides 18 U.S.C. 1512 that Special Counsel Mueller may want to question the President about?
- c. Is it still your view that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction”?
- d. In your January 14 letter to Chairman Graham, you said of your memo that “my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory.” You noted in your January 14 letter that you shared the memo with the several of the President’s defense attorneys. Did you also forward the memo to the Special Counsel’s Office so they could consider your views the potential implications of the theory? If not, why not?

- e. Did any of the President's attorneys whom you sent your memo tell you that they agreed with your view that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?
- f. Did any of the President's attorneys whom you sent your memo tell you that they used your memo to argue that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?

RESPONSE: As I stated in my June 8, 2018 memorandum and explained in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, my memorandum was narrow in scope. It was premised on an assumption based on public accounts – which the memorandum acknowledged may be incorrect – that the Special Counsel's basis for questioning the President was that the firing of former FBI Director Comey constituted obstruction under a specific statute – namely, 18 U.S.C. § 1512(c). In other words, the memorandum assumed, for purposes of analysis, that the Special Counsel's sole predicate for interviewing the President was the single obstruction theory that it was addressing. The memorandum did not address whether the President could be questioned under any of the other possible obstruction theories that have been publicly discussed in connection with the Special Counsel's investigation, or any other theories of liability the Special Counsel may be pursuing.

After drafting the memorandum, I provided copies to several officials at the Department of Justice who I thought would be in a position to assess whether it was actually relevant to the Special Counsel's work, including Deputy Attorney General Rosenstein, who by law at the time was charged with overseeing the Special Counsel. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. As I have stated, I sent a copy to the President's lawyers and spoke with them to explain my views. I do not know what impressions they had regarding my views or what, if anything, they did with my memorandum after receiving it.

As I stated during my hearing before the Committee, I remain in the dark regarding the specific facts and legal theories currently at issue in the Special Counsel's investigation. If confirmed, I will approach the investigation with an open mind as to all issues and will make any decisions based on the relevant law and the facts at the time.

- 2. Because your June 8, 2018 memo expresses stark views about what you feel should and should not be permitted as part of the Special Counsel's ongoing criminal investigation, and because you sent your memo to Special Counsel Mueller's supervisor and to members of President Trump's defense team without informing the Special Counsel's Office of your memo, a reasonable person could conclude that you would not be impartial if issues arise as part of the Special Counsel investigation that require the Attorney General to make decisions regarding obstruction of justice, including decisions about what information about obstruction of justice should be included in reports to the Committee and the public.

Therefore you should, at minimum, seek the advice of career Department ethics officials regarding recusing yourself from such decisions, pursuant to 5 CFR 2635.502(a)(2), given the legitimate questions that your memo and your use of it have raised about your impartiality.

- a. Will you commit, if confirmed, to seek the advice of DOJ career ethics officials on this recusal question?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

- b. If so, will you commit to promptly inform the Committee what advice the DOJ career ethics officials gave and whether you will follow it?

RESPONSE: Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices, applicable rules and regulations, and recognized Executive Branch confidentiality interests.

3. At your hearing you said that you would decline to follow the advice of career DOJ ethics officials "if I disagree with them." When you previously worked in the Justice Department, did you ever decline to follow the advice of career DOJ ethics officials? If so, please discuss when you did so and why.

RESPONSE: While I do not recall specific recusal decisions I made for myself at that time, I have no recollection of declining to follow ethics advice I received about any recusals.

4. At your hearing, Professor Neil Kinkopf said: "It is clear that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict—declination decisions. In combination with the DOJ view that a sitting president may not be indicted, this suggests that Barr will take the position that any discussion or release of the Mueller report relating to the President, who, again, cannot be indicted, would be improper and prohibited by DOJ policy and regulations."

- a. Do you take DOJ regulations to mean that you should release not the Mueller report, but rather your own report?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special

Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, if confirmed, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

- b. Do you read DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict?

RESPONSE: The regulations governing public discussion of a Special Counsel's declination decisions are discussed above in my response to Question 4(a). In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

- c. Do you believe it would be improper and/or prohibited by DOJ policy or regulations to provide Congress or the public with any discussion or release of parts of Mueller's report relating to the President?

RESPONSE: Please see my responses to Questions 4(a) and 4(b) above.

- d. 28 CFR 600.9(c) provides that "The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions" (emphasis added). Do you read the term "these reports" to include the report issued by the Special Counsel to the Attorney General pursuant to 28 CFR 600.8(c)?

RESPONSE: Please see my response to Question 4(a) above.

- e. 28 CFR 600.9(c) also provides that “All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.” Is it your view that this sentence governs the release of information concerning matters handled by Special Counsels to Congress, as opposed to public release?

RESPONSE: Please see my response to Question 4(a) above.

- f. Do you adhere to OLC’s view, stated in its October 16, 2000 opinion “A Sitting President’s Amenability to Indictment and Criminal Prosecution,” that “a sitting President is immune from indictment as well as from further criminal process” and that the Constitution provides the Legislative Branch the only authority to bring charges of criminal misconduct against a president through the impeachment process?

RESPONSE: Although I have not studied this issue in detail, my understanding is that the October 16, 2000 opinion by the Office of Legal Counsel remains operative at the Department.

- g. If you believe the answer to (f) is yes, then shouldn’t Congress be given access to the Special Counsel’s full investigative findings so that Congress can best evaluate whether or not to hold a President accountable for potential criminal misconduct through the impeachment process?

RESPONSE: I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, if confirmed, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

5. At your hearing you said “well, under the current regulations the special counsel report is confidential. The report that goes public would be a report by the attorney general.” You later said “the AG has some flexibility and discretion in terms of the AG’s report.”

If confirmed, will you use this flexibility and discretion to make sure the public can see Special Counsel Mueller’s own words about his findings and conclusions to the greatest

extent possible, rather than your own summary or interpretation of Special Counsel Mueller's words?

RESPONSE: As I stressed repeatedly in my testimony, I believe that it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can consistent with these regulations, applicable law, and the Department's longstanding practices and policies.

6. Do you agree with the statement of then-CIA Director Pompeo, who said on July 21, 2017 that "I am confident that Russians meddled in this election, as is the entire intelligence community....This threat is real."

RESPONSE: I agree with then-CIA Director Pompeo's statement.

7. Will you commit that, if you are confirmed:
- a. You would be willing to appear before the Senate Judiciary Committee to testify and answer questions specifically about the Special Counsel investigation after Special Counsel Mueller submits his concluding report?

RESPONSE: Yes.

- b. You would not object to Special Counsel Mueller appearing before the Senate Judiciary Committee to testify and answer questions about the Special Counsel investigation after he submits his concluding report?

RESPONSE: I would consult with Special Counsel Mueller and other Department officials about the appropriate response to such a request in light of the Special Counsel's findings and determinations at that time.

8. During your confirmation hearing in 1991, you said "[t]here are a lot of different ways politics can come into play in a case." You went on to say "you shouldn't sweep anything under the rug. Don't cut anyone a special break. Don't show favoritism."
- a. Do you still stand by these principles?
 - b. Will you ensure that Special Counsel Mueller's findings are made available to Congress and to the public, so that the Special Counsel's findings are not swept under a rug?
 - c. The President's attorneys, led by Rudy Giuliani, are apparently preparing their own report to counter the Mueller report. Presumably there will be no redactions sought and no executive privilege claimed by the Administration over the contents of the Giuliani report, in contrast to the President's expected efforts to hide much of the Mueller report from Congress and the people. Are you concerned that it would

seriously undermine the confidence of the American people in our justice system if the Special Counsel Mueller's findings were swept under the rug or heavily redacted while the full Giuliani report was tweeted out to the American people?

RESPONSE: The Department's investigations and prosecutorial decisions should be made based on the facts, the applicable law and policies, admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and should be made free of bias or inappropriate outside influence.

I believe that it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can consistent with the law, including the Special Counsel regulations discussed in my prior answers, and the Department's longstanding practices and policies.

9. Other than your 19-page memo that you sent to Deputy Attorney General Rosenstein and OLC head Steven Engel on June 8, 2018, have you sent any other memos to Justice Department officials urging them to follow a course of action in an ongoing criminal investigation since you left the Department in 1993? If so, please describe the date and contents of each memo you sent.

RESPONSE: As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials in both the Executive branch and Congress. For example, following the attacks of September 11, 2001, I contacted numerous officials within the administration of President George W. Bush, including officials at the White House and the Department of Justice, to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. As a more recent example, I expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

10. Why did you not mention in your June 8, 2018 memo that you had met with President Trump in June 2017 and discussed the possibility of joining the President's legal defense team? Would that information have been relevant for the recipients of your June 8, 2018 memo to know?

RESPONSE: As I testified during my hearing before the Committee, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. I did not reference this meeting in my June 2018 memorandum because I did not believe that it was relevant to my legal analysis.

11. On November 14, 2017, you emailed Peter Baker of *The New York Times* and said “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] foundation, is far stronger than any basis for investigating so-called ‘collusion.’”
- a. Why did you describe collusion as “so-called” in this email?
 - b. Why did you put the word collusion in quotation marks in this email?
 - c. Why have you long believed that the predicates for investigating the uranium deal and the foundation are “far stronger” than any basis for investigating potential crimes that are commonly described as falling under the umbrella of collusion?

RESPONSE: My November 2017 comments to the New York Times were based on media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. To the best of my recollection, I used the term “so-called” and employed quotation marks when referring to “collusion” because, as many lawyers have observed, “collusion” is an informal, colloquial term that does not refer to a specific federal crime.

12. Why did you put the word obstruction in quotation marks in the subject line of your June 8, 2018 memo?

RESPONSE: To the best of my recollection, I used quotation marks when referring to “obstruction” in the subject line of my June 8, 2018 memorandum because I was using the term as a shorthand for the phrase “obstruction of justice.”

- 13.
- a. Was Attorney General Sessions wise to follow the advice of DOJ ethics officials and recuse himself from matters relating to the presidential campaign, including the Mueller investigation?
 - b. Was Acting Attorney General Whitaker unwise to disregard the advice of DOJ ethics officials that he should recuse himself from the Mueller investigation because a reasonable person would question his impartiality?
 - c. What message does it send to the American people if Attorneys General establish a practice of disregarding the ethics advice of career DOJ ethics officials?

RESPONSE: If confirmed, I will consult with the Department’s career ethics officials, review the facts at the time, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

My understanding is that the basis for Attorney General Sessions' recusal was 28 C.F.R. § 45.2, which generally prohibits any Department employee from participating in a criminal investigation or prosecution if he has a "personal or political relationship with . . . any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; . . . or any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution." I do not know all the facts, but I have stated that I believe he probably reached the correct result under the regulation.

I am not familiar with the specific facts relevant to Acting Attorney General Whitaker's recusal decision and therefore am not in a position to comment on it.

If confirmed, it will be my goal to ensure that the public has the utmost confidence in the integrity of the Department's law enforcement activities.

14. In your hearing testimony you quoted the following statement from your 1991 confirmation hearing: "The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of law."

President Trump has repeatedly denigrated Special Counsel Mueller and his investigation, calling it "unfair," a "witch hunt" and a "hoax." He also has tweeted and sent public signals to witnesses and targets in the investigation regarding their conduct. In your view, has the President gone too far with political interference in Mueller's investigation?

RESPONSE: Neither Members of Congress, the public, nor I know all of the facts. That is why I believe that it is important that the Special Counsel be allowed to complete his investigation.

As I testified at the hearing, President Trump has repeatedly denied that there was collusion. It is understandable that someone who felt like he or she was being falsely accused would describe an investigation into him or her as a "witch hunt."

If confirmed, I will ensure that the Special Counsel is allowed to finish his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence.

15. When you were working as a private sector attorney:
- a. Did you ever represent Russian individuals or corporations as clients? If so, please provide details on the dates and nature of the representation.

- b. Did you ever have dealings with the Russian government or Russian oligarchs? If so, please provide details.

RESPONSE: I do not have complete records reflecting all of the clients that I have represented over the course of my four-decade legal career. After leaving the Department of Justice in 1993, I worked in-house for a single U.S. corporation until 2008. Since then, I have represented a handful of non-Russian clients as a private attorney in connection with matters having nothing to do with Russia. To the best of my recollection, these clients are reflected in the questionnaire that I submitted to the Committee. Prior to my last service at the Department of Justice 30 years ago, so far as I recall, and based on the records I have been able to access, I did not personally represent any Russian nationals or corporations organized under the laws of Russia while practicing law as a private attorney.

In approximately 1980, the federal judge for whom I clerked introduced me to someone I understood to be a consular officer from the Soviet Embassy, and I subsequently had several lunches with him at the request of the FBI. I debriefed the FBI following each meeting. This matter has been included in all of my subsequent background investigations. Other than that, to the best of my recollection and knowledge, I have not had dealings with the Russian government or anyone I understood to be a “Russian oligarch.”

16. During your 1989 confirmation hearing to head the Office of Legal Counsel, you said at one point that the Attorney General is “the chief lawyer in the administration. He is the President’s lawyer; he is the lawyer for the cabinet” (emphasis added). Do you stand by this characterization of the Attorney General’s role?

RESPONSE: Yes. That characterization is consistent with the way Presidents and Congress have understood the Attorney General’s role since the Founding. Since the Judiciary Act of 1789, the Attorney General has been charged with providing opinions and advice on matters of law to the President and the cabinet. Of course, the President may also have other lawyers that serve the office of the President (such as the White House Counsel) as well as lawyers that serve him in his personal capacity.

17. During your hearing we discussed a January 25, 1996 speech you gave at the University of Virginia’s Miller Center, in which you essentially admitted to taking actions as Attorney General for political purposes. You said: “After being appointed, I quickly developed some initiatives on the immigration issue that would create more border patrols, change the immigration rules, and streamline the processing system. It would furthermore put the Bush campaign ahead of the Democrats on the immigration issue, which I saw as extremely important in 1992. I felt that a strong policy on immigration was necessary for the President to carry California, a key state in the election.”

This admission that you developed initiatives to “change the immigration rules” to “put the Bush campaign ahead” stands in stark contrast to the commitment you made in your 1991 confirmation hearing for Attorney General, where you said: “The Attorney General must

ensure that the administration of justice, the enforcement of the law, is above and away from politics.”

- a. Why did you feel it was appropriate to develop initiatives to “change the immigration rules” as Attorney General for purposes of helping the political fortunes of the Bush campaign despite the commitment you made during your confirmation hearing?
- b. Is it appropriate for an Attorney General to “change the rules” to help the political campaign of the President who appointed him?
- c. If confirmed, do you believe it would be within your proper role to develop initiatives to “change the immigration rules” in ways that would help the 2020 Trump campaign?

RESPONSE: The actions referenced above and my discussion of those actions was appropriate for reasons that I explained at the hearing. As I discussed, the Attorney General plays three general roles within the Executive Branch. The first role is as the enforcer of the law; as to that role, the Attorney General must keep the enforcement process separate and free from political influence. The second role is as a legal advisor; as to that role as well, the Attorney General must provide legal advice that reflects what the Attorney General believes is the correct answer under the law. The third role is a policy role, which involves setting legal and law enforcement policy, including as it bears on immigration issues. The Attorney General is a political subordinate of the President, and, when acting in that third role, the Attorney General may propose and pursue legal policies that are in furtherance of the President’s agenda.

18. In an April 5, 2001 panel at the University of Virginia’s Miller Center, you said “my experience with the Department is that the most political people in the Department of Justice are the career people, the least political are the political appointees.” Do you stand by this characterization of DOJ career employees?

RESPONSE: In this portion of the interview, I was emphasizing the importance of utilizing the government’s prosecutorial power responsibly. To illustrate the point, I highlighted a case involving former Senator Charles Robb as one “where adult supervision prevailed.” Immediately after making the statement quoted above, I noted that it was “an overstatement to dramatize a point.” Although I have not been in the Department for many years, I believe the vast majority of men and women of the Department of Justice, whether they be career employees or political appointees, set aside personal political preferences to ensure the rule of law is enforced fairly and free from improper political influence. If confirmed, I will work to ensure politics plays no role in law enforcement decisions at the Department.

19. Did anyone at the White House or the Justice Department advise you not to meet with Democratic members of this Committee in advance of the hearing, and if so, who gave you this advice?

RESPONSE: No. I met with members of the Committee from both parties prior to my confirmation hearing and will continue to meet with Senators from both parties following my hearing. If confirmed, I look forward to working with all Members of Congress, regardless of party affiliation.

20. On October 18, 2017, Attorney General Sessions testified before the Senate Judiciary Committee for a Department of Justice oversight hearing. This was the only time he testified before the Committee as Attorney General. At this hearing, Attorney General Sessions did not provide a written copy of his testimony to the Committee members in advance of the hearing; in fact, an electronic copy of his testimony was emailed to my committee staff by the Department only after the hearing had begun. As a result of this late submission, Committee members were denied the opportunity to prepare questions in advance based on the Attorney General's written testimony. Will you commit that if you are confirmed, you will provide your written testimony to the full Committee 24 hours in advance of each hearing where you testify in accordance with the Committee's long-standing rules?

RESPONSE: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information needs, including the submission of hearing testimony, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will endeavor to see that the Committee's needs are appropriately accommodated and its rules followed.

21. Attorney General Sessions never provided responses to written questions from this Committee from the Department of Justice oversight hearing on October 18, 2017. Other former Department officials have provided responses to this Committee's oversight questions after they have left the Department, including former FBI Director Comey who provided responses on December 4, 2018 to written questions following his appearance before the Committee on May 3, 2017. If confirmed, will you ensure that the Committee receives prompt answers to all the written questions that were submitted to Attorney General Sessions from the October 18, 2017 oversight hearing?

RESPONSE: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

22. I appreciate that in your testimony you pledged to "diligently implement" the First Step Act.
- a. Will you direct prosecutors not to oppose eligible petitions for retroactive application of the Fair Sentencing Act if you are confirmed?

RESPONSE: If I am confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act consistent with congressional intent.

- b. The First Step Act authorizes \$75 million in annual funding for the next five fiscal years to carry out the Act's provisions. The actual cost of implementation is likely to be higher, and the Bureau of Prisons is already facing severe funding and staffing shortages. Will you pledge that, if confirmed, you will ensure that the Justice Department's budget requests include an increase of at least \$75 million, as authorized to implement the First Step Act, as well as any additional funding needed to address previous shortfalls?

RESPONSE: It is important that the Bureau of Prisons is funded at a level that allows it to effectively discharge all of its duties, including implementation of the FIRST STEP Act. If I am confirmed, I will work with the President and the Office of Management and Budget to ensure that such funding is requested in the President's budget and will work with Congress to see that such funding is provided.

- c. The First Step Act became law on December 21. It mandates the Attorney General begin immediate implementation of certain reforms, and establishes deadlines for others. Among other things, it requires that an Independent Review Committee be established by the National Institute of Justice by Tuesday, January 21, 2019. This deadline has already been missed.

The First Step Act requires the Attorney General, not later than 210 days after the date of enactment, and in consultation with the Independent Review Committee, to develop and release publicly on the Department of Justice website a risk and needs assessment system. What steps will you take in order to ensure the risk assessment system is established by this deadline if you are confirmed?

RESPONSE: If I am confirmed, I will work with relevant Department components to ensure the Department implements the requirements of federal statutes, including the FIRST STEP Act, consistent with the bounds set by the Antideficiency Act.

- d. The First Step Act broadens applicability of the Safety Valve under 18 U.S.C. § 3553(f). Do you agree that this change applies to cases where a sentence for the offense has not yet been imposed? If you are confirmed, what guidance will you provide to prosecutors on the applicability of the safety valve in such pending cases?

RESPONSE: Section 402(a) of the FIRST STEP Act broadens the class of defendants who are eligible for safety-valve relief. Section 402(b) provides that the Act's safety-valve amendments "shall apply only to a conviction entered on or after the date of enactment of this Act." If I am confirmed, I will ensure that

prosecutors receive implementing guidance for pending cases that is consistent with the applicability provision in the Act.

23. In 1993 you co-wrote an article in *The Banker* entitled “Punishment that exceeds the crime – The crackdown on corporate fraud threatens to stifle the financial system.” In this article, you criticized what you described as an “overly hostile enforcement atmosphere” when it comes to investigation and prosecution of corporate fraud and white collar crimes.” You said this aggressive enforcement risks deterring entrepreneurial investment and “offending our notions of fundamental fairness.”

- a. Why did you urge caution when it comes to investigating and prosecuting white collar crimes as opposed to your aggressive approach to investigating and prosecuting drug offenses?

RESPONSE: If confirmed, I will be committed to fully and fairly enforcing the law, including relating to fraud and white collar crime. I also believe that appropriate prosecutorial discretion plays an important role in all types of prosecutions. As I noted at my hearing, I believe my prior experience overseeing the Department’s aggressive response to the savings and loans crisis demonstrates that I will not shy away from prosecuting corporate fraud or other white collar crimes, where appropriate.

- b. Should white collar criminals get different treatment from other criminals?

RESPONSE: No. As I explained at my hearing, I care deeply about the rule of law. Laws should be evenly applied and enforced. The American people must know that the Department will treat all people fairly based solely on the facts and the law and an evaluation of each case on the merits.

24. At a panel discussion before the Federalist Society in 1995 you said “violent crime is caused not by physical factors, such as not enough food stamps in the stamp program, but ultimately by moral factors.” You went on to say “spending more money on these material social programs is not going to have an impact on crime, and, if anything, it will exacerbate the problem.”

Since you made these comments, new research has gone a long way toward rebutting them. For instance, scientific evidence now shows that childhood exposure to trauma affects brain development and perpetuates the cycle of violence. Social programs that help prevent and address exposure to trauma in children can have a significant impact on ending the cycle of violence.

- a. Do you regret these comments you made in 1995 to the Federalist Society?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in

effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement. During my time as Attorney General, the Department of Justice implemented “Weed and Seed.” This program focused on removing violent criminals and repeat offenders from high-crime areas while delivering vital social services to improve neighborhoods in partnership with local communities. This program, among other enforcement actions, helped reduce crime rates and was an effective strategy for controlling crime.

- b. Have your views on the relationship between social programs and violent crime changed since 1995?

RESPONSE: Please see my response to Question 24(a) above.

- c. Is it your view that white collar crime is also ultimately caused by moral factors?

RESPONSE: Yes.

25. In 1992, when you were Attorney General, you issued a lengthy report called “The Case for More Incarceration” that said: “First, prisons work. Second, we need more of them.” And in an October 2, 1991 speech you described a high prison population as “a sign of success.” Over the last three decades, as a result of stiff mandatory minimums, the federal prison population grew by over 700%, and federal prison spending climbed nearly 600%. Federal prisons now consume one quarter of the Justice Department’s budget. And we hold more prisoners, by far, than any other country in the world. America has five percent of the world’s population but 25 percent of the world’s prisoners – more than Russia or China.

Meanwhile, use of illegal drugs actually increased between 1990 and 2014. The availability of heroin, cocaine, and methamphetamine also increased. And recidivism rates for federal drug offenders did not decline. Today the data is clear – there is no significant relationship between drug imprisonment and drug use, drug overdose deaths, and drug arrests.

Have your views about the value of incarceration changed as a result of what we’ve learned in the last three decades?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement. As I said at my hearing, I will diligently implement the FIRST STEP Act, which seeks to address some of what you describe.

26. Now, we are facing another deadly drug epidemic, and some are proposing that we again respond with harsh mandatory minimum sentences. Today, a large body of research establishes that stiffer prison terms do not deter drug use or distribution. Do you agree that we cannot incarcerate our way out of the fentanyl epidemic?

RESPONSE: A comprehensive response to any drug epidemic should involve multiple lines of effort. This Administration has a three-pronged strategy to combat the opioid epidemic: prevention and education; treatment and recovery; and enforcement and interdiction. These efforts should be complementary and mutually reinforcing. I agree that we cannot incarcerate our way out of the opioid epidemic, but I also think that law enforcement plays a critical role in protecting public safety and reducing access to deadly drugs. If confirmed as Attorney General, I will ensure that the Justice Department continues to prioritize the prosecution of significant drug traffickers, rather than drug users or low-level drug offenders. And, as I testified at my hearing, I will work with Congress to implement the FIRST STEP Act.

27. During your testimony before this Committee, you acknowledged that “the heavy drug penalties, especially on crack and other things, have harmed the black community, the incarceration rates have harmed the black community.”

On May 10, 2017, Former Attorney General Sessions directed all federal prosecutors to always seek the maximum penalty in federal criminal prosecutions. During your confirmation hearing, you testified that you intend to continue this policy unless “someone tells me a good reason not to.” Yet you also testified that the “draconian policies” enacted in reaction to the crack epidemic resulted in “generation after generation of our people . . . being incarcerated,” and that it is time to “change the policies.” I agree. This seems to be a “good reason” not to continue the Sessions policy, which applies to violent and non-violent offenders alike. Will you commit to reviewing and revising the Sessions charging guidance if you are confirmed as Attorney General?

RESPONSE: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. It is my understanding that the Department’s current charging policy allows prosecutors the discretion to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so. As I noted in my testimony, if confirmed, I will not hesitate to assert myself - either with regard to the overall policy or in any particular case - if I believe justice is not being served.

28. In recent years, the Federal Bureau of Prisons (BOP) workforce has faced a number of significant challenges—including severe staffing shortages that jeopardize their ability to ensure the safety of inmates, staff, and the public. These staffing concerns resulted from a hiring freeze imposed by the Trump Administration and implemented by former Attorney General Sessions. Additional hiring was also delayed after President Trump proposed an FY 2019 budget that inexplicably sought to cut an additional 1,168 BOP positions, while projecting an increase in BOP’s prison population.

These staffing shortages have led to widespread reliance on “augmentation,” a practice that forces non-custody staff, such as secretaries, counselors, nurses, and teachers, to work as correctional officers—despite the fact that these employees lack the experience and extensive training of traditional correctional officers. Augmentation places staff at risk and reduces access to programming, recreation, and education initiatives—all of which are key to maintaining safe facilities and reducing recidivism.

- a. If confirmed, how will you address the ongoing staffing challenges at BOP?

RESPONSE: As I am not currently at the Department, I am not familiar with the details of staffing at the Bureau of Prisons. It is my general understanding that all staff working in an institution are considered correctional workers first and expected to supervise inmates. As for the concept of augmentation, other than what I have garnered from news media reports about this issue, I am not directly familiar with the Bureau’s staffing and current budget requests. If confirmed, I look forward to reviewing the Bureau’s resource allocation, staffing needs, and practices.

- b. Will you commit, if confirmed, to ensuring that BOP is adequately staffed so that augmentation is no longer needed?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about the BOP’s staffing situation and any impact it may have on safety and security.

- c. The ongoing government shutdown has exacerbated an already-dangerous situation for BOP staff and has caused significant financial stress as they continue to work without a paycheck. If confirmed, how will you address the impact that this shutdown has had on BOP and other DOJ staff?

RESPONSE: I share your concern about the impact the lapse in appropriations has had on Federal employees. It is my understanding that Congress has now passed, and the President has signed, legislation to restore appropriations for the Department of Justice and other federal agencies.

29. In an op-ed last November you praised Attorney General Sessions’ immigration policies including, among other things, for “breaking the record for prosecution of illegal-entry cases.” This praise came in the aftermath of Attorney General Sessions’ disastrous “zero-tolerance” policy directing U.S. Attorneys along the Southwest border to criminally prosecute every illegal entry misdemeanor case referred by DHS, which included parents fleeing gang and sexual violence. The President of the American Academy of Pediatrics saw the zero-tolerance policy differently than you did— she called it “government-sanctioned child abuse”. It led to the separation of thousands of families, some of whom have still not been reunited today.

- a. As Attorney General, would you adhere to the zero-tolerance policy?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they are going to apprehend, whom they are going to refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

- b. Do you think the zero-tolerance policy has been a success?

RESPONSE: Please see my response to Question 29(a) above.

- c. Was it appropriate for a Federal District Court Judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sbraw did on June 26, 2018? If so, why? If not, why not?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matter, and thus it would not be appropriate for me to comment on this matter.

30. On June 5, 2018, when asked, “Is it absolutely necessary . . . to separate parents from children when they are detained or apprehended at the border?” Attorney General Sessions answered, “Yes.” Yet on June 21, 2018, after widespread public backlash, Attorney General Sessions claimed that the Administration did not anticipate the separation of families, stating: “We never really intended to do that.” The Justice Department’s Inspector General (IG) is reviewing the Justice Department’s poorly planned and chaotic implementation of the zero-tolerance policy.

- a. Will you pledge that, if confirmed, you will implement the IG’s recommendations so we can avoid a repeat of this disaster?

RESPONSE: I cannot speculate on how I would hypothetically respond to future, unknown recommendations on any matter. If confirmed, I look forward to working closely with the Office of Inspector General on this and other matters and will certainly strive to implement recommendations as appropriate.

- b. Do you agree with Attorney General Sessions’ comment that it is absolutely necessary to separate parents from children when they are detained or apprehended at the border?

RESPONSE: Without having additional information beyond what has been reported in the news media, I am not in a position to comment on this statement. President Trump’s June 20, 2018 Executive Order directed that families should

be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

31. On June 17, 2018, DHS Secretary Nielsen stated on Twitter "We do not have a policy of separating families at the border. Period." Was this an accurate statement?

RESPONSE: I have not had the opportunity to study this statement and, as a private citizen, am not familiar with all the facts and details of the policies of the Department of Homeland Security. I therefore do not have a basis for commenting on this statement.

32. Justice Department resources were reportedly diverted from federal drug-smuggling felony cases to handle immigration charges under the zero-tolerance policy. Was the zero-tolerance policy a wise use of Department resources?

RESPONSE: I have not had the opportunity to study the policy beyond what has been publicly reported in the news media and would therefore not be in a position to comment on this matter.

33. Congress received a letter on January 9, 2019 from Judge Ashley Tabaddor, the President of the National Association of Immigration Judges. Judge Tabaddor explained that every immigration judge across the country is currently in a no-pay status. She added that every day the immigration courts are closed, thousands of cases are cancelled and have to be indefinitely postponed.

Judge Tabaddor stated that there is currently a backlog of more than 800,000 pending immigration cases, an increase of 200,000 cases in less than two years despite the largest growth in the number of active immigration judges in recent history. At the end of Fiscal Year 2016 there were 289 active judges, while currently there are over 400.

Judge Tabaddor said "When a hearing is delayed for years as a result of a government shutdown, individuals with pending cases can lose track of witnesses, their qualifying relatives can die or age-out and evidence already presented become stale. Those with strong cases, who might receive a legal status, see their cases become weaker. Meanwhile, those with weak cases – who should be deported sooner rather than later – benefit greatly from an indefinite delay."

Do you agree that the shutdown has hurt the administration of justice in our immigration courts and is worsening the immigration court backlog?

RESPONSE: I am generally aware that the immigration court backlog has increased since 2008 but also that immigration courts last year were completing more cases than at any other time in recent years. I do not know whether the backlog has worsened during the government shutdown, though I understand that immigration judges have continued to adjudicate cases of detained aliens.

34. Do you believe a child can represent herself fairly in immigration court without access to counsel?

RESPONSE: It is my general understanding that all respondents in immigration proceedings, including minors, are afforded due process protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. Otherwise, I understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation, and it would not be appropriate to comment further.

35. During the presidency of George H.W. Bush, the U.S. generously accepted refugees fleeing persecution from around the world. In Fiscal Year 1989 the U.S. resettled 107,070 refugees, in 1990, 122,066, in 1991, 113,389, and in 1992, 132,531. By contrast, in Fiscal Year 2018 the U.S. resettled just 22,491 refugees, less than half of the 50,000 target established by President Trump, and for 2019 the Trump Administration has established the lowest refugee admissions goal since the Refugee Admissions Program was created in 1980: a mere 30,000 refugees may be admitted this year, at a time when there are more than 25 million refugees worldwide, more than ever before, according to UNHCR.

- a. Did you have any role in the refugee admissions policy of the George H.W. Bush Administration, including providing any opinions to other cabinet departments and officials about the number of refugees admitted? Please describe your role, if any, in initiating and implementing this policy.

RESPONSE: As the Attorney General, Deputy Attorney General, and Assistant Attorney General for the Office of Legal Counsel, I was present for many discussions and meetings within the Department of Justice or other executive branch offices on a wide range of issues and matters. Although I do not recall specifics, it is possible that I advised on legal issues related to these policies.

- b. Did you support the admission of over 100,000 refugees per year during President George H.W. Bush's Administration?

RESPONSE: The President was responsible for setting policy with respect to refugee admissions. In my various roles at the Department of Justice during President Bush's Administration, I worked to ensure that the President's admissions policies were consistent with applicable law. Although I do not recall specifics, it is possible that I advised on legal issues related to these policies.

- c. Do you believe the refugee admissions ceiling established by President Trump for Fiscal Year 2019 (30,000) is an adequate response to the unprecedented global refugee crisis?

RESPONSE: I have not considered the admissions ceiling established for Fiscal Year 2019 and thus am not in a position to comment on it at this time.

36. You have described yourself as a “strong proponent of executive power.” In your June 8, 2018 memo, you went so far as to state that “constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He *alone* is the Executive branch.”

President Trump has taken an aggressive and expansive view of presidential power. He has shown contempt for the federal judiciary unlike any president we can recall. He has undermined and ridiculed your predecessor, whom he chose. He has shown disrespect for the rule of law over and over again.

- a. In light of this record, do you believe President Trump is a faithful steward of executive power?

RESPONSE: I respectfully disagree with the premises of this question. In any event, if confirmed, the oath I will take will be to protect and defend the Constitution of the United States, and I will continue to honor that oath. The American people elected President Trump using the procedures prescribed by our Constitution. And Article II of the Constitution vests the entirety of “the executive power ... in a President of the United States of America.” In other words, the Supreme Court has said, “Article II ‘makes a single President responsible for the actions of the Executive Branch.’” *Free Ent. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496-97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)). And “[t]he Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so. ... Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else. Such diffusion of authority would greatly diminish the intended and necessary responsibility of the chief magistrate himself.” *Id.* at 513-14 (internal quotation marks omitted).

- b. Do you stand by your argument that President Trump *alone* is the Executive branch?

RESPONSE: I stand by my statement, which reflects the way the Founders of our Constitution and the Supreme Court have long viewed the President’s role in the Executive Branch. I cannot improve upon the words of former Attorney General and Supreme Court Justice Robert Jackson, who observed that “Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality his decisions so far overshadow any others that almost alone he fills the public eye and ear.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 653 (1952) (concurring opinion).

- c. Are you concerned about President Trump continuing to abuse executive power?

RESPONSE: Please see my responses to Questions 36(a) and 36(b) above.

- d. Are you confident that the Justice Department and OLC will serve as a check and balance on any abuses of executive power by President Trump?

RESPONSE: I have confidence in the Department of Justice and the Office of Legal Counsel, and I believe that they will properly discharge their responsibilities to the Constitution, the law, the Executive Branch, and the Office of the President. As I stated in my confirmation hearing, “I love the Department ... and all its components. ... I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity. ... And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.” Moreover, as I explained in a speech I gave at Cardozo law school on November 15, 1992: “In my view, the President has a responsibility to his office to advance responsible positions in law. Ultimately, if you attempt to push too hard—even as a matter of litigation risks—and take legal positions that clearly will not be sustained, or that are not responsible and reasonable legal positions, you will lose ground. That certainly was the consequence of the Steel Seizure Case.”

37. On multiple occasions, President Trump has issued pardons without any apparent consultation or vetting from the DOJ Office of the Pardon Attorney. For example, Scooter Libby, Joe Arpaio and Dinesh D’Souza were all pardoned by President Trump without even applying for a pardon, let alone going through the Justice Department’s vetting process.
- a. In your view, is it appropriate for a President to exercise the pardon power without any input from the Justice Department?
 - b. If you are confirmed, would you insist on the Department having input into clemency decisions, including the opportunity for the Office of the Pardon Attorney to vet clemency applicants?

RESPONSE: As a general matter, Article II, Section 2 of the Constitution grants the President the unqualified power to “grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” Generally, Presidents have exercised this authority after receiving advice from the Department of Justice. Throughout history, however, there have been exceptions. The President is not required to involve the Office of the Pardon Attorney or the Department of Justice prior to making clemency decisions.

38. On June 15, 2018, President Trump’s attorney Rudy Giuliani said of the Special Counsel’s Russia investigation: “When this whole thing is over, things might get cleaned up with some presidential pardons.”

- a. In your view, does a statement like this constitute inappropriate interference in an investigation?

RESPONSE: As the nominee for Attorney General, I do not believe that I should express an opinion on matters concerning an ongoing investigation. As I testified, if confirmed, I will scrupulously follow the Special Counsel regulations and ensure that the Special Counsel is allowed to complete his work.

- b. When does it cross into obstruction of justice for a President or his representative to publicly hint that the pardon power might be used to reward investigation witnesses and targets who refuse to cooperate?

RESPONSE: Please see my response to Question 38(a) above.

- c. In your view, would it constitute inappropriate interference in Special Counsel Mueller’s investigation for President Trump to issue pardons to people under investigation or indictment by Special Counsel Mueller?

RESPONSE: Please see my response to Question 38(a) above.

- d. On June 4, 2018, President Trump tweeted “I have the absolute right to pardon myself.” Do you agree?

RESPONSE: No court has ever ruled on whether the President can pardon himself. I have not studied the issue.

- e. Would you advise a President against attempting to pardon himself?

RESPONSE: No President has ever sought to pardon himself. In all matters, if I am confirmed, I would ground my advice on my best judgment of the law and the facts of a particular case.

- f. You have not been shy in discussing how you urged President George H.W. Bush to pardon Defense Secretary Caspar Weinberger and five other government officials involved in the Iran-Contra scandal. After President Bush issued these pardons in 1992, Lawrence Walsh, the independent counsel who led the Iran-Contra inquiry, said that the pardon of Weinberger and other Iran-contra defendants “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office — deliberately abusing the public trust without consequence.” If confirmed, how would you ensure that

President Trump does not use the pardon power in a way that undermines the principle that no man is above the law?

RESPONSE: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. If confirmed, I would advise the President to carefully consider these and other appropriate factors in exercising his pardon power.

39.

- a. As a general matter, do you believe it is a worthy goal for the Department of Justice to seek to remedy systematic constitutional and civil rights violations by police departments?

RESPONSE: The Department has an important duty to investigate constitutional and civil rights violations by police departments when they occur. My understanding is that these matters are often initially reviewed by state or local prosecutors and the internal affairs division of the particular police department. To the extent that such violations may require the Department’s review, I am committed to working closely with the Department and FBI to conduct thorough investigations and, when the facts warrant it, use Department resources to initiate prosecutions against officers who abuse their authority and to bring appropriate civil actions against police departments.

- b. On November 7, Attorney General Sessions issued a memo that drastically curtails DOJ pattern or practice investigations of police departments and limits the use of consent decrees to bring police departments into compliance with the Constitution. If confirmed, will you revisit the Sessions memo, which was hastily issued right before his resignation, to ensure the Department is fulfilling its responsibility to protect the American people from systemic Constitutional violations by police?

RESPONSE: I take seriously the Department’s role in protecting Americans’ civil rights. As I stated during the hearing, I generally support the policies reflected in former Attorney General Sessions’ memorandum. However,

because I am not currently at the Department, I recognize that I do not have access to all information. As in all matters, if confirmed, I would look at the individualized facts of the situation as well as the governing law and the policies of the Department in determining what the next, appropriate steps might be with respect to Attorney General Sessions' memorandum.

- c. In a March 31, 2017 memo, Attorney General Sessions stated that: "Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies." Do you share that position? If so, was it inappropriate for Attorney General Sessions to petition a federal court in opposition to the policing reform consent decree that was independently negotiated between the City of Chicago and the Illinois State Attorney General last year?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter. The government may be in possession of information of which I am not aware that could influence my outlook on the matter, and it would be inappropriate to comment further without an opportunity to study and understand those facts.

40. Earlier this month, the *Washington Post* reported that the Trump Administration is "considering a far-reaching rollback of civil rights law that would dilute federal rules against discrimination in education, housing and other aspects of American life."

Senior civil rights officials within DOJ were reportedly instructed to "examine how decades-old 'disparate impact' regulations might be changed or removed in their areas of expertise, and what the impact might be." Officials at the Department of Education and the Department of Housing and Urban Development are also reportedly reviewing disparate impact regulations under their jurisdictions.

Disparate impact liability is a key civil rights enforcement tool.

The Supreme Court reaffirmed this in a 2015 case, holding that disparate impact claims are cognizable under the Fair Housing Act. Justice Kennedy, writing for the majority, noted that "[m]uch progress remains to be made in our Nation's continuing struggle against racial isolation.... But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse." The opinion concluded with the Court acknowledging the Act's "continuing role in moving the Nation toward a more integrated society."

- a. Do you agree that disparate impact liability is an important and valid civil rights enforcement tool?
- b. If so, will you agree not to take any actions to undermine disparate impact liability if you are confirmed?

RESPONSE: Beyond what I have seen reported publicly in the news media, I am not familiar with the facts and circumstances surrounding these issues. Therefore, I am not in a position to comment on the matter.

41. In your 1991 confirmation hearing, you said “discrimination is abhorrent and strikes at the very nature and fiber of what this country stands for.” You also said “I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.”

- a. Do you stand by that pledge today?

RESPONSE: Yes. As I did then, I pledge to remain vigilant in looking for discrimination and to enforce vigorously federal laws against discrimination.

- b. Does your pledge include discrimination against LGBTQ Americans?

RESPONSE: If confirmed, I will enforce federal anti-discrimination laws for all Americans, including LGBTQ Americans.

- c. Do LGBTQ Americans face discrimination today?

RESPONSE: Yes. LGBTQ Americans, like many in America, face discrimination.

- d. Do you believe LGBTQ Americans have protections against discrimination under federal law?

RESPONSE: It is my understanding that certain federal laws expressly provide LGBTQ Americans with protections against discrimination, such as in the Shepard-Byrd Hate Crimes Prevention Act. I also understand that the issue whether other federal laws, such as Title VII, provide such protections is subject to ongoing litigation.

- e. If so, in your opinion, what is the scope of federal protections for LGBTQ Americans?

RESPONSE: Please see my response to Question 41(d) above.

- f. Do you agree that an individual cannot choose or change their sexual orientation, any more than an individual can choose or change their race or national origin?

RESPONSE: I have no basis to reach a conclusion regarding that issue.

42. In recent years, you have made troubling statements in opposition to efforts to combat LGBTQ discrimination. For example, in November 2018, you wrote a joint op-ed with

former Attorneys General Ed Meese and Michael Mukasey “saluting” former Attorney General Sessions. You specifically praised Sessions for changing DOJ’s litigation position to argue that transgender people are not protected by Title VII’s prohibition on sex-based discrimination in the workplace. You suggested that this reversal “help[ed] restore the rule of law.” Further, in a 2007 panel discussion, you criticized the Supreme Court’s decision in *Lawrence v. Texas*, stating that “the striking down of the anti-sodomy laws in Texas on the grounds that ‘liberty’ entails some right to engage in sodomy and therefore the state’s ability to regulate that... [threw] out hundreds of years of understanding about the ability of local and state governments to engage in ‘moral’ legislation.”

Do you stand by those statements today?

RESPONSE: Respectfully, my November 2018 op-ed did not oppose “efforts to combat LGBTQ discrimination.” I understand that the question of whether Title VII’s prohibition on sex-based discrimination in the workplace covers gender identity is currently pending in litigation, and the Department’s position is that it does not. Of course, the scope of Title VII and the question whether transgender individuals should be protected from workplace discrimination as a matter of policy are two different issues. With respect to *Lawrence v. Texas*, it remains my belief that the decision led to the invalidation of certain laws, some of which had been on the books for many years.

43. When former Attorney General Sessions came before this Committee for an oversight hearing in October 2017, I asked him about his recently-issued guidance to all administrative agencies and executive departments on religious liberty issues. You praised this guidance in your November 2018 joint op-ed.

However, the guidance has received significant criticism, particularly in relation to its impact on the rights of LGBTQ Americans. The Human Rights Campaign had this to say about the guidance:

“A preliminary analysis of the Trump-Pence administration’s license to discriminate indicates that LGBTQ people and women will be at risk in some of the following ways:

- A Social Security Administration employee could refuse to accept or process spousal or survivor benefits paperwork for a surviving same-sex spouse;
- A federal contractor could refuse to provide services to LGBTQ people, including in emergencies, without risk of losing federal contracts;
- Organizations that had previously been prohibited from requiring all of their employees from following the tenets of the organization’s faith could now possibly discriminate against LGBTQ people in the provision of benefits and overall employment status; [and]
- Agencies receiving federal funding, and even their individual staff members, could refuse to provide services to LGBTQ children in crisis, or to place adoptive or foster children with a same-sex couple or transgender couple simply because of who they are.”

I asked then-Attorney General Sessions for his response to this analysis. He said he would get back to me, but he never did.

Do you believe that under this guidance, it is acceptable for a Federal government employee to cite their religious beliefs in refusing to serve or assist a same-sex couple?

RESPONSE: While I was not present in the Department of Justice for the events you describe, it is my understanding that the Department of Justice’s guidance on “Federal Law Protections for Religious Liberty” does not address that question. The guidance merely describes existing law. It does not—and could not—change the law. And it certainly does not abrogate existing antidiscrimination laws.

44. In an April 1995 news report following the Oklahoma City bombing, you discussed the Bush administration’s work countering domestic right-wing groups. You said “[w]e were concerned about extreme rightwing groups in the country, but the surveillance and investigation of these groups was not as thorough as it should have been because of domestic restrictions.”

Right-wing extremism remains a significant threat today. To name just two recent examples, we’ve seen alleged fatal attacks by right-wing extremists in Charlottesville, Virginia and at the Pittsburgh Tree of Life Synagogue. A recent analysis by the *Washington Post* found the following: “Of 263 incidents of domestic terrorism between 2010 and the end of 2017, a third—92 —were committed by right-wing attackers.”

- a. Do you agree that “extreme right-wing groups,” to use your words, remain a significant domestic terrorism threat today?

RESPONSE: Yes. Although I am not familiar with the *Washington Post*’s analysis, I believe that extremist ideological groups, including right-wing groups, remain a significant domestic terrorism threat.

- b. If confirmed, what steps will you take to combat this threat?

RESPONSE: If confirmed, I will vigorously support efforts to investigate domestic terrorism and hold any and all perpetrators accountable. I do not, however, want to prejudge or otherwise influence any outcomes by commenting directly on any of the Department’s ongoing investigations.

- c. Do you agree with President Trump’s statement that “You also had some very fine people on both sides” of the white supremacist demonstrations in Charlottesville?

RESPONSE: I am not in a position to speak for the President or speculate on what he was conveying.

- d. Will you pledge to ensure that the Department of Justice directs sufficient resources to combat domestic terrorism?

RESPONSE: I am not familiar with the Department's current budget and related funding requests. If confirmed, I will review the Department's resource allocations, needs, and funding proposals. I believe that the Department should focus its resources generally on the most serious criminal activity, including domestic terrorism that threatens our national security and public safety.

- e. Will you also commit to ensuring that the Department of Justice provides regular briefings to this Committee on the Department's efforts to combat domestic terrorism?

RESPONSE: I appreciate the Committee's desire for information related to the Department's efforts to combat domestic terrorism. If confirmed, I will be pleased to work with Congress through the Department's Office of Legislative Affairs to keep the Committee appropriately informed of the Department's efforts in this area, consistent with the Department's law enforcement, national security, and litigation responsibilities.

45. In 2017, I introduced the Domestic Terrorism Prevention Act. This legislation would enhance the federal government's efforts to prevent domestic terrorism by requiring federal law enforcement agencies to regularly assess those threats and provide training and resources to assist state, local, and tribal law enforcement in addressing these threats.

Would you commit, if you are confirmed, to review this legislation and give us your feedback on it?

RESPONSE: I am not familiar with the details of the legislation. If confirmed, I can commit to working with Committee regarding legislation that supports the Department's mission and priorities.

46. During your tenure as Attorney General, you oversaw the publication of the Justice Department's annual reports. The 1992 report emphasized the Department's "efforts to assure minorities a fair opportunity to elect candidates of their choice to public office through its administrative review of voting changes under Section 5 of the Voting Rights Act, as well as through litigation."

The 1992 report also specifically noted that "[t]he Attorney General interposed Section 5 objections to 16 statewide redistricting plans," including in Alabama, Georgia, and North Carolina.

Unfortunately, in 2013, a divided Supreme Court voted 5-4 in *Shelby County v. Holder* to gut the Voting Rights Act. The Court struck down the formula that determined which jurisdictions were subject to Section 5 preclearance.

- a. In your experience as Attorney General, did you find Section 5 preclearance to be an effective tool to combat voter suppression efforts?

RESPONSE: As Attorney General, I was committed to protecting and upholding the civil rights and voting rights of all Americans. If confirmed, I will bring that same commitment to the Department of Justice. During my time as Attorney General, I interposed Section 5 objections where those objections were valid based on the facts of the particular case and the governing law. As Congress and the Supreme Court had determined, Section 5 was an appropriate tool to protect voting rights based on the facts and circumstances at that time.

- b. In light of your experience, what was your reaction to the *Shelby County* decision?

RESPONSE: I understand that the *Shelby County* decision rested on the Supreme Court's determination that Congress had relied upon outdated findings to justify the reauthorization of Section 5 in 2006, which was thirteen years after my tenure as Attorney General concluded. The Department of Justice is bound to enforce the laws that Congress enacts, subject to the authoritative interpretations of the Supreme Court. If confirmed, I am committed to protecting and upholding the civil rights and voting rights of all Americans.

- c. What role do you believe that the Voting Section of the Civil Rights Division should play in enforcing federal voting laws?

RESPONSE: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. It is my understanding that the Voting Section of the Civil Rights Division bears primary responsibility for the Department's enforcement of federal laws that protect the right to vote.

- d. If confirmed, will you commit to ensuring that the Voting Section of the Civil Rights Division will be more aggressive in pursuing Section 2 cases against states and localities engaging in voter suppression efforts?

RESPONSE: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

47. In the lead-up to the 2018 midterm election, we saw a number of significant voter suppression efforts across the country:
- Several states engaged in significant voter purges—a problematic method of cleaning up voter registration rolls that often deletes legitimate registrations, preventing voters from casting their ballots on Election Day. For example, in Georgia, on a single day in July

2017, more than a half million people were purged from the voter rolls—which totaled eight percent of Georgia's registered voters.

- Georgia also employed a controversial “exact match” system, which required names on voter registration records to exactly match voters’ names in the state system—so if you filled out one form as “Tom” and another as “Thomas,” your registration would be blocked. This led to 53,000 “pending” registrations being held up in the weeks before the election; nearly 70 percent of these registrations were for African-American voters.
- In North Dakota, a strict new voter ID law went into effect that required voters to present an ID with their residential street address. It was clear that the law would have a disproportionate impact on Native American communities, in which many community members do not have street addresses. It was estimated that 5,000 Native American voters would need to obtain qualifying identification before Election Day.
- Voters across the country also saw reduced access to voting after state and local governments shuttered polling locations and curtailed early voting opportunities. In Florida, election officials were ordered to block early voting at the state’s college and university campuses. And since the Supreme Court’s 2013 ruling in *Shelby County v. Holder* to gut the Voting Rights Act, almost 1,000 polling locations across the country have been closed—many of them in predominantly minority communities.

a. Do you agree that these are examples of voter suppression?

- i. If so, what steps would you take as Attorney General to address similar voter suppression efforts in the future?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these instances beyond what I have seen reported in the news media. Therefore, I am not in a position to comment on these instances. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- ii. If not, what do you consider to be an incident of voter suppression?

RESPONSE: I cannot comment on a hypothetical question. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

b. Do you think voter fraud is a problem that justifies these types of restrictive voting measures?

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- c. Do you agree with President Trump's claims that 3-5 million people illegally voted in the 2016 election?

RESPONSE: I have not studied this issue in detail. Therefore, I have no basis for reaching a conclusion on this issue.

48. Despite frequent claims from Republicans that voter fraud is a rampant problem that must be addressed through restrictive voter laws, the most salient recent example of alleged election fraud was perpetrated by a Republican in the 9th Congressional District of North Carolina. A Republican House candidate, Mark Harris, apparently employed contractors who collected absentee ballots from mostly African-American voters and either filled them out for Harris or discarded them if they supported Harris' opponent. The North Carolina State Board of Elections has refused to certify Harris' purported 900-vote victory, and a local prosecutor has confirmed that an investigation is underway.

Do you support a federal investigation into apparent election fraud in North Carolina's 9th District?

RESPONSE: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. As a result, I am not in a position to comment on this matter.

49. In your 1991 confirmation hearing, you were asked your views on the right to privacy. You stated:

I believe that there is a right to privacy in the Constitution...I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled.

Do you stand by that statement today in light of the Court's subsequent decisions in *Planned Parenthood v. Casey* (1992) and *Whole Women's Health v. Hellerstedt* (2016), which each affirmed the right to abortion?

RESPONSE: *Roe v. Wade* is an established precedent of the Supreme Court.

50. Attorney General Sessions tried to block federal Byrne-JAG violence prevention grant funds in an effort to try to force unrelated immigration policy reforms on cities and states. At least 5 district courts and the 7th Circuit have held that the Justice department does not have the authority to impose unrelated grant conditions on programs like Byrne-JAG. However, Attorney General Sessions nonetheless refused to release these vital funds to cities like Chicago, which hurts the fight against deadly gun violence.

I don't think the Byrne-JAG program should be used as a political football in the immigration debate. Byrne-JAG is a formula grant program that was designed by Congress to give state and local jurisdictions flexibility to address their public safety needs. Ironically, the Byrne-JAG program was named for a New York City police officer who heroically gave his life to protect an immigrant witness who was cooperating with law enforcement.

Will you commit that if you are confirmed you will stop DOJ's withholding of Byrne-JAG funds to state and local communities as part of an effort to force immigration policy reforms?

RESPONSE: I am generally aware that the Department has sought to require law enforcement grant recipients to provide cooperation with federal authorities with respect to criminal aliens in their custody. As a general matter, I believe that, where authority exists to do so, this is a common sense requirement that should be continued. I am not familiar with the specifics of any withholding of Byrne-JAG grant funds. But, if confirmed, I would expect to use lawful tools available to the Department to ensure that all jurisdictions provide the level of cooperation required by law.

51. In a June 5, 2005 hearing before the Senate Judiciary Committee, you said regarding the Bush Administration's detention policy: "Rarely have I seen a controversy that has less substance behind it. Frankly, I think the various criticisms that have been leveled at the administration's detention policies are totally without foundation and unjustified." In July 2005, you sat on a panel entitled "Civil Liberties and Security" hosted by the 9/11 Public Disclosure Project and said that "under the laws of war, absent a treaty, there is nothing wrong with coercive interrogation, applying pain, discomfort, and other things to make people talk, so long as it doesn't cross the line and involve the gratuitous barbarity involved in torture."

- a. Do you reject the reasoning of the OLC "torture memo," which claimed that the torture statute unconstitutionally infringed on the President's authority as Commander-in-Chief and was subsequently rescinded by the Bush Administration Justice Department?

RESPONSE: That opinion was written prior to the passage of section 1045 of the National Defense Authorization Act for Fiscal Year 2016. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force. Any future questions on the issue would have to address that statutory provision, as well as any related constitutional issues.

- b. Do you acknowledge that the McCain Detainee Treatment Act, which passed the Senate with 90 votes in 2005 and which outlawed cruel, inhuman and degrading treatment, is constitutional? Do you pledge to abide by it?

RESPONSE: Yes.

- c. Is waterboarding torture?

RESPONSE: Regardless of the label, section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of waterboarding on any person in U.S. custody. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force.

- d. Can terrorists be successfully prosecuted and incarcerated in our domestic criminal justice system?

RESPONSE: The Department of Justice can, and routinely does, successfully prosecute and incarcerate terrorists in our domestic criminal justice system.

52. Under Attorney General Sessions, the Justice Department changed its previous litigation position and decided to stop defending the constitutionality of the Affordable Care Act in court, instead arguing that the ACA's protections for people with pre-existing conditions should be invalidated. Two career DOJ attorneys withdrew from the case rather than sign DOJ's brief, and one of these attorneys resigned.
- Was it appropriate for the Justice Department to change its previous litigation position and decline to continue defending the constitutionality of the Affordable Care Act?
 - Did you agree with that decision?
 - Will you review the Department's decision if you are confirmed?
 - You have previously argued in an amicus brief that the Affordable Care Act is unconstitutional. Do you still hold that view?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of the decision you reference, and I am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the Department's position in this case. With regard to my prior amicus work, the Supreme Court upheld the constitutionality of the Affordable Care Act in *NFIB v. Sebelius*. If confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but on the law.

53. You have described Attorney General Sessions as “an outstanding attorney general” in your November 2018 *Washington Post* op-ed. Please identify any actions or policies that Attorney General Sessions implemented during his tenure that you think were misguided and that should be revisited by the next Attorney General.

RESPONSE: I am not aware of any specific decisions from the prior Attorney General’s tenure that I am currently in a position to characterize as misguided. The Department of Justice may be in possession of information of which I am not aware that could influence my outlook on the matter. I would hesitate to comment further without an opportunity to study and understand those facts.

54. In order to reduce the number of shootings in Chicago, we must address the flow of illicitly-trafficked guns from out-of-state into the city.

- a. Will you commit that, if you are confirmed, you will make it a priority of the Department of Justice to investigate and prosecute those who are selling guns that supply Chicago’s criminal gun market?

RESPONSE: I believe that the Department should focus its resources on the most serious criminal activity, including violent offenders who threaten public safety and those who illegally supply them with firearms. If confirmed, I intend to continue focusing Department resources on reducing violent crime, particularly in communities like Chicago that are facing unacceptable levels of firearms violence.

- b. If you are confirmed, what steps will you take to ensure that cases involving straw purchasing, gun trafficking, and dealing in firearms without a license are prosecuted?

RESPONSE: If confirmed, I expect to continue to pursue violent crime reduction as a top priority for the Department, and would expect federal prosecutors to target their efforts against those driving the violence in their communities - including persons who unlawfully arm criminals and others who cannot lawfully possess firearms.

- c. Will the Department of Justice’s budget requests support additional resources, specifically for ATF, to enforce these laws?

RESPONSE: If confirmed, I look forward to reviewing the Department’s resource allocations, needs, and funding proposals to ensure that ATF and the Department’s other law enforcement components have the resources necessary to effectively combat violent crime, including gun-related violent crime.

- d. If confirmed as Attorney General, would you take steps to enable and encourage all state and local law enforcement agencies to use eTrace and NIBIN for all guns and ammunition casings recovered in crimes?

RESPONSE: If confirmed, I look forward to working with ATF to enhance local and state participation in these important programs.

55. There is an important program in the Justice Department's Office of Justice Programs called the John R. Justice Program. Named after the late former president of the National District Attorneys Association, the John R. Justice Program provides student loan repayment assistance to state and local prosecutors and public defenders across the nation

Congress created this program in 2008 and modeled it after a student loan program that DOJ runs for its own attorneys. The John R. Justice program helps state and local prosecutors and defenders pay down their student loans in exchange for a three-year commitment to their job. This is a very effective recruitment and retention tool for prosecutor and defender offices. And since DOJ is giving hundreds of millions of dollars in grants each year to state and local law enforcement, which generates more arrests and more criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The John R. Justice Program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to funding this program and to carefully administering it.

Will you commit to support this program during your tenure if you are confirmed?

RESPONSE: If confirmed, I would seek to ensure that the Department effectively implements whatever programs Congress funds.

56. In your 1991 confirmation hearing you were asked by Senator Thurmond about the pace of filling judicial vacancies while you were Deputy Attorney General. You said "it is a long process because we have to make sure that we are putting people who have the proper character and integrity and competence on the bench, and that requires the FBI background check, it requires the ABA screening process, and that takes a lot of time."

- a. Is it still your view that the ABA screening process is required to ensure that judicial nominees have the proper character, integrity and competence to serve on the bench?

RESPONSE: At the time, it was the practice of the George H.W. Bush administration to submit nominees to the ABA screening process pre-nomination. I am not familiar with the current judicial-selection process, but I do not believe that it is required.

- b. If so, will you commit to doing all in DOJ's power to ensure that the Committee has the benefit of the results of the ABA screening process before the Committee holds a hearing on a judicial nominee?

RESPONSE: I am not familiar with the current judicial-selection process. If confirmed, I look forward to learning more about the current process.

57. Will you commit that, if you are confirmed, you will take steps to ensure that the FBI and the Department of Justice work together to improve hate crime reporting by state and local law enforcement?

RESPONSE: Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I will be committed to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

58. When I was Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held two hearings on the human rights, fiscal, and public safety consequences of solitary confinement. Anyone who heard the chilling testimony of Anthony Graves and Damon Thibodeaux—exonerated inmates who each spent more than a decade in solitary confinement—knows that this is a critical human rights issue that we must address.

In light of the mounting evidence of the harmful—even dangerous—impacts of solitary confinement, states around the country have led the way in reassessing the practice. Some progress was made at the federal level as well; however, much of the progress has been erased during the Trump Administration, and there are currently more than 11,000 federal inmates in segregation.

- a. Do you believe that long-term solitary confinement can have a harmful impact on inmates?
- b. If you are confirmed, can you assure me that you will examine the evidence and work with BOP to make ensure that solitary confinement is not overused?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to reviewing the issue, including the facts of the situation and existing law and policies. Because I am not currently at the Department, and I am not familiar with these facts, it would not be appropriate for me comment further.

59. When asked at your hearing about the Foreign Emoluments Clause to the Constitution, you said “I cannot even tell you what it says at this point.”

The Foreign Emoluments Clause in Art. I, Section 9, Clause 8 of the Constitution states that “No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

The Foreign Emoluments Clause reflects a fundamental priority of the Founding Fathers as they designed our form of government. They were worried about foreign powers attempting

to influence and corrupt the leadership of our nation, so the Constitution included safeguards against pressure from such powers, particularly the Foreign Emoluments Clause, which was adopted unanimously at the Constitutional Convention. As Delegate Edmund Randolph of the Continental Congress said during the ratification debates in Virginia, “[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”

- a. Do you believe that all current provisions of the Constitution must be followed and enforced, including the Foreign Emoluments Clause?

RESPONSE: I believe that all provisions of the Constitution should be followed and enforced, as appropriate. If confirmed, I will honor my oath to protect and defend the Constitution of the United States.

- b. If you are confirmed as Attorney General, what steps will you take to ensure that the Foreign Emoluments Clause is followed and enforced?

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment on what specific actions I would take on this issue if confirmed.

60.

- a. In an April 5, 2001 interview, conducted in connection with the preparation of an oral history of the presidency of George H.W. Bush, you called the *qui tam* provisions of the False Claims Act “an abomination and a violation of the Appointments Clause under the due powers of the President. . . .” At your hearing you said you no longer consider the False Claims Act an abomination. What changed your mind?

RESPONSE: The False Claims Act is an important tool used by the government to detect fraud and recover money. As stated at my hearing, if confirmed I will diligently enforce the False Claims Act. More generally, if confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but instead on the law and the best interests of the United States. The long-term interests of the United States with respect to the False Claims Act would be determined through, among other things, consultation with the Solicitor General, the Assistant Attorney General for the Civil Division, and other individuals within the Department, as well as with other relevant agencies within the federal government.

- b. In 2000, the year before your April 5, 2001 interview, the Supreme Court made it clear in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*--a decision authored by Justice Scalia--that *qui tam* relators have Article III standing to bring False Claims Act cases on behalf of the government. Do you think this case was wrongly decided?

RESPONSE: *Vermont Agency of Natural Resources v. United States ex rel. Stevens* is a precedent of the Supreme Court and is entitled to all respect due settled precedent. If confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but instead on the law and the best interests of the United States. The long-term interests of the United States with respect to the False Claims Act would be determined through, among other things, consultation with the Solicitor General, the Assistant Attorney General for the Civil Division, and other individuals within the Department, as well as with other relevant agencies within the federal government.

- c. If you are confirmed, will you commit to vigorously enforcing the False Claims Act and its qui tam provisions?

RESPONSE: As stated at my hearing, if confirmed I will diligently enforce the False Claims Act.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR WHITEHOUSE

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.

RESPONSE: As I explained at my hearing, the current Department of Justice regulations that govern the Special Counsel were enacted at the end of the Clinton Administration and reflected, to a certain extent, bipartisan dissatisfaction with certain elements of the previous independent counsel regime. If confirmed, I intend to follow the Special Counsel regulations scrupulously and in good faith. I believe that the current regulations appropriately balance the relevant considerations, although I would be open to considering how they can be improved. However, I do not believe that the Special Counsel regulations should be amended during the current Special Counsel's work. Any review of the existing regulations should occur following the conclusion of the Special Counsel's investigation.

2. Will you object to Special Counsel Mueller testifying publicly before Congress if invited (or subpoenaed)?

RESPONSE: I would consult with Special Counsel Mueller and other Department officials about the appropriate response to such a request in light of the Special Counsel's findings and determinations at that time.

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?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. See 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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?

RESPONSE: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

An opinion issued by the Office of Legal Counsel held that an indictment or criminal prosecution of a sitting President would unconstitutionally undermine the capacity of the executive branch to perform its constitutionally assigned functions. To the best of my understanding, the OLC opinion remains operative.

Congress can and does conduct its own investigations, and its right to do so is not precluded by the Department’s decision not to provide certain information about an uncharged individual gathered during the course of a criminal investigation.

As I testified before the Committee, I believe that it is very important that the public and Congress be informed of the results of the Special Counsel’s work. My goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies.

The Constitution grants the legislative branch the power to impeach for, and convict of, treason, bribery, or other high crimes and misdemeanors. I am not in a position to opine or speculate on the manner in which the Congress determines what constitutes a high crime or misdemeanor, or how the Congress gathers evidence in support of or in contradiction to that conclusion.

5. Please describe the nature of your relationship with White House Counsel Pat Cipollone, including any shared organizational affiliations.

RESPONSE: When I served as Attorney General, I hired Mr. Cipollone to serve as an aide in my office. We have been personal and professional acquaintances ever since. I am not aware of the full extent of Mr. Cipollone's organizational affiliations. However, to the best of my recollection and knowledge, we served together on the board of directors of the Catholic Information Center for a period of time, we both were affiliated with Kirkland & Ellis LLP for several months in 2009, and we are both members of the Knights of Columbus.

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.

RESPONSE: To the best of my recollection, I have not had any discussions with Mr. Eisenberg regarding any matters related to, or clients of, Kirkland & Ellis, LLP since he left the firm in 2017.

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?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I would act in accordance with applicable Department of Justice

protocols, including the 2009 Memo on communications with the White House issued by former Attorney General Holder. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. The purpose of these procedures is to prevent inappropriate political influence or the appearance of inappropriate influence on Department of Justice matters. If confirmed, I will be reviewing many of the policies and practices of the Department and making adjustments as appropriate.

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?

RESPONSE: Because I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. Therefore, I am not in a position to comment on this matter.

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?

RESPONSE: I am aware of the referenced conversation only through news media reports and do not know all of the facts and circumstances. Therefore, I am not in a position to comment.

- b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

RESPONSE: Much of the Department's law enforcement work involves non-public, sensitive matters. Disseminating non-public, sensitive information about Department matters could invade individual privacy rights; put a witness or law enforcement officer in danger; jeopardize an investigation or case; prejudice the rights of a defendant; or unfairly damage the reputation of a person among other things. The Department's policies generally prohibit the unauthorized disclosure of such information to members of the public. See Justice Manual § 1-7.100.

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).

RESPONSE: It is well established that the presidential communications privilege applies to communications between the President and the Attorney General. See generally *Confidentiality of the Attorney General's Communications in Counseling the President*, 6 Op. O.L.C. 481 (1982). In the course of holding that communications to and from "presidential advisers in the course of preparing advice for the President come under the presidential communications privilege," *In re Sealed Case*, 121 F.3d at 752, see also *id.* at 757, the D.C. Circuit cautioned (in the language quoted in the question) that "staff outside the White House in executive branch agencies" who may be preparing advice for the President should not be viewed as "presidential advisers" for purposes of the privilege. *Id.* at 752. The quoted language did not suggest that communications between executive branch agencies and White House staff are not subject to the privilege. To the contrary, a subsequent D.C. Circuit case, applying *Sealed Case*, held that communications between Justice Department officials and the President or his White House staff fall within the scope of the privilege. *Judicial Watch v. Department of Justice*, 365 F.3d 1108 (D.C. Cir. 2004).

- 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)*?

RESPONSE: *In re Sealed Case* is an important precedent that the Justice Department regularly applies in its court filings. I cannot speculate on whether circumstances might arise where the Department might seek any modification of that precedent by the D.C. Circuit or the Supreme Court.

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?

RESPONSE: I stand by the statement I made in your office. It was based on my understanding that it has been the longstanding policy of the Executive Branch not to assert executive privilege for the purpose of covering up evidence of 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?

RESPONSE: Please see my response to Question 11(a) above. That response applies whether or not an individual is subject to indictment.

- 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?

RESPONSE: Beyond observing that the hypothetical situation identified in this question seems unlikely to arise, I cannot speculate on how I might proceed other than to say that, as in all matters, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining what the next, appropriate steps might be.

- 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?

RESPONSE: Please see my response to Question 11(c) above.

- 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?

RESPONSE: I would resign.

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?

RESPONSE: I am committed to responding to Congressional requests and inquiries consistent with the law and Department policies and in good faith. Because many of the policies and practices regarding Executive Branch responses to Congressional requests for information have changed since I was Attorney General, I will need to review current practices. I understand that the current practice is that when the Executive Branch sends a congressional committee a letter informing it that the President has asserted executive privilege, the letter encloses a copy of the Attorney General’s letter advising the President that the assertion of privilege is legally permissible. The Attorney General’s letter typically provides a description of the categories of materials that are subject to the privilege assertion and the legal basis for the assertion. Prior to the assertion of the privilege, the Executive Branch will also have described the withheld information in letters to the committee and otherwise. In so doing, the Executive Branch will have made clear what categories of privileged information are involved and identified the confidentiality interests that ultimately were the basis for the executive privilege assertion. My understanding is that the Executive Branch has found that these procedures provide more useful and timely information to committees than a document-by-document privilege log.

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?

RESPONSE: The Executive Branch engages in good faith negotiation with congressional committees in an effort to accommodate legitimate oversight needs, while safeguarding the legitimate confidentiality interests of the Executive Branch. This accommodation process has historically been the primary means for successfully resolving conflicts between the branches and has, except in extraordinary cases, eliminated the need for an executive privilege assertion. Because the effort to accommodate congressional requests for privileged information requires an iterative process, it will often be necessary to withhold information, without any invocation of privilege by the President, in order to permit continued negotiation and to preserve the President's ability to assert 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?

RESPONSE: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

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?

RESPONSE: Please see my response to Question 14 above.

16. Will you commit to responding to oversight requests submitted by the minority party?

RESPONSE: I agree that it is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department's law

enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department's Office of Legislative Affairs.

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?

RESPONSE: I believe it is important to provide thorough and accurate responses to Congress, where appropriate. If confirmed, I will work with the Office of Legislative Affairs to respond in a timely manner to any inquiries from the Committee regarding the work of the Department.

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?

RESPONSE: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation,

and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the investigation, and he has not asked me about what I would do about anything in the investigation.

The Vice President and I are acquainted, and since the spring of 2017, we have had occasional conversations (sometimes joined by his chief of staff) on a variety of subjects, including policy, personnel, and other issues. Our conversations have included, at times, general discussion of the Special Counsel's investigation in which I gave my views on such matters as Bob Mueller's high integrity and various media reports. In these conversations, I did not provide legal advice, nor, to the best of my recollection, did he provide confidential information.

As discussed in my testimony, after drafting my June 8, 2018 memorandum, I sent a copy of the memorandum and discussed my views with White House Special Counsel Emmet Flood. I also provided a copy to Pat Cipollone, who now serves as White House Counsel, and discussed my views with him and others.

Finally, I have spoken with members of the White House staff about numerous issues, including paperwork and logistics, as part of the selection and nomination process for this position.

This answer relates the conversations responsive to the question to the best of my recollection. But I am acquainted with a number of people who serve or have served at the White House. As best I can recall, I have not spoken about the substance of the Special Counsel's investigation with those people, though the investigation is, of course, a constant topic of conversation in Washington legal circles and it may have arisen.

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?

RESPONSE: As I stated in my letter of January 14, 2019 to Chairman Graham, I sent a copy of my June 8, 2018 memorandum to Pat Cipollone and have discussed the issues raised in the memo with him, Marty and Jane Raskin, and Jay Sekulow. The purpose of those discussions was to explain my views. To the best of my recollection, the President's lawyers have not conveyed to me any information 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?

RESPONSE: To the best of my recollection, I had the following conversations with Department of Justice Officials about the Special Counsel's investigation. Before I began writing the memorandum, I provided my views on the issue discussed in the memorandum to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views on the issue discussed in the memorandum to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering, but he later indicated that he was not involved in the Special Counsel's investigation and would not be reading my memorandum. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

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?

RESPONSE: As a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not

just by future Presidents, but by all public officials involved in administering the law, especially those in the Department of Justice. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with a number of lawyer friends; wrote the memo to senior Department officials and sent it to them via email; shared it with other interested parties; and later provided copies to friends.

I was not representing anyone when I wrote the memorandum, no one requested that I draft it, and I was not compensated for my work. I researched and wrote it myself, on my own initiative, without assistance, and based solely on public information.

To the best of my recollection, before I began writing the memorandum, I provided my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. To the best of my recollection, I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views. My letter of January 14, 2019 to Chairman Graham identifies other individuals with whom I can recall sharing the memorandum and/or discussing its contents.

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?

RESPONSE: If confirmed, it is possible that I will be responsible for overseeing the Special Counsel’s investigation under applicable regulations. Accordingly, it would not be appropriate for me to speculate regarding hypothetical scenarios. As a general matter, if presented with novel legal questions of constitutional importance while serving as Attorney General, I would likely consult with the Office of Legal Counsel and other relevant personnel within the Department of Justice to determine the appropriate path forward under applicable law.

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

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

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? 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?

- d. Your June 8 memo includes no reference to the False Statements Accountability Act of 1996 or its definition of “corruptly.” Why?

RESPONSE: The memorandum that I drafted in June 2018 was narrow in scope. It addressed only a single subsection of one federal obstruction statute – namely, 18 U.S.C. § 1512(c). Nevertheless, the memorandum expressly discussed, and noted the relevance of, other federal obstruction statutes, such as 18 U.S.C. § 1505, to the interpretation of section 1512(c). Specifically, on page 17, the memorandum notes that “when Congress sought to ‘clarify’ the meaning of ‘corruptly’ in the wake of *Poindexter*, it settled on even more vague language – ‘acting with an improper motive’ – and then proceeded to qualify this definition further by adding, ‘including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.’ 18 U.S.C. § 1515(b).” Section 1515(b), in turn, provides the definition of “corruptly” that is used in § 1505, which you refer to as the “codification” of the False Statements Accountability Act of 1996. See 18 U.S.C. § 1515(b) (“As used in section 1505, 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.” (Emphasis added)). As the memorandum explained, the “fact that Congress could not define ‘corruptly’” in § 1505 “except through a laundry list of acts of evidence impairment strongly confirms that, in the obstruction context, the word has no intrinsic meaning apart from its transitive sense of compromising the honesty of a decision-maker or impairing evidence.” In other words, when Congress attempted to define the term “corruptly” in § 1505, it could only do so by providing examples that relate to the suppression or impairment of evidence, which supports the conclusion that, outside of that context, it is difficult to define exactly what “corruptly” means.

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’”).

As noted above, my memorandum only addressed the scope of section 1512(c). It did not address the meaning or scope of other federal obstruction statutes. If such issues were to arise during my tenure as Attorney General, I would consult with the Office of Legal Counsel, the Criminal Division, and other relevant Department of Justice personnel to determine the best view of the law and proceed accordingly.

24. On May 12, 2017, you published an op-ed in the Washington Post defending President Trump's firing of FBI Director James Comey.
- Did anyone ask you to write that op-ed, or suggest that you write it? If so, who?
 - 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?
 - Did you discuss the op-ed before its publication with any person currently or formerly associated with the Federalist Society?
 - 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?

RESPONSE: To the best of my recollection, following the removal of former FBI Director Comey, my former Deputy Attorney General, George Terwilliger, asked me to join him in drafting an op-ed on the issue. During the course of drafting, we determined that I would submit the op-ed under my name due to Mr. Terwilliger's busy schedule. It is my understanding that Mr. Terwilliger had been contacted by a publicist who was working with the Federalist Society to assist in placing the op-ed with publications. Although I normally submit opinion pieces to the *Washington Post* directly, in this instance I provided a draft of the op-ed to the publicist, who eventually placed it with *Washington Post*. I also spoke with friends about submitting an op-ed on this topic, but do not recall sending a draft of the op-ed to any person at the White House, on President Trump's legal team, at the Department of Justice, or any Republican House committee members or staff.

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?

RESPONSE: If confirmed, I will be committed to ensuring that all appointees comply with the requirements of the financial disclosure reporting program. I understand that the Ethics in Government Act (EIGA) requires that filers of public financial disclosure reports (SF-278s) report the identity of each source of compensation in excess of \$5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report. 5 U.S.C. app. §102(a)(6). The filer must provide: (1) the identity of each source of compensation, and (2) a brief description of the nature of the duties performed. 5 U.S.C. app. §102(a)(6)(B)(i) and (ii). EIGA does not require filers to report the underlying sources of income that were provided to the filers’ sources of compensation. EIGA specifically excludes from its reporting requirements any “positions held in any religious, social, fraternal, or political entity....” 5 U.S.C. app. §102(a)(6).

At the same time, as I said in my testimony, I understand the underlying concern and intend to explore this issue further with the Department’s ethics officials and the Office of Governmental Ethics.

- 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?

RESPONSE: If confirmed, I will ensure that the Department’s ethics review of financial disclosure reports is consistent with legal requirements. It is also my understanding that if the filer has properly reported all necessary entries on his or her SF-278, an ethics reviewer will not assume that efforts have been made to hide identities.

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?

RESPONSE: I do not believe that it is possible to make a recusal decision unless and until I am confirmed and the specific facts and circumstances of any live controversy are known. If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department’s work, and I intend to follow those regulations in good faith.

Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department’s established policies and practices.

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?

RESPONSE: I am not aware of the nature of the Inspector General’s review, should one be occurring, but I have no intent to interfere with the Inspector General’s work.

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?

RESPONSE: I did not commit to conduct any investigations; I promised only to look into issues of concern to the Chairman and noted that investigations may be underway right now. In any event, I did not commit in advance to conduct any specific investigation.

In the hearing, Chairman Graham raised the issue of numerous inappropriate text messages exchanged by two FBI employees that appear to document personal or political bias for Secretary Clinton and prejudice against President Trump. Chairman Graham also spoke about the FBI's potential use of the Steele-authored "dossier" as a basis to obtain a Foreign Intelligence Surveillance Act (FISA) warrant from the FISA Court. FBI investigations must be based on the law and the facts and should be conducted without regard to political favoritism. If confirmed, I will seek to better understand what internal reviews of these and related matters were undertaken, including any investigations conducted by the Inspector General, United States Attorney John Huber, and the Department's ethics and professional responsibility offices.

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?

RESPONSE: Please see my response to Question 26 above.

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?

RESPONSE: Acting Attorney General Whitaker and I have had preliminary discussions to explore possible positions both inside and outside of the Department where he may best be able to continue to serve his country. No decisions have been made.

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?

RESPONSE: If confirmed, I will ensure that all Department attorneys, including attorneys within the Office of Legal Counsel, are receiving the appropriate ethical and professional responsibility training. I will address any insufficiency in the current ethics training program, should I discover that one exists.

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 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?

RESPONSE: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC's attorneys since I ran the office nearly 30 years ago. I do not know the author of the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has "seen an unprecedented tide of authoritarian-style politics sweep the country." However, the author's statement that "[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line" certainly reflects my experience with the Office.

- b. Is the OLC conduct described in the op-ed consistent with a lawyer's duty of candor?

RESPONSE: Please see my response to Question 32(a) above.

- 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

RESPONSE: In my experience, when OLC reviews proposed executive orders, it seeks, to the greatest extent possible, to verify the factual and legal predicates for the proposed action, relying upon the experience and expertise of others in the Executive Branch.

- d. Against that backdrop, under your leadership, will the Department continue its traditional practice of deferring to factual findings by the White House?

RESPONSE: Please see my response to Question 32(c) above.

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

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

- 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?

RESPONSE: No, I have no reason to believe that, and that is not consistent with my dealings with OLC.

- f. If confirmed, what will you do to address these concerns?

RESPONSE: As I stated in my confirmation hearing, "I love the department ... and all its components.... I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I'd like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity.... And I feel that I'm in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration." As I further stated, "I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I'm going to do what I think is right."

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 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. 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?

RESPONSE: Enforcement of our tax laws and the laws protecting the integrity and transparency of our election process must be a priority for the Department

of Justice. Determining whether there is criminal liability under specific statutes would require an individualized assessment of the facts presented in a specific case, consistent with the Principles of Federal Prosecution. As in all matters, if confirmed, I would look at the individualized facts and circumstances and follow the law and any policies of the Department.

- a. 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?

RESPONSE: If confirmed, I would evaluate any such situation based on actual facts and circumstances if and when presented.

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, 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?

RESPONSE: Yes. My understanding is that when bad actors exploit front companies, shell companies, other legal structures, and nominees, this creates challenges for prosecutors and investigators seeking to identify the true owners of these entities.

- 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?

RESPONSE: If confirmed, I would be pleased to work with you and other Members of Congress, as well as others in the Executive Branch, to discuss ways to combat money laundering more effectively.

- 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?

RESPONSE: If confirmed, I will further familiarize myself with this issue and consult with the Department's subject matter experts.

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.

RESPONSE: As I stated in my January 3, 2019 letter to the Committee, I have never been a member of the Federalist Society, although I have intermittently participated in activities and events organized by the group, including as a speaker. Speeches I have given at Federalist Society events are listed in my answer to Question 12 on the Committee's questionnaire. In addition, as disclosed in my questionnaire, I served on the Federalist Society's 1987 Convention Planning Committee, though I do not recall specifics of my involvement.

36. Please describe the nature of your relationship with Leonard Leo, including any shared organizational affiliations beyond the Federalist Society.

RESPONSE: Mr. Leo is a longtime personal and professional acquaintance. We speak on occasion and see each other from time to time at events in and around Washington, D.C. While I do not know the full extent of Mr. Leo's organizational affiliations, I believe that we have both been affiliated with the Catholic Information Center. In addition, as noted above, I have from time to time attended events organized by the Federalist Society, for which Mr. Leo works. Although I do not at this time recall any other shared organizational affiliations with Mr. Leo, it is possible he has been involved with other groups with which I have been affiliated, including those identified in my Committee questionnaire.

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.

RESPONSE: To the best of my recollection, my only involvement with judicial nominees during the Trump Administration was a brief, informal phone call with then-White House Counsel Donald McGahn in summer 2018 in which I expressed my views regarding then-Judge Brett Kavanaugh and Judge Thomas Hardiman. I do not recall any other involvement, but it is possible that I have expressed support for a judicial candidate at some point.

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?

RESPONSE: If confirmed, I will vigorously enforce the nation’s hate crimes laws to protect all Americans from violence and attacks motivated by their differences. I have not studied the federal definition of “domestic terrorism” or its application to violations of the federal hate crimes laws. If confirmed, I will

be firmly committed to prosecuting all federal hate crimes where warranted by the facts, the governing law, and Department policy.

Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I will be firmly committed to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

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?

RESPONSE: Yes, if confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act consistent with congressional intent.

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?

RESPONSE: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. I also believe that the Department’s charging and sentencing decisions should, to the extent feasible, reflect uniform application of the laws. My understanding is that the current policy facilitates that goal while maintaining flexibility when it is warranted. In that way, we should expect to see similar cases treated similarly, regardless of the district in which the case is brought. I believe these fundamental principles – uniformity, fairness, justice – inure to the public good, promote respect for the rule of law, and promote public safety.

- 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?

RESPONSE: Please see my response to question 40(a) above.

- 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?

RESPONSE: I believe that law-abiding citizens in every community want to live their lives free from violent crime. Mandatory minimum sentences can be an effective tool to take the most violent offenders off the streets for the longest period of time, thereby increasing public safety. I also firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. It is my understanding that the Department’s charging policy allows prosecutors the discretion to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so. If confirmed, I will ensure that the Department’s charging and sentencing policies demand a fair and equal application of the laws passed by this body, while providing the necessary flexibility to serve justice.

- 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?

RESPONSE: It is my understanding that the Department’s charging policy applies to all charging decisions in criminal cases without regard to the nature of the crime(s) to be charged.

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?

RESPONSE: I take seriously the Department’s role in protecting Americans’ civil rights. As I stated during the hearing, I generally support the policies reflected in former Attorney General Sessions’ memorandum. However, because I am not currently at the Department, I recognize that I do not have access to all information. As in all matters, if confirmed, I would look at the individualized facts of the situation as well as the governing law and the policies of the Department in determining what the next, appropriate steps might be with respect to Attorney General Sessions’ memorandum.

- 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?

RESPONSE: Yes. My belief remains that the Department should defend the constitutionality of congressional enactments except when they are clearly unconstitutional or impinge on executive prerogative. The Metropolitan Washington Airports Act Amendments of 1991, Pub. L. No. 102-240, Title VII, 103 Stat. 2197 (Dec. 18, 1991), is an example of such a statute. When I was Attorney General, the Department declined to defend certain provisions of the statute because they raised serious separation of powers concerns and violated the Appointments Clause. On July 13, 1992, Stuart M. Garson, then-Assistant Attorney General for the Civil Division, sent a letter to Senator Robert C. Byrd, pursuant to 28 U.S.C. § 530D, explaining this decision.

- 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?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the

Department's position in this case.

43. Do you believe that voter impersonation is a widespread problem? If so, what is the empirical basis for that belief?

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it.

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?

RESPONSE: I cannot comment on a hypothetical question. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

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.
- a. Do you agree with Attorney General Sessions's interpretation of Title VII? Why or why not?
 - b. Should you be confirmed as Attorney General, would DOJ continue to take the position that Title VII does not prohibit discrimination against transgender employees?

RESPONSE: I understand that the question of whether Title VII's prohibition on sex-based discrimination in the workplace covers gender identity is currently pending in litigation, and the Department's position is that it does not. Of course, the scope of Title VII and the question whether transgender individuals should be protected from workplace discrimination as a matter of policy are two different issues.

[Questions numbered 46 and 47 were missing in the submission of Questions for the Record that were received from the Senate Committee on the Judiciary.]

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.”
- a. 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?
 - b. Do you still believe that secularism causes juvenile crime and venereal disease? If not, what changed your mind?

RESPONSE: The reports you quote take substantial parts of my speech out of context and are inaccurate. Contemporary societal problems are complex and caused by many factors. I have never claimed that societal problems are caused by specific individuals or specific classes of individuals.

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?

RESPONSE: If confirmed, I will be firmly committed to fostering a fair, open, and equitable workplace for all Department employees, including non-religious attorneys and staff, in accordance with all applicable laws and Department policies.

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?

RESPONSE: I am not currently at the Department, and I am unfamiliar with the work of that Task Force, so I am unable to comment at this time.

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?

RESPONSE: I cannot speculate on a hypothetical question. I believe people should be hired based on their qualifications and performance, but I also believe it is vital that we not use governmental power to suppress the freedoms of religious communities in our country.

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?

RESPONSE: Because I am not currently at the Department, I am not familiar with all the circumstances referenced in your question and therefore am not in a position to make a commitment at this time. However, it is my understanding that the Environment and Natural Resources Division has issued guidance, available at <https://www.justice.gov/enrd/page/file/1043726/download>, on the implementation of Attorney General Sessions’ memorandum in environmental cases. That guidance indicates that the Sessions memorandum did not change preexisting policy regarding SEPs, as it “does not prohibit, as part of a settlement, a defendant from agreeing to undertake a supplemental environmental project related to the violation, so long as it is consistent with EPA’s Supplemental Environmental Projects (SEP) Policy, which already expressly prohibits all third-party payments.”

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

- a. Will you commit to investigate this dramatic drop-off in corporate fines for violations

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>).

of federal law and commit to reversing these trends?

RESPONSE: I am not familiar with the source of these statistics, and so have no basis to agree or disagree with them. I am committed to the fair and evenhanded enforcement of the laws within the Department's jurisdiction, including by assessing appropriate penalties to punish and deter unlawful conduct.

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?

RESPONSE: It is not uncommon for the Justice Department to change litigation positions in a small number of cases following a change in presidential administrations. The Department changed position in four significant cases during the Supreme Court's last term, and the Court ultimately agreed with the Department in each of those cases.

- b. Did DOJ reverse any prior litigation positions during your previous tenure as Attorney General?

RESPONSE: I do not recall any significant changes in litigation positions during my tenure as Attorney General, although I cannot say categorically that no changes occurred.

- c. If confirmed, what process will you use to determine whether the Department should reverse a prior litigation position?

RESPONSE: I believe the Justice Department should change litigating positions only after weighing the importance of the issue, how erroneous the prior position was, the Department's reasoning in reaching the prior position, and any other relevant factors depending on the facts of the case. If confirmed, I would consult with other members of the Department and the Executive Branch to ensure that those and any other relevant and appropriate factors are carefully considered before making any change in position.

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?

RESPONSE: When the President announced his intent to nominate me to serve as Attorney General, I stopped actively working on matters relating to Caterpillar. It is likely that my prior representation of Caterpillar will present conflicts, and it is my understanding that certain types of conflicts cannot be waived. If confirmed, I commit to following all applicable laws, regulations, and rules with respect to my prior representation of Caterpillar and, if necessary, recusing from any matters relating to the company. Other than information that is publicly available, I am unable to provide further details regarding the nature and specifics of my work for Caterpillar due to applicable privileges and confidentiality obligations.

56. If confirmed as Attorney General, will you commit to providing the resources necessary to pursue complex criminal tax abuse investigations and prosecutions?

RESPONSE: Tax enforcement, whether criminal or civil, is critical to both specific and general deterrence. When wrongdoers are held responsible for their misconduct it helps strength the compliant taxpayer's confidence in the fairness of the tax system. If I am fortunate to be confirmed I will seek to strategically deploy the Department's resources to ensure the equitable enforcement of our tax laws.

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KLOBUCHAR

Recusal

1. During the hearing, you committed to consulting career ethics attorneys at the Department of Justice about whether to recuse yourself from overseeing the Special Counsel's investigation, although you did not commit to following their advice.
 - a. Will you make public what the Department's ethics attorneys' recommendations are for any matter before the Department, including the Special Counsel's investigation?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices.

- b. I asked whether attorneys at your law firm represented individuals or entities in connection with the Special Counsel's investigation. You told me that because you serve as Of Counsel at the firm, you would need to supplement your answer. Please do so here.

RESPONSE: I have consulted with Kirkland & Ellis and they have informed me that the firm does not and has not represented an entity or individual in connection with the Special Counsel's investigation.

Special Counsel's Report

2. You have committed to make as much of the Special Counsel's report public as possible. Under 28 C.F.R. § 600.9(a)(3), the Attorney General must send a report to Congress documenting any instances where the Attorney General prohibited the Special Counsel from taking an action.
 - a. Will you allow the White House or the President's personal lawyers to view or make changes to this report?

RESPONSE: Under 28 C.F.R. § 600.9(a)(3), the Attorney General will transmit a report to Congress upon the conclusion of the Special Counsel's

investigation. The Attorney General may release the report publicly to the extent that the release would comply with applicable legal restrictions. If confirmed, I would handle the report consistent with the regulations and established Department procedures, and I can assure the Committee that any report sent to Congress will be my own and will not reflect changes from anyone outside the Department of Justice.

- b. Would Congress be within its rights to make some or all of this report public if the Department declined to do so?

RESPONSE: Although there could conceivably be information in the Attorney General's report, such as classified information, that may not be publicly disclosed, 28 C.F.R. § 600.9(a)(3) does not itself restrict what Congress may do with the report.

Freedom of the Press

3. I asked you whether the Department of Justice, under your leadership, would ever jail reporters for doing their job. You referenced the Department's guidelines and responded that jail might be appropriate as a last resort. Under Attorney General Sessions, the Department initiated a process to revise the guidelines, which has not been finalized.
- a. Do you believe that the guidelines need to be changed?
 - b. The current guidelines require the Department to issue an annual report on all subpoenas issued or charges made against journalists. Will you commit to keeping this in place?
 - c. Will you commit to keeping the Judiciary Committee informed of any proposed changes to the guidelines before they are finalized?

RESPONSE: I have not yet had a chance to familiarize myself with the current guidance. The Department of Justice's policies and practices should ensure our nation's security and protect the American people while at the same time safeguarding the freedom of the press.

Management of the Justice Department

4. This Administration has reversed its positions in an unprecedented number of cases. I am concerned about the long-term effects of this on the Justice Department.
- a. Several career lawyers at the Department declined to sign the briefs in the Texas Affordable Care Act case. If you had been Attorney General, would you have directed the briefs to be filed over their objections?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the Department's position in this case.

- b. A former Office of Legal Counsel lawyer wrote an op-ed in *The Washington Post* in which she described her job as “fashioning a pretext, building an alibi” for the White House's decisions. How will you restore morale among the Department's career civil servants?

RESPONSE: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC's attorneys since I ran the office nearly 30 years ago. I do not know the author of the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has “seen an unprecedented tide of authoritarian-style politics sweep the country.” However, the author's statement that “[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line” certainly reflects my experience with the Office.

As I stated in my confirmation hearing, “I love the department . . . and all its components . . . I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I'd like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity . . . And I feel that I'm in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I'm going to do what I think is right.”

Voting Rights

5. This Administration suggests that voter fraud is a major threat to the integrity of our elections, but a major *Washington Post* study found only 31 credible instances of voter fraud out of more than 1 billion votes cast over 14 years.
- a. Will you take an evidence-based approach to ensuring the integrity of our elections?

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- b. Will you commit to enforcing Section 2 of the Voting Rights Act?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, including through enforcement actions brought under Section 2 of the Voting Rights Act. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

Antitrust

6. You and I had a lengthy talk about antitrust issues when we met, and I was glad to hear from you in our meeting that you are committed to renewed thinking about antitrust law.
- a. We have heard that the demands of merger enforcement have taken limited resources away from monopolization and other civil conduct cases. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust agencies get the resources they need to tackle both mergers and monopolization cases. Can I count on your support in getting this bill passed and implemented?

RESPONSE: I believe that sufficient resources are always necessary to maintain appropriate enforcement, including against anticompetitive mergers and monopolization. If confirmed, I will work with the Antitrust Division to assess what resources are necessary to ensure appropriate and effective enforcement of the antitrust laws. If requested, I would be pleased to review any proposed legislation, to the extent appropriate.

- b. I am concerned about mergers that allow companies to unfairly lower prices that they pay, as buyer power among employers has been linked to stagnant wages. My bill, the Consolidation Prevention and Competition Promotion Act, would forbid these kinds of mergers under the Clayton Act. If you are confirmed, how will you approach the problems posed by monopsonies?

RESPONSE: As I understand, the antitrust laws prohibit mergers that may substantially lessen competition in the purchase of inputs as well as in the sale of products. Section 12 of the current DOJ/FTC Horizontal Merger Guidelines explains how the Antitrust Division evaluates mergers for the potential that they may give firms increased market power over the purchase of inputs and thus the ability to lower input prices. This framework would apply to mergers that create monopsony power, including such power over labor markets.

- c. I have expressed concern regarding the effectiveness of merger consent decrees in protecting competition and consumers. That is why my bill, the Merger Enforcement Improvements Act, would require parties to a consent decree to provide post-settlement data, so that the agencies can measure the effectiveness of their remedies and make improvements. Would post-settlement data be helpful in determining what types of merger remedies are effective and what types are not?

RESPONSE: I understand that some have suggested that post-settlement data may be useful in conducting retrospective reviews of mergers and the effect of consent decrees. If confirmed, I look forward to discussing with the Antitrust Division when and how such retrospective merger reviews might be informative and to working with you should any legislative measures be necessary.

- d. It is clear that we are seeing trends toward increased vertical integration in certain industries, such as healthcare and video content. But after the challenge to the AT&T/Time Warner transaction was announced, a number of commentators characterized antitrust enforcement against a vertical merger as extremely rare, if not unprecedented. If you are confirmed, how will you evaluate the consequences of vertical integration in mergers?

RESPONSE: It is my understanding that some vertical mergers have raised competition concerns and have been the subject of enforcement actions over the past few decades. If confirmed, I will continue the review of vertical transactions to determine whether they are likely to create the incentive and ability for a merged entity to harm competition to the detriment of consumers, in violation of the antitrust laws.

- e. The vertical merger guidelines have not been revised for some time despite multiple calls for the Justice Department and FTC to update them and uncertainty as to the agencies' commitment to vertical merger enforcement. Will you commit to updating the vertical merger guidelines to reflect current Justice Department practices?

RESPONSE: I understand that the Antitrust Division has announced that it is reviewing and considering revisions to the Non-Horizontal Merger Guidelines, published as part of the merger guidelines of 1984. If confirmed, I look forward to learning more about this review and working with the Antitrust Division to make appropriate revisions that will update the guidance consistent with existing law and promote transparency in vertical merger review.

- f. Over the last decade, major online platforms have changed the lives of Americans, allowing them to find information, buy or sell products, and communicate with each other. At the same time, the growing dominance of these companies raises a host of potential antitrust issues, and the lack of competition among platforms appears to keep market forces from disciplining their approaches to consumer privacy. How will you assess the impact of technology platforms on competition?

RESPONSE: I agree that this question raises important issues. If confirmed, I look forward to studying and discussing these issues from a competition standpoint with the Antitrust Division.

- g. In the last two years, the European Commission has issued multi-billion dollar fines against Google for using its dominance in search to give advantages to other Google products and for using its strong position in Android-related markets to maintain its dominance in internet search. According to Assistant Attorney General Makan Delrahim, the European Union (EU) also uses the consumer welfare standard, so why are the levels of enforcement activity so different between the United States and the EU, and what steps will you take to reestablish U.S. leadership in antitrust law?

RESPONSE: The Department is and should continue to be a leader in antitrust enforcement globally. If confirmed, I will study and explore whether there are differences in enforcement activity between the United States and the EU, and what may underlie any differences between the two jurisdictions.

- h. Prescription drug costs impose a heavy burden on consumers and are projected to comprise an increasing proportion of health care costs in the years to come. Curbing pay-for-delay settlements is one way to reduce prescription drug costs, and Senator Grassley and I are leading legislation to help put a stop to these anti-consumer deals for years. If you are confirmed, how will you approach the role of antitrust law in reducing high prescription drug costs?

RESPONSE: Pursuant to long-standing practice, to ensure both the FTC and the Department do not review the same conduct, civil antitrust matters with respect to pharmaceuticals usually are handled by the FTC, whereas the Antitrust Division exclusively handles all criminal enforcement in this industry. If confirmed, I will commit to working with the Antitrust Division to enforce the antitrust laws against any company or individual who conspires to fix drug prices, allocates customers, or otherwise engages in anticompetitive practices, in the pharmaceutical industry.

- i. Antitrust scholars have noted that the threat of private treble damages has driven the courts to constrain the Sherman Act's ability to address anticompetitive conduct by a single firm—which does not just affect private litigants, but government enforcement as well. Will you commit to reevaluating the positions that the Justice Department takes in private enforcement actions in order to expand the scope of enforcement of the antitrust laws?

RESPONSE: I understand that the Department has implemented a program to participate actively in private antitrust cases through the filing of amicus briefs and statements of interest, in order to promote the appropriate and

effective enforcement of the antitrust laws. If confirmed, I look forward to working with the Antitrust Division on these efforts.

White Collar Crime

7. In a November 1993 article in *The Banker*, you argued that the downsides of prosecuting corporations for fraud outweighed the upsides.

- a. If you are confirmed, will you commit to prosecuting white collar and corporate criminals just as you would street criminals?

RESPONSE: Yes, although the question does not accurately characterize my article. I am committed to fully and fairly enforcing the law. As I noted at my hearing, I believe my prior experience overseeing the Department's aggressive response to the savings and loans crisis demonstrates that I will not shy away from prosecuting corporate fraud or other white collar crime.

- b. At a 2004 conference held by the Federalist Society, you said prosecutors in white-collar cases were young and inexperienced, and overreached in corporate investigations. If you are confirmed, those young prosecutors will be looking to you for leadership. Do you stand by what you said in 2004?

RESPONSE: The question does not accurately characterize my speech. Please see my response to Question 7(a) above.

Presidential Records Act

8. According to a January 13, 2019 report in *The Washington Post*, the President has destroyed notes from at least one of his meetings with Russian President Vladimir Putin.

- a. Does the Presidential Records Act apply to the President?

RESPONSE: Yes. The definition of "Presidential records" for purposes of the Presidential Records Act includes "documentary materials ... created or received by the President." 44 U.S.C. § 2201(2).

- b. Do you believe that the Presidential Records Act is constitutional?

RESPONSE: The Supreme Court has upheld the constitutionality of the predecessor statute to the Presidential Records Act, in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), and I believe the rationale of that decision also applies to the Presidential Records Act.

Immigration

9. Attorney General Jeff Sessions narrowed the grounds for asylum claims for victims of private crime. His opinion in *Matter of A-B* makes very difficult for victims of domestic abuse and gang violence to be granted asylum.

- a. Do you agree with Attorney General Sessions's decision in *Matter of A-B*?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- b. Asylum statutes dictate that applicants seeking asylum must show that either their "race, religion, nationality, membership in a particular social group, or political opinion" is "at least one of the central reasons for the persecution" of the applicant. Do you interpret the statute's requirement of "membership in a particular social group" to be independent of the requirement that an applicant demonstrate persecution?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

10. Minnesota has a large Liberian refugee population. In 2007, President George W. Bush directed that Deferred Enforced Departure (DED) be provided for 18 months to certain Liberians whose Temporary Protected Status (TPS) was expiring. Every President after George Bush has extended DED for Liberians since the initial 18 month period was set to expire. Last March, President Trump directed Secretary Nielson to begin winding down DED status. On March 31, 2019, DED ends for Liberians.

- a. Do you agree with President Trump's decision to end DED status?

- b. What steps will you take to protect Liberians with DED status from being deported?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

Trafficking

11. One of my highest priorities has been working to combat the scourge of human trafficking. I work closely with members of the Judiciary Committee, including Senator Cornyn, to support survivors of human trafficking and provide resources to federal, state, and local law enforcement officials. We recently passed bipartisan legislation called the Abolish Human Trafficking Act.

- a. If confirmed as Attorney General, what will be your priorities in combating trafficking?

RESPONSE: Rigorous enforcement of our anti-trafficking laws is essential to providing for the security of Americans. I do not know what Departmental resources are currently being devoted to combatting sex trafficking at this time, but if I am fortunate enough to be confirmed, I will evaluate the Departmental resources and needs to determine the best method of fighting the scourge of human trafficking.

Opioid Epidemic

12. Congress will need to continue working with the Justice Department and local law enforcement officers combat the opioid epidemic.

- a. If confirmed as Attorney General, what steps will you take to combat the opioid epidemic?

RESPONSE: Under my leadership, the Justice Department will work closely with state, local, and tribal law enforcement and other federal agencies in a “whole of government” approach, targeting all aspects of this epidemic, from the over-prescription and diversion of controlled prescription drugs to the illicit trafficking of heroin and fentanyl. I will continue Attorney General Sessions’ efforts to enforce our laws against bad actors in the prescription opioid distribution chain, and I will continue to prioritize opioid related healthcare fraud prosecutions. With regard to illicit opioids, the Justice Department will work with our foreign counterparts, particularly in Mexico, Canada, and China, to stem the flow of illicit narcotics across the southwest border and through our postal system. I will prioritize prosecutions involving synthetic opioids, to include prosecutions involving transnational criminal organizations and prosecutions involving the use of the internet to traffic drugs.

- b. How do you plan to work with local law enforcement to combat the opioid epidemic?

RESPONSE: Local law enforcement officers are our first line of defense to this epidemic. Every day, local law enforcement officers save lives. They respond to drug overdoses and administer Naloxone. They warn the public when it appears that a particularly deadly batch of drugs has caused multiple overdoses. They take steps to protect the children of addicted parents. Local law enforcement officers are critical to our federal response to the epidemic because they know the communities most impacted by the epidemic. If confirmed, I will ensure that our federal agents work closely with state, local, and tribal law enforcement officers through task forces.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR COONS

1. At your nomination hearing, you agreed to seek the advice of career ethics officials regarding whether you should recuse from the Special Counsel investigation. You testified that you did not think you would have an objection to (1) notifying the Senate Judiciary Committee once you receive the ethics officials' guidance, (2) telling the Committee what that guidance was, and (3) explaining whether or not you disagree with it. Now that you have had an opportunity to consult any applicable rules, will you agree to (1) notify this Committee once you receive the career ethics officials' guidance on recusal from the Special Counsel investigation, (2) inform us of the advice that you received from these career ethics officials, and (3) explain why you agree or disagree with it? If you contend that these notifications are not permitted, please cite the applicable rule.

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department's work, and I intend to follow those regulations in good faith.

I am not currently at the Department and have not spoken further with ethics officials nor studied the Department's practices on these matters. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices, and recognized Executive Branch confidentiality interests.

2. At your nomination hearing, you testified that you would share as much as possible of Special Counsel Mueller's report "consistent with the regulations and the law."
 - a. Which regulations and laws do you think may prevent you from sharing the report in its entirety?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as

are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

- b. If Special Counsel Mueller provides you with his report, and it contains information that you choose not to include in the Attorney General’s report that is released to the public, would you provide a log of the information withheld and the rule, regulation, or privilege justifying that it be withheld?

RESPONSE: If confirmed, I will consult with Deputy Attorney General Rod Rosenstein to better understand any prior consideration regarding the release of information from the Special Counsel, and I will evaluate the report from the Special Counsel when it is received.

3. If Donald Trump fires Special Counsel Mueller or orders you to fire Special Counsel Mueller without good cause, would you resign? Please answer yes or no.
- a. If you would not resign, what would you do?

RESPONSE: I would resign.

- b. Will you agree to notify the Chairman and Ranking Member of the Senate Judiciary Committee if you believe Special Counsel Mueller has been removed without good cause? Please answer yes or no.

RESPONSE: Yes.

- c. If you learn that the White House is attempting to interfere with the investigation, will you report that information to Special Counsel Mueller and inform Congress? Please provide examples of what, in your view, would constitute inappropriate interference.

RESPONSE: If confirmed, I will ensure that the Special Counsel finishes his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence. As I testified, I will follow the Special Counsel regulations scrupulously and in good faith.

4. If the President directed the FBI to stop investigating his National Security Advisor in order to hide the administration's Russia connections from the American people, is that illegal?

RESPONSE: As a general matter, depending on the facts and circumstances, it could be a breach of the President's obligation under the Constitution to faithfully execute the laws if he were to halt a lawful investigation for an improper purpose. The Department's investigative and prosecutorial decisions should always be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and should be made without bias or inappropriate outside influence.

5. You were Attorney General when President Bush pardoned six administration officials charged with crimes in the Iran-Contra scandal, and you have said that you encouraged the President to issue those pardons. The Iran-Contra Independent Counsel called these pardons a "cover-up." He said they "undermine[] the principle that no man is above the law" and "demonstrate[] that powerful people with powerful allies can commit serious crimes in high office – deliberately abusing the public trust without consequence."
- a. What factors would you consider when advising the President on whether to issue a pardon?
- b. You testified that if a President issues a pardon as a quid pro quo to prevent incriminating testimony, that would be a crime. How should a President be held accountable for such a crime?

- c. Would it be permissible for President Trump to pardon Michael Flynn, Paul Manafort, or Michael Cohen if he did so to cover up his own criminal activity?
- d. Would it be permissible for President Trump to pardon himself?

RESPONSE: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President's power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President's actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President's pardon authority.

- 6. Chairman Graham, Senator Tillis, Senator Booker, and I have introduced the Special Counsel Independence and Integrity Act (S.71), which would codify the good-cause restriction on the Special Counsel's removal and make it clear that the Special Counsel can be reinstated if he is removed improperly. If this bill passes, would you commit to complying with that law?

RESPONSE: If confirmed, I will faithfully comply with all applicable laws and regulations.

- 7. When you were nominated to lead the Office of Legal Counsel, you told the Senate Judiciary Committee that you "fully accepted" the Supreme Court's ruling in *Morrison v. Olson*, 487 U.S. 654 (1988). Do you still accept the *Morrison* decision as good law?

RESPONSE: It is my understanding that the Supreme Court has not overruled *Morrison v. Olson*. If confirmed, and if the issue arose, I would need to consult with the Office of Legal Counsel and review subsequent decisions by the Supreme Court to determine whether they have any bearing on the decision.

- 8. Deputy Attorney General Rosenstein has said publicly that your June 2018 memorandum on obstruction of justice "had no impact" on the Special Counsel investigation. When I asked if you would order the Special Counsel's office to accept and follow the reasoning in your memorandum, you testified that you would "try to work it out with Bob Mueller" and "unless something violates the established practice of the department, [you] would have no ability to overrule that."

- a. Please confirm that if Special Counsel Mueller's theory of obstruction does not

violate an established practice of the Department of Justice, you will not overrule his interpretation of the law.

- b. Did any of the attorneys to whom you transmitted your June 2018 obstruction of justice memorandum respond to you? If so, please provide their responses.

RESPONSE: As I stated during my hearing before the Committee, if confirmed, I will follow the Special Counsel regulations scrupulously and in good faith, and I will not permit partisan politics, personal interests, or any other improper considerations to interfere with the Special Counsel's investigation.

As I explained in detail in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, I provided my June 8, 2018 memorandum to a number of different people, including officials at the Department of Justice and the President's lawyers. At the Department of Justice, Deputy Attorney General Rosenstein briefly acknowledged receipt of the memorandum and noted that his policy was not to comment publicly on the Special Counsel's investigation; Assistant Attorney General Engel briefly acknowledged receipt; and Solicitor General Francisco called me to say he was not involved in the Special Counsel's investigation and would not be reading the memorandum. To the best of my recollection, none of the President's lawyers responded directly to the memorandum, but as I have noted, I subsequently had follow up conversations in which I explained my views.

9. The same day that you sent your June 2018 obstruction of justice memorandum to Deputy Attorney General Rosenstein, former Attorney General Dick Thornburgh, who was your boss when you were the Deputy Attorney General, authored an op-ed published in the *Washington Post*, stating in part, "Mueller is the right person to investigate Russia's apparent assault on our democracy. . . . Mueller must put all applicable evidence before an impartial grand jury that will decide whether to bring charges. We must let him do his job."
- a. Have you discussed your obstruction of justice memorandum with former Attorney General Thornburgh? If so, please describe this discussion.
- b. Have you discussed former Attorney General Thornburgh's op-ed with him? If so, please describe this discussion.

RESPONSE: I have not discussed my June 8, 2018 memorandum or the op-ed with former Attorney General Thornburgh.

10. In the 26 years since you served as Attorney General, have you sent any other legal memoranda to Department of Justice leadership criticizing an investigation? If so, please provide a list of the investigations that these memoranda addressed and estimates of when the memoranda were transmitted.

RESPONSE: As I explained in detail in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, my June 8, 2018 memorandum did not criticize Special Counsel Mueller's investigation as a general matter. Rather, it discussed a potential theory that I thought, based on publicly available information, he may be pursuing at the time. As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials. For example, I recently expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

11. What is the remedy if the President violates his constitutional duty to faithfully execute the laws or violates an obstruction statute?

RESPONSE: The remedy would depend upon the facts and circumstances of a particular violation. They could arise in a court of law, or in Congress, or from the People.

12. During the hearing on his nomination to be Attorney General, then-Senator Sessions stated that he "did not have communications with the Russians," but facts about meetings that he had with the Russian Ambassador later became public. Have you ever had any contact and/or communications with anyone from the Russian government? If so, please list these contacts and/or communications.

RESPONSE: In approximately 1980, the federal judge for whom I clerked introduced me to someone I understood to be a consular officer from the Soviet Embassy, and I subsequently had several lunches with him at the request of the FBI. I debriefed the FBI following each meeting. This matter has been included in all of my subsequent background investigations. Other than that, to the best of my recollection and knowledge, I have not had contact or communications with anyone from the Russian government.

13. An op-ed that you joined in November, entitled "We are former attorneys general. We salute Jeff Sessions.," specifically praised Attorney General Sessions for changing the Department of Justice's interpretation of Title VII to exclude protections for transgender individuals. Do you support interpreting Title VII to protect the LGBT individuals?

RESPONSE: I understand that the scope of Title VII's prohibition on sex-based discrimination in the workplace is currently pending in litigation, and the Department's position is that it does not cover LGBT individuals. Of course, the scope of Title VII and the question whether LGBT individuals should be protected from workplace discrimination as a matter of policy are two different issues.

14. In a 1995 law review article, you criticized a D.C. law that required Georgetown

University to “treat homosexual activist groups like any other student group.” Do you oppose laws that ensure equal treatment for LGBT student groups?

RESPONSE: Congress prescribes the scope of the federal laws that it enacts, including the protections provided by federal civil rights laws. The Department is bound to enforce federal law as enacted by Congress and interpreted by the Supreme Court. If confirmed, I will be firmly committed to enforcing the laws that Congress has enacted, including laws that protect LGBT Americans.

15. At your nomination hearing, you testified that you are “against discrimination against anyone because of some status,” including “their gender or their sexual orientation.” If you are confirmed, will the Department of Justice file amicus briefs defending discrimination against LGBT individuals, as it did in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *Zarda v. Altitude Express*?

RESPONSE: Because I am not currently at the Department, I am not privy to the details regarding the Department’s position in these matters. Further, it would not be appropriate to comment on ongoing litigation. As with all matters, any decision to file an amicus brief will be based upon a thorough analysis of the facts and the governing law.

16. In a speech that you gave as Attorney General, you said that public schools had suffered a “moral lobotomy” based on “extremist notions of separation of church and state.” However, you testified at your nomination hearing that you “believe in the separation of church and state.” Do you think that the Constitution permits public schools to endorse a particular religious view?

RESPONSE: I believe in the separation of church and state. The Supreme Court has held that a public school may not endorse any particular religious belief system.

17. You authored an op-ed that was published in the *Washington Post* claiming that President Trump’s first travel ban was legal and that it did not discriminate against Muslims. Do you still contend that there were “no plausible grounds for disputing the order’s lawfulness,” even though over a dozen judges found the order was unlawful?

RESPONSE: Yes, although the status of the President’s first order is no longer a live question. And in any event, the Supreme Court upheld the lawfulness of his revised Proclamation in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

18. You testified at your nomination hearing that you are concerned about “the willingness of some district court judges to wade into matters of national security where, in the past, courts would not have presumed to be enjoining those kinds of things,” specifically citing the travel ban. If a President issues a discriminatory executive order while claiming a justification of national security, do you agree that it is the responsibility of a court evaluating a challenge to that executive order to review its lawfulness and strike down the

executive order if the court finds it violates the Constitution or a statute?

RESPONSE: Judicial review of any executive order is dependent on a variety of threshold justiciability requirements, including standing, ripeness, and a statutory basis for review. If a court finds that the relevant threshold requirements are satisfied, it is appropriate for the court to review the order's lawfulness and strike it down if it violates the Constitution or a statute.

19. There are 67,000 Americans who are dying every year from drug overdoses. You once said “. . . I don't consider it an unjust sentence to put a [drug] courier . . . in prison for five years. The punishment fits the crime.” We cannot incarcerate our way out of the opioid crisis. How would you use the resources of the Department of Justice to help those suffering from addiction get the help they need?

RESPONSE: A comprehensive response to the opioid epidemic should involve multiple lines of effort. This Administration has a three-pronged strategy to combat the opioid epidemic: prevention and education; treatment and recovery; and enforcement and interdiction. These efforts should be complementary and mutually reinforcing. I agree that we cannot incarcerate our way out of the opioid epidemic, but I also think that law enforcement plays a critical role in protecting public safety and reducing access to deadly drugs. If confirmed, I will look at ways in which the Department's enforcement efforts can reinforce treatment and recovery efforts, including federal reentry programs. Under my leadership, the Department's Bureau of Justice Assistance will continue awarding grants to support treatment initiatives at the state and/or local level. Finally, the Department will seek opportunities to work with other government agencies, like HHS, on initiatives that will promote public health and public safety.

20. At your nomination hearing, you testified that you did not agree with the proffered percentage of nonviolent drug offenders within the federal prison population, stating that “sometimes the most readily provable charge is their drug-trafficking offenses rather than proving culpability of the whole gang for murder.” Is it your view that many individuals in prison for nonviolent drug offenses have committed violent crimes? If so, please provide the evidence you rely on in support of this contention.

RESPONSE: Based on my prior experience as Attorney General, I believe that indeed sometimes the most readily provable offense is drug trafficking, notwithstanding the fact that the crime involved violence. My understanding is that U.S. Sentencing Commission data shows that a number of convicted federal drug offenders carried or used a weapon during their offense, that many federal drug offenses resulted in bodily injury, and that many federal drug offenders have prior convictions for violent offenses.

21. Why did you sign a letter opposing passage of the Sentencing Reform and Corrections Act in 2015? Please explain the basis for your opposition to bipartisan sentencing reform.

RESPONSE: Respectfully, I do not oppose “bipartisan sentencing reform.” As discussed in my letter to Leader McConnell and Senator Reid, the letter raised a specific policy concern, namely that the retroactive provisions of the Sentencing Reform and Corrections Act of 2015 would have released violent felons from federal prison and realigned our sentencing structure in profound ways. If confirmed, I intend to faithfully enforce and implement the recently enacted FIRST STEP Act.

22. If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?

RESPONSE: If confirmed, I will engage in a review of the Department’s position in this case, which will include receiving input from the Solicitor General and other individuals within the Department, as well as from other relevant agencies within the federal government. Beyond that, I am not in a position to comment or make a commitment at this time.

23. Last Congress, I was grateful to join with Senator Toomey to introduce the NICS Denial Notification Act (S.2492) – a bipartisan, commonsense bill that ensures that state and federal law enforcement are working together to prevent those who should not be able to buy a gun from getting one. However, these “lie and try” cases are rarely prosecuted at the federal level. Will you work with me on this bill to ensure that state law enforcement has the information to prosecute violations of “lie and try” laws?

RESPONSE: As I testified in my hearing, keeping firearms out of the hands of prohibited persons must be a priority. If confirmed, I look forward to working with you and other members of the Committee to effectively address this priority.

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

RESPONSE: I am not familiar with the specific studies you cite, but generally understand that the vast majority of federal firearms licensees comply with federal laws and regulations. I agree with your objective of focusing compliance and enforcement efforts on those licensees who do not comply with the law and, if confirmed, look forward to learning more about this issue from ATF.

25. 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, would the Department of Justice work to end this practice?

RESPONSE: States and localities around the country are reviewing the way fines and fees are assessed in the criminal justice process and exploring ways to improve the delivery of justice to victims, defendants, and the community, including through reforms to the use of fines and fees. I think that states and localities are right to be reviewing this issue and the Department should work with them to ensure that these reforms are effective.

- 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?

RESPONSE: The Eighth Amendment to the Constitution states that "Excessive bail shall not be required." Consistent with the Constitution, I believe bail and other pre-trial restrictions should be imposed only to ensure public safety or that defendants comply with the justice process and appear in court as required. The Supreme Court has also reiterated that a defendant's bail cannot be set higher than necessary to ensure the defendant's presence at trial. That said, there is a diversity of practice on this issue in the states, in addition to considerable recent experimentation. I think the Department should work to ensure that any such reforms to money-bail systems effectively deliver justice to defendants, victims, and the community at large.

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

RESPONSE: I know from my prior experience in the Department about the important work done by federal prosecutors in enforcing anti-corruption laws. If confirmed, I look forward to working closely with the Department's prosecutors to root out corruption.

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

RESPONSE: I am aware that the Department has identified intellectual property crime as a priority area due to the wide-ranging economic impact on U.S. businesses and, in some situations, the very real threat to the health and safety of the American public. If confirmed, the Department will continue to focus on prosecution of the most serious cases of trademark counterfeiting, trade secret theft, copyright piracy and the related criminal statutes protecting intellectual property.

28. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.

- a. Would you prioritize enforcement actions to combat trade secret theft by foreign nationals?

RESPONSE: My understanding is that the Department has prioritized the theft of valuable trade secrets, whether committed by an individual or as part of a systematic program of economic espionage directed by a foreign government. If confirmed, I look forward to supporting that important work.

- b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

RESPONSE: Please see my response to Question 28(a) above. If confirmed, I would examine this important issue to ensure the Department is working effectively – both by itself and in conjunction with other parts of the Executive Branch – to counter the threat of the criminal theft of trade secrets.

29. The United States is currently facing a massive cybercrime wave that the White House has estimated costs more than \$57 billion annually to the U.S. economy. However, a recent study using the Justice Department's own data found that only an estimated three in 1,000 cyberattacks in this country ever result in an arrest.

- a. Do you agree that we have to narrow this enforcement gap?

RESPONSE: I know that Attorney General Sessions tasked a group of experts from across the Department, the Cyber Digital Task Force, to work on this issue. If confirmed, I look forward to reviewing their initial report describing the Department's existing efforts and working to examine further improvements to make the Department even more effective as this problem continues to evolve.

- b. Although it may be difficult to successfully extradite and prosecute individuals located in countries like China, there have been a number of cases in which the U.S. has had success in arresting and extraditing cyber-attackers from foreign countries. Do you agree that we should be more aggressive in using existing laws against cyber- criminals located abroad, such as in China?

RESPONSE: I am aware the Department has had many notable successes in extraditing cybercriminals. I am also aware that the Department has pursued charges against cybercriminals, even while they remain in countries with which we do not have an extradition treaty, such as China. If confirmed, I would support such efforts.

- c. Will you commit to ensuring that the Computer Crime and Intellectual Property Section and the Office of International Affairs are fully staffed, should you be confirmed?

RESPONSE: It is important to devote sufficient resources to the Department's cyber experts. If confirmed, I would examine this important question, within the constraints of the President's budget.

- d. What actions would the Department take under your leadership to strengthen private sector cooperation in cybercrime investigations?

RESPONSE: I know the Department has a number of lines of effort across many of its components to enhance cooperation with the private sector on fighting cybercrime. If confirmed, I look forward to learning more about existing efforts and finding ways to improve them.

30. The CLOUD Act, a bill that I worked hard on with Chairman Graham and Senator Whitehouse, became law last year. This legislation authorizes the U.S. government to enter into agreements with foreign partners to facilitate law enforcement access to electronic communications. No such agreements have been entered into yet. Will you explore using these agreements to further leverage cooperation on cybercrime investigations?

RESPONSE: Yes, I am committed to exploring using the authority provided by Congress to ensure that we and our allies have effective and efficient means to obtain cross-border access to data needed for criminal investigations.

31. You testified that protecting the integrity of elections would be one of your top priorities as Attorney General.

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

RESPONSE: I cannot comment on a hypothetical question. It also would not be appropriate for me to comment on any matter that may be the subject of a pending investigation or pending litigation within the Department of Justice. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- b. If confirmed, will you work with Congress to restore preclearance review under the Voting Rights Act by helping to develop a coverage formula that the Department of Justice would support?

RESPONSE: If confirmed, I will be firmly committed to working with

Congress regarding legislation that supports the Department's mission and priorities.

32. You testified at your nomination hearing that it might be appropriate to prosecute a journalist if that journalist "has run through a red flag or something like that, knows that they're putting out stuff that will hurt the country." Please explain how you would evaluate if a journalist has "run through a red flag" or is putting out information that "will hurt the country."

RESPONSE: As I noted during my confirmation hearing, I understand that the Department has policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. These policies ensure our nation's security and protect the American people while at the same time safeguarding the freedom of the press. In light of the importance of the newsgathering process, I understand that the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure, using such tools only after all reasonable alternative investigative steps have been taken, and when the information sought is reasonably required for a successful investigation or prosecution.

33. While you were Attorney General, you were involved in litigation related to the detention of HIV-positive Haitians in Guantanamo Bay.
- a. In the litigation, the Justice Department represented to the Supreme Court that anyone who was identified as having a credible fear of persecution upon return to Haiti was to be brought to the United States for an asylum hearing. After making that representation, the administration changed its policy to hold HIV-positive Haitians, even those who had already been identified as having a credible fear of persecution, in Guantanamo Bay. Do you dispute that the Justice Department supported detentions of HIV-positive Haitians in Guantanamo Bay after representing to the Supreme Court that HIV-positive Haitians with a credible fear of persecution would be brought to the U.S. for an asylum hearing?

RESPONSE: I do not recall this specific alleged representation and believe it to be incorrect as stated here. As I noted at the hearing, federal law at the time generally provided that HIV-positive individuals were inadmissible to the United States. My best recollection is that the Administration was nonetheless attempting to admit HIV-positive individuals who could claim asylum where they could also make an individualized showing for admission under the Attorney General's waiver authority. The Clinton Administration continued these policies and defended them in court.

- b. In that same litigation, the Justice Department represented to the Supreme Court that tens of thousands of Haitians wanted to flee violence in their home country, drawn

by the “magnet effect” of a judicial decision issued by the Eastern District of New York. There was no credible evidence of this so-called magnet effect. Do you regret that the Justice Department made this unsubstantiated claim?

RESPONSE: I do not recall this specific alleged representation, but the Supreme Court itself noted that “the Haitian exodus expanded dramatically” during the six months after October 1991 and credited the President’s view that allowing fleeing Haitian emigrants into the United States “would have posed a life-threatening danger to thousands of persons embarking on long voyages in dangerous craft.”

34. At your nomination hearing, you testified that you had not looked at the issue of birthright citizenship. Please review this article by John Yoo, entitled “Settled law: Birthright citizenship and the 14th Amendment,” available at <https://www.aei.org/publication/settled-law-birthright-citizenship-and-the-14th-amendment/>.
- a. Do you agree that the text of the Fourteenth Amendment guarantees birthright citizenship?
 - b. Do you support the revocation or modification of the Fourteenth Amendment’s constitutional guarantee of birthright citizenship?

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, and if this matter arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR BLUMENTHAL

1. In June 2018, the FCC's plan to abdicate its authority over net neutrality came into effect. While the FCC has signed a memorandum of understanding with the FTC over unfair and deceptive practices by internet service providers, these actions have left consumers without clear rules and effective enforcement over net neutrality violations.

While the FCC and FTC are primarily responsible for oversight over internet service providers, the Department of Justice has interceded in cases regarding net neutrality in the past. Most recently, the California Attorney General reached a temporary agreement with the Department of Justice to delay their law from taking effect until federal lawsuits over the FCC's rollback of net neutrality are resolved.

When you were in private practice, you were significantly involved with telecommunications companies and other interests that were implicated in net neutrality. Most significantly, you served as General Counsel and Executive Vice President of Verizon Communications for eight years, during which you argued against net neutrality based on concerns over its impact on Verizon's revenue. For example, you reportedly stated that net neutrality regulations might prevent broadband providers like Verizon from earning "an adequate return." You also recently served on the board of Time Warner, which is seeking to merge with AT&T. Both affiliations create the appearance of potential conflicts of interest with regard to oversight of internet service providers and enforcement of net neutrality.

- a. At least four states have passed their own net neutrality laws since the FCC abdicated its responsibility and still more are considering taking action to protect their residents. Do you intend to continue to pursue litigation to prevent states from enforcing their own laws to protect net neutrality? Under what specific conditions will the Department of Justice intervene against states that regulate discriminatory conduct within their state?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- b. Verizon and other internet service providers originally sued California to prevent the implementation of their net neutrality protections, and have been parties to most fights over the open internet. Considering the potential appearance of conflicts of

interest based on your previous professional affiliations and statements on net neutrality, will you commit to recuse yourself from any cases that involve the enforcement or defense any net neutrality laws?

RESPONSE: I have not been at Verizon for over a decade. Moreover, because I do not know the scope of the matter referenced in your question, and because I do not know all the facts and circumstances, I cannot commit to such a recusal at this time. If I am confirmed and a matter comes before me where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and will recuse myself whenever appropriate.

- c. Given concerns over the appearance of conflicts of interest, will you recuse yourself from any cases that involve specific claims of discriminatory conduct by Verizon that may come before the Department of Justice? Will you recuse yourself from any cases that involve specific claims of discriminatory conduct by other internet service providers?

RESPONSE: If confirmed, in any case where potential recusal issues arise, I will consult with career ethics officials at the Department and recuse myself whenever appropriate.

2. The Music Modernization Act was the result of years of bipartisan work by many members of the Judiciary Committee. The Department of Justice is currently conducting a sweeping review of 1,300 consent decrees, including the ASCAP and BMI consent decrees. These decrees play a critical role in allowing Americans to hear their favorite songs. I am concerned that terminating the ASCAP and BMI consent decrees could undermine the Music Modernization Act and permit the accumulation and abuse of market power.
- a. Can you commit that the Department of Justice will work with Congress to develop an alternative framework prior to any action to terminate or modify the ASCAP and BMI consent decrees?

RESPONSE: I commit that, if I am confirmed, the Department will stand ready, as always, to provide this Committee with technical assistance on any legislative proposal regarding music licensing. I also commit that, if confirmed, I will work with the Antitrust Division to ensure that this Committee is informed of the Division's intentions a reasonable time before it takes any action to modify or terminate the decrees.

3. The Federal Correctional Institution in Danbury, Connecticut is home to over 1,000 federal inmates. It hosts important education and literacy programs, including some programs that bring in students from outside the institution to study with students housed

inside the institution. Educational programs such as these are critical to restoring fairness to our criminal justice system and preparing inmates to contribute to society once have finished serving their time.

- a. Do you agree with me that education and literacy programs are important parts restoring fairness and opportunity to our criminal justice system?

RESPONSE: I have not had the opportunity to review the programs currently offered by the Bureau of Prisons and presently have no basis to disagree or agree with the statement. If I am confirmed, I will fully and fairly enforce the laws within the Department's jurisdiction.

- b. What steps will you take as Attorney General to ensure that programs like the ones at the Federal Correctional Institution in Danbury are provided with the necessary resources?

RESPONSE: If I am confirmed, I look forward to reviewing the Bureau of Prisons' resource allocation in this area, current educational offerings, and inmate needs.

- c. What steps will you take to expand successful prison education programs on a nationwide basis?

RESPONSE: I am not currently at the Department, and I am not familiar with details regarding educational programs provided by the Bureau of Prisons. Since I have not had the opportunity to review this matter, I am not in position to comment. If confirmed, I look forward to learning more about the educational programming offered by the Bureau of Prisons.

- d. Do you supporting restoring Pell grant funding to people in prison? Please explain the reasoning behind your position.

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more.

4. During your confirmation hearing I asked you if you maintained the position you expressed in 1991, that *Roe v. Wade* should be overruled. You responded:

"I said in 1991 that I thought as an original matter it had been wrongly decided, and that was, what, within 18 years of its decision? Now it's been 46 years, and the department has stopped, under Republican administration, stopped as a routine matter asking that it be overruled, and I don't see that being turned--you know, I don't see that being resumed."

- a. Are you suggesting that you will not direct the Department of Justice to advocate to overturn *Roe*, or that it is merely unlikely that you will issue such an order?

RESPONSE: I would respond to any case presenting that question by consulting with the Solicitor General and other members of the Executive Branch to determine our position based on the facts of the case, the governing law, and the federal government's interests.

- b. In your answer at the hearing you indicated that proximity in time to a Supreme Court ruling determines when you respect a precedent. In your opinion, when between 18 and 46 years does the principal of *stare decisis* attach?

RESPONSE: All Supreme Court decisions (except those that have been overruled) are entitled to respect under principles of *stare decisis*.

- c. How do you determine when to give deference to a precedent?

RESPONSE: The Supreme Court has explained that deciding whether to overrule precedent requires weighing (among other factors) whether a prior decision is correctly decided, well-reasoned, practically workable, consistent with subsequent legal developments, and subject to legitimate reliance interests.

- d. Does societal reliance on a precedent matter for *stare decisis* considerations?

RESPONSE: Yes, as noted above, it is one of several factors that are relevant under principles of *stare decisis*.

5. As you know, American student loan borrowers now collectively owe more than \$1.5 trillion in student debt. The U.S. Department of Education relies on a number of large private-sector financial services firms to manage accounts and collect payments for more than \$1.2 trillion dollars of this debt. These firms have been the target of investigations and litigation by a range of state law enforcement agencies and regulators, alleging widespread abuses. This led Connecticut to pass the first comprehensive consumer protections in this area.

In the face of mounting litigation, beginning in 2017, the United States adopted the new legal position that it was never the government's expectation that these firms comply with state consumer law, including state prohibitions against unfair and deceptive practices, because these laws were preempted by federal law. To this end, in early 2018, the U.S. Department of Justice took the extraordinary step of filing a "statement of interest" in a lawsuit brought by the Massachusetts Attorney General related to one company's alleged mishandling of the federal Public Service Loan Forgiveness program in which DOJ urged a state trial court judge to side with the student loan company over that state's top law enforcement official. In late 2018, DOJ filed a second "statement of interest" in a federal trial court supporting affirmative litigation brought by a student loan industry trade

association, which opposed an effort by the District of Columbia to empower its banking department to oversee the practices at these firms. In both instances, the United States departed from its long-held position supporting federalism and states' historic police powers in the student loan market-- a position that spanned administrations of both parties-- to side with the student loan industry.

- a. Will you commit to restoring the past position of the DOJ and refraining from filing further actions opposing state consumer protection litigation in the student loan market?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

6. In recent years, Congressional investigations and leaked financial documents (i.e. Panama and Paradise Papers) have shown the extent to which the wealthiest citizens and corporations around the world—including the United States—use sophisticated financial strategies to avoid and evade taxes. Some of these moves are illegal, depriving the federal government of revenue and preventing the wealthiest from paying their fair share in the process.
 - a. Will you commit to making the full, fair, and consistent enforcement of tax laws a priority of the department during your tenure?

RESPONSE: I am generally aware that in the past several years the Tax Division has engaged in well-publicized and successful criminal and civil enforcement actions to combat offshore tax evasion. These efforts send the important message that violations of the tax laws will not be tolerated. If I am confirmed, I will work to support these efforts on behalf of the law-abiding taxpayers of this country.

7. Former White House Chief of Staff John Kelly recently stated that Attorney General Jeff Sessions “surprised” the Administration when he instituted a zero-tolerance policy that led to the family separation crisis on the border.
 - a. Can you commit to me that you will never support a policy that leads to mass family separation?

RESPONSE: President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

8. President Trump recently issued a Presidential Proclamation barring certain individuals from receiving asylum. This policy could result in deporting asylum seekers back to their

death. In addition to being needlessly cruel, this Proclamation is illegal under our laws and under international law. For this reason, a federal judge has already issued a temporary restraining order blocking it from going into effect. A federal appeals court upheld this temporary restraining order. I have previously written to President Trump demanding that he revoke this unlawful Proclamation rather than continuing to fight a losing battle in court. So far, he has not done so.

- a. INA § 208(a)(1) is clear on this question. It says that any individual who arrives in the United States, “*whether or not at a designated port of arrival,*” may apply for asylum. Can you please explain how President Trump’s Proclamation is legal?
- b. Will you commit to advising the president to rescind this proclamation?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

9. In 1990, you put forward an argument that Congress had very limited ability to control how the Executive spends congressionally appropriated funds. You stated – quote – “there may be an argument that if the president finds no appropriated funds within a given category to conduct activity, but there is a lot of money sitting somewhere else in another category — and both categories are within his constitutional purview — he may be able to use those funds.” In these remarks, you looked for a source of constitutional authority for Congress to control Executive spending, but you weren’t able to find one.
 - a. Do you believe that Congress has constitutional authority to limit or control the Executive’s spending?

RESPONSE: Answering this question in the abstract is difficult. As I stated during the hearing, I would need to examine the specific statute being invoked by Congress to determine whether Congress has the constitutional authority to impose the limits or controls that you mention. As I mentioned during the hearing, that law review article was intended to be a “thought piece” rather than advancing a position on a specific controversy.

- b. In your remarks in 1990, you asked a simple question regarding Congress’s appropriations power: “What is the source of the power to allocate only a set amount of money to the State Department and to restrict the money for that activity alone?” I would like you to answer your own question.

RESPONSE: The question to which you refer was merely a rhetorical question presented as part of a “thought piece,” and I have not recently studied the answer to that question in detail. I will note, however, that Congress’s power to appropriate funds comes from several sources, such as

the Appropriations Clause and the Taxing and Spending Clause. Congress also has authority to appropriate funds for the raising of armies. Whether and in what circumstances Congress may exercise these powers in a way that might interfere with the President's own Constitutional authority by enacting limits on how funds are to be used is a hypothetical question that I cannot answer in the abstract.

10. Late last year, I wrote to the Department of Justice regarding Amazon's use of most favored nation clauses in its contracts with third-party sellers on its site. I am deeply concerned that these hidden clauses are artificially raising prices on goods that millions of consumers buy every year. Amazon's most favored nation clauses prevent sellers operating on its site from selling their goods at lower rates on other online marketplaces. This means that third-party merchants who sell on online marketplaces with lower transaction fees cannot pass on these savings to consumers. Relatedly, e-commerce sites that want to compete with Amazon to attract sellers will have trouble doing so by charging third-party sellers lower fees, given that third-party sellers could not pass these savings on to consumers. As a result, most favored nation clauses can also act as a barrier to entry for competitors. Roughly, five years ago, UK and German antitrust regulators opened an investigation into Amazon's most favored nation clauses – and Amazon announced it would stop enforcing these most favored nation clauses in Europe. However, it continues to enforce them here in the United States.

- a. Do you agree that Amazon's use of most-favored nation clauses in its contracts with third party sellers on its site could raise competition concerns?

RESPONSE: I have not had the opportunity to study Amazon's use of most favored nation clauses and therefore have no opinion on the matter. If confirmed, I will discuss this issue with the Antitrust Division.

- b. Would you commit to investigating Amazon's use of most-favored nation clauses in its contracts with third-party sellers on its site?

RESPONSE: If confirmed, I will commit to discussing this issue with the Antitrust Division. As in all matters, we would look at the individualized facts of the situation and the applicable law to determine what the appropriate next steps might be.

11. Corporate consolidation does not only threaten consumers; it threatens workers. At a hearing last October, I asked Assistant Attorney General Delrahim to provide an example of the last time labor market considerations were cited as the basis for rejecting a merger. Mr. Delrahim has still not provided a single example.

- a. Do you believe that labor market considerations are relevant to merger review?

RESPONSE: Yes. As I understand, the Department is committed to protecting competition in labor markets as well as product markets. I further understand that the Antitrust Division has identified labor market concerns in past enforcement efforts, including its challenges to the Anthem/Cigna merger in 2016 and the Aetna/Prudential merger in 1999.

- b. Can you commit to me that in every merger where the Department of Justice makes a second request, it will include a request for data related to labor market considerations?

RESPONSE: If confirmed, I will look forward to discussing with the Antitrust Division the types of data it seeks when issuing second requests.

12. I am deeply concerned about the growth of non-compete clauses, which block employees from switching to another employer in the same sector for a certain period of time. These clauses weaken workers' bargaining power once they are in the job, because workers often cannot credibly threaten to leave if their employer refuses to give them a raise or imposes poor working conditions. According to the Economic Policy Institute, roughly 30 million workers – including one in six workers without a college degree – are now covered by non-compete clauses. Just this past December, President Trump's administration released a report indicating that non-compete clauses can be harmful in particular contexts, such as the healthcare industry.

- a. Do you believe that non-compete clauses pose a threat to American workers?

RESPONSE: Although I believe there can be legitimate uses of non-compete clauses, they potentially can raise concerns for American workers in certain circumstances.

- b. What action do you intend to take regarding non-compete clauses?

RESPONSE: If I am confirmed, I will look forward to discussing this issue with the Antitrust Division.

13. Last month, we learned that Facebook has been selling more of users' personal data than previously disclosed. For example, it allowed Netflix and Spotify to read Facebook users' private messages. It is unconscionable and unacceptable that a company is able to act with such disregard for the privacy rights of its users. One reason that Facebook is able to get away with it is that they hold such a powerful market position. This allows them to impose poor privacy conditions on their users.

There is growing evidence that Facebook is willing to go to extreme lengths to protect its market power. Recently, the UK Parliament released documents showing Facebook's

ruthless attempts to shut down competitors. In 2013, Facebook was concerned about competition from Vine. A Facebook executive asked Mark Zuckerberg whether he could target Vine by shutting off Vine users' ability to find their friends via Facebook. Mr. Zuckerberg's response: "Yup, go for it."

- a. Do you believe this sort of action could constitute anticompetitive conduct?

RESPONSE: I am generally aware of these reports, but I have not studied these allegations in detail. As I explained at my hearing, however, I am aware of concerns many have expressed regarding how technology platform companies have taken shape and whether those companies' practices may raise antitrust concerns. If confirmed, I look forward to learning more about these matters.

14. When Americans use Google to search for products, the top result should be the one that best answers users' queries – not the result that is most profitable to Google. But there is growing concern that this is not the case. Just over a year ago, the European Union concluded that Google has been manipulating search results to favor its own comparison shopping service. Now, the European Union is reportedly investigating whether Google is unfairly demoting local competitors in its search results.

- a. Do you believe that there is sufficient evidence for the Department of Justice to act?

RESPONSE: I am generally aware of these assertions, but I have not studied them or the underlying facts in detail. If confirmed, I look forward to discussing these important issues with the Antitrust Division.

15. In a 2017 article, you wrote, "through legislative action, litigation, or judicial interpretation, secularists continually seek to eliminate laws that reflect traditional moral norms." According to your piece, secularists were attempting to, "establish moral relativism as the new orthodoxy" and in the process producing an explosion of crime, drugs, and venereal disease.

As an example of this trend, you discuss laws that, "seek to ratify, or put on an equal plane, conduct that previously was considered immoral. For example, "laws are proposed that treat a cohabitating couple exactly as one would a married couple. Landlords cannot make the distinction, and must rent to the former just as they would to the latter."

The implications of your statement for same-sex couples are troubling. At that time you wrote those words, same-sex couples were not allowed to get married. So, if landlords at that time were allowed to discriminate against unmarried couples, they would have been allowed to refuse to rent to any same-sex couple, essentially forcing millions of Americans to choose between living where they want and living with the person they love.

- a. Do you believe landlords should be able to discriminate against unmarried couples?

- b. Do you believe landlords should be able to discriminate against gay and lesbian Americans?
- c. If landlords can discriminate based on moral condemnation of unmarried couples and gay people, could a landlord refuse to rent to a Jew because he has a moral objection to that faith? If landlords should be allowed to express their moral beliefs by discriminating against groups they consider morally repugnant, where does that stop?

Another example of this trend you highlighted was, “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student groups.” You argued that, “This kind of law dissolves any form of moral consensus in society.”

You argued that the law undermined a “moral consensus.” But D.C.’s law was passed by the city’s elected officials. My understanding is that it is broadly popular in the city, and I suspect it is broadly popular on Georgetown’s campus as well. If Georgetown were allowed to discriminate against LGBT organizations, it would be rejecting a moral consensus, not embracing one.

- d. In your view, is there a “moral consensus” against gay and lesbian student groups?
- e. What did you mean when you suggested that protections against discrimination “dissolve[] any form of moral consensus in society”?

RESPONSE: Respectfully, the above question mischaracterizes my views as expressed in the article in several respects. The quotes mentioned above are taken out of context. In addition, the article was written in 1995, not 2017, as your question suggests.

As I stated during my hearing, “We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. But we can only survive and thrive as Nation if we are mutually tolerant of each other’s differences – whether they be differences based on race, ethnicity, religion, sexual orientation, or political thinking. Each of us treasures our own freedom, but that freedom is most secure when we respect everyone else’s freedom.”

The above questions call for speculation, and I cannot speculate on hypothetical questions. If confirmed, I would faithfully enforce all laws that protect individuals against discrimination. As in all matters, if faced

with these issues at the Department, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining any position or policy.

16. One of the major achievements of the last century is the recognition that racial segregation is a great moral and legal wrong. The Supreme Court recognized this truth in one of its most esteemed decisions, *Brown v. Board of Education*. I would hope that, in 2019, the correctness of the *Brown* decision cannot be in dispute.

Yet here we are, two years into the Trump Administration and judicial nominee after judicial nominee has come before this committee firmly and repeatedly declining to say that they believe *Brown* was correctly decided. If confirmed as Attorney General, you will oversee the Office of Legal Policy. Part of your duties will be to advise the president on judicial nominations, so I ask you this:

- a. Do you believe *Brown v. Board of Education* was correctly decided?

RESPONSE: Yes.

- b. Will you commit to only recommending for nomination individuals who believe *Brown* was correctly decided?

RESPONSE: While I am not familiar with the current judicial-selection process, my understanding is that judicial candidates are not asked for their views on *Brown* or any other case.

17. The 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States.” President Trump claims that “the 14th Amendment is very questionable as to whether or not somebody can come over and have a baby and immediately that baby is a citizen.”

- a. Do you agree with President Trump?
- b. Can the president eliminate birthright citizenship by executive order?

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, and if the issue arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

18. In a 2001 interview with the Miller Center at the University of Virginia, you discussed how you prepared to advise President George H.W. Bush to deploy the army to address the Rodney King riots in Los Angeles. You said that, “basically the President has to issue a proclamation telling people to cease and desist and go to their homes. . . And then if they don’t cease and desist, you’re allowed to use regular army.” This seems like remarkably cavalier position on the use of the American military against the American people.

- a. As you know, President Trump has expressed a willingness and desire to invoke national emergency powers to build a wall on the southern border. Would you advise him to do so?

RESPONSE: The President's authority to declare a national emergency, and the authorities that are triggered by such a declaration, would depend upon the specific facts and circumstances at the time. I have not examined those facts and circumstances beyond what has been reported in the media, and, therefore, I am not in a position to comment on this matter.

- b. What factors would you consider before advising the president to declare a national emergency? What do you think constitutes a national emergency?

RESPONSE: Congress has authorized the President to declare a national emergency under the National Emergencies Act, and that declaration may trigger authorities under other statutes. The terms of those statutes, the precedents of prior Presidents, and the factual determinations by the appropriate agencies within the Executive Branch should all inform the President's decision. I have not examined the facts and circumstances pertaining to security on the southern border with this issue in mind, and therefore, I am not in a position to further comment on what would constitute a national emergency. If confirmed, I will ensure that the Department's advice on this subject is consistent with any applicable law, including the National Emergencies Act.

- c. In your opinion, what limits – if any – are there to the president's use of the military in domestic matters?

RESPONSE: The Constitution and applicable statutes set forth the terms under which it is appropriate for the President to use the military in domestic matters. If confirmed, I will ensure that the Department of Justice's advice is consistent with the Constitution and all other applicable law, including Title 10 of the U.S. Code and the Posse Comitatus Act.

19. Just months before the 1992 presidential election, several employees of the State Department — at the direction of the Assistant Secretary of State for Consular Affairs — searched a National Archives warehouse for then-candidate Bill Clinton's passport files. According to the State Department Inspector General, the search was conducted "in the hope of turning up damaging information about Clinton that would help President Bush's reelection campaign" — namely, "whether Clinton had ever written a letter at the time of the Vietnam War renouncing or considering renouncing his U.S. citizenship."

In a 2001 interview, you said you were still bitter about this investigation. Specifically, you said, "the career people in the public integrity section had some kind of wacky theory,

a very broad theory that if the search was done for a political reason, it was improper.” You went on to say that you believe that, “if an executive official has the power to open a file and look in a file, it’s not illegal that he may have a political motivation in doing so.”

- a. Do you stand by your statement?

- b. Is it your view that law enforcement is free to investigate people to gather political intelligence for a campaign?

RESPONSE: As a general matter, I believe that attempts to impose criminal liability on political officials (whether in the Executive branch or in Congress) for performance of official duties based solely on the officials’ subjective intent raises difficult legal questions and can potentially create dangerous precedents. Nevertheless, in 1992, I personally requested the appointment of an independent counsel in connection with the “Passportgate” matter – an investigation that ultimately determined that no charges should be brought. In my view, it would not be appropriate for law enforcement to investigate people in order to gather political intelligence for a campaign.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR HIRONO

1. At your hearing you both told Senator Graham that you don't believe Robert Mueller would be involved in a "witch hunt," and expressed to me that you had sympathy for Donald Trump's calling it that.

You said, "the President is one that . . . has denied that there was any collusion and has been steadfast in that. . . . But I think it is understandable that if someone felt they were falsely accused, they would view an investigation as something like a witch hunt, where someone like you or me who does not know the facts, you know, might not use that term."

If you don't believe that Mr. Mueller would conduct an unfounded investigation, and if you know about the numbers of indictments and guilty pleas entered so far, why would you express sympathy for the President's insulting characterization of the Special Counsel's work?

RESPONSE: Neither Members of Congress, the public, nor I know all of the facts. That is why I believe that it is important that the Special Counsel be allowed to complete his investigation.

As I testified at the hearing, President Trump has repeatedly denied that there was collusion. It is understandable that someone who felt like he or she was being falsely accused would describe an investigation into him or her as a "witch hunt."

If confirmed, I will ensure that the Special Counsel finishes his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence.

2. You mentioned that you had lunch with Deputy Attorney Rod Rosenstein and tried to sell him on your theory that a President can never obstruct justice if his actions are among those properly delegated to the Chief Executive, even if they have a corrupt intent. You described his reaction as "sphinx-like." Did you think that reaction was improper, given the fact that you were not a Department official and had no basis to be involved in the case? Are you implying he should have reacted more positively to you? Why?

RESPONSE: While your characterization of my position is not accurate, Deputy Attorney General Rosenstein's response was entirely proper and commendable.

3. To explain why you provided unsolicited input to narrow the scope of Special Counsel Mueller's investigation – efforts that you noted were resisted by Deputy Attorney General Rosenstein – you asserted that you also “weighed in repeatedly to complain about the idea of prosecuting Senator Menendez” when your “friend . . . was his defense counsel.”
 - a. Do you think it is proper for non-Department of Justice (DOJ) officials, including former Attorneys General, to weigh in to seek to influence law enforcement decisions, particularly when such decisions have a personal benefit?

RESPONSE: Yes. Whether the former official is paid or unpaid—and I was not paid in either of these instances—it can be appropriate and is not unusual for former Department officials to provide their views to current Department officials on pending matters through a variety of means, including personal conversations, legal memoranda, editorial articles, white papers, and law review articles.

- b. Should you be confirmed, how will you respond when others give you unsolicited input or seek to influence Special Counsel Mueller's investigation?

RESPONSE: I will consider the views raised and proceed in an appropriate manner.

4. In the 19-page unsolicited memo addressed to Justice Department officials that you distributed to Donald Trump's private and White House Attorneys, you argued that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” and that “[i]t is inconceivable to me that the Department could accept Mueller's interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President.” Despite making such strong and unequivocal assertions, you claimed you did not know many facts about Special Counsel Mueller's investigation.

You testified at your hearing that you “do not recall getting any confidential information about the investigation.” Please review your emails, notes, and any other relevant materials. Having reviewed those materials, did you receive any confidential information about Special Counsel Mueller's investigation? Do you recall getting any information whatsoever about the investigation from anyone? If you did, who gave it to you?

RESPONSE: I based my memo on information available to the public at the time through news media reports. To the best of my recollection, I did not receive any non-public or confidential information regarding the Special Counsel's investigation.

5. At your hearing, you mentioned two meetings you had with Donald Trump.
 - a. Are those two meetings that you mentioned at the hearing the only times you have met with Donald Trump? If not, when else have you met with him? Where?
 - b. Have you had any telephone conversations with Donald Trump? If so, where? When?
 - c. Please tell us the details of all of your meetings and telephone calls with the President, including the following:
 - Where were the meetings?
 - Who was present for the meetings and the phone calls?
 - How long did each meeting or phone call last?
 - What was discussed?
 - What promises, if any, did the President ask you to make?
 - Did the President ask for your loyalty?
 - Did he make any threats?
 - Do you have any notes from any of the meetings or phone calls?
 - Did anyone else in the meetings or on the phone calls take notes?

RESPONSE: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me

to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the investigation, and he has not asked me about what I would do about anything in the investigation.

The President has never sought any assurances, promises, or commitments from me of any kind, either express or implied, and I have not given him any, other than that I would run the Department of Justice with professionalism and integrity. The President has never asked for my "loyalty," nor has he made any "threats" to me.

6. The former head of the Office of Government Ethics, Walter Shaub, believes you were wrong in your testimony about government ethics rules. You testified that you would seek the opinion of ethics officials about whether or not you should recuse yourself from the Special Counsel's investigation, but that you would not necessarily follow it. You reserved the right to ignore their advice and decide for yourself. Mr. Shaub points to 5 C.F.R. 2635.502(c), which requires you to follow the guidance of your designated agency ethics official. Is Mr. Shaub correct? If not, why not?

RESPONSE No. Under the governing regulations, the Attorney General, as the head of an agency, makes the final decision on whether to recuse under 5 C.F.R. § 2635.502. See 5 C.F.R. § 2635.102 ("Any provision [of this part] that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official."). In addition, Mr. Shaub is citing a regulation, 5 C.F.R. § 2635.502(c), which applies only to appearance problems arising from a financial interest or a covered relationship. When other circumstances may raise a question regarding an employee's impartiality, the employee follows the procedures of section 2635.502, but the ultimate recusal decision is left to the employee himself. See 5 C.F.R. § 2635.502(a)(2).

7. In light of 5 C.F.R. 2635.502(c), will you commit to following the opinion of career ethics officials on whether or not you should recuse yourself from the Special Counsel's investigation?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

8. You testified at your hearing that you think former FBI Director James Comey "is an

extremely gifted man who has served the country with distinction in many roles,” although you disagreed with some actions he took in the investigation of Hillary Clinton’s emails. What do you think about the President’s insults of Mr. Comey? The President has referred to the former FBI Director as “Leakin’ James Comey,” called him a liar multiple times, a “bad guy,” a “slime ball,” “slippery,” and “shady.”

RESPONSE: As I stated during my hearing before the Committee, I agreed with the conclusions in Deputy Attorney General Rosenstein’s memorandum regarding former FBI Director Comey’s handling of the Clinton email investigation. As a general matter, I do not believe that it is the role of the Attorney General to comment on, criticize, or censor the President’s public statements.

9. At your hearing, you testified to Senator Cornyn that you “completely agree with” the memo Rod Rosenstein wrote justifying former FBI Director James Comey’s firing.

But do you believe Donald Trump really fired James Comey because he was too harsh on Hillary Clinton, or because he didn’t follow Department of Justice guidelines? Do you discount the other explanations Donald Trump has given – specifically, that he told Lester Holt of NBC on air that he fired Mr. Comey because of “this Russia thing;” and that he told the Russian Ambassador and Russian Foreign Minister in the Oval Office that he fired Mr. Comey, referring to the former FBI Director as “crazy, a real nut job,” and saying, “I faced great pressure because of Russia. That’s taken off.”?

RESPONSE: I do not know whether the President’s decision to remove former FBI Director Comey is an aspect of the Special Counsel’s ongoing investigation. If confirmed, it is possible that I will be supervising that investigation as Attorney General under applicable regulations. Accordingly, as a nominee, it would not be appropriate for me to answer your question.

10. You told Sen. Feinstein at your hearing that you would “[a]bsolutely” commit “to ensuring that Special Counsel Mueller is not terminated without good cause consistent with Department regulations.”

Would the President’s displeasure with a lawful action by Special Counsel Mueller taken in accordance with Justice Department regulations constitute good cause?

RESPONSE: No.

11. You told Senator Durbin at your hearing that there is nothing wrong with an Attorney General taking a policy position that happened to have a political benefit to it. But do you agree that an Attorney General should not formulate policies just BECAUSE they are politically advantageous?

RESPONSE: Yes.

12. At your hearing, you told Senator Whitehouse that with respect to finding out the sources of payments to Acting Attorney General Whitaker, “my first consideration always is where do you – where do you draw the line, and also what are the implications for other kinds of entities because, you know, there are membership groups and First Amendment interests” Why is that your FIRST consideration? What about transparency and confidence in the system? Shouldn’t they be your first considerations in addressing conflicts of interest by the nation’s top law enforcement official?

RESPONSE: The public’s interest in “transparency and confidence in the system” are important considerations when considering conflict-of-interest issues, as are American’s constitutional rights, including those guaranteed by the First Amendment.

13. I asked you at your hearing whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment. You said you had not looked at the issue and that you would ask the Justice Department’s Office of Legal Counsel to advise you on “whether it is something that is appropriate for legislation.”

In 1995, Walter Dellinger, then-Assistant Attorney General for the Office of Legal Counsel testified in the House Judiciary Subcommittees on Immigration and Claims and on the Constitution that to change birthright citizenship the Constitution would have to be amended. See <https://www.justice.gov/file/20136/download>.

Now that you have had a chance to look at the Constitution, and read Mr. Dellinger’s testimony, do you believe that birthright citizenship is guaranteed by the 14th Amendment?

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, and if the issue arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

14. When you were Attorney General for President George H.W. Bush, you recommended that he pardon people implicated in the Iran-Contra scandal. You told the Miller Center about it, saying, “I went over and told the President I thought he should not only pardon Caspar Weinberger, but while he was at it, he should pardon about five others. I favored the broadest — There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’ Elliot[t] Abrams was one I felt had been very unjustly treated.”

President Bush issued the pardons you recommended, and they were widely viewed as having the effect of protecting the President and others from having to testify in any related cases. At the time the pardons were issued, Independent Counsel Lawrence Walsh, criticized them, and said, "The Iran-Contra cover-up, which has continued for more than six years, has now been completed."

- a. Why did you recommend the Iran-Contra pardons?

RESPONSE: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by "honor, decency, and fairness." Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

- b. If confirmed, will you recommend that Donald Trump pardon any of the people who have already been convicted or have pleaded guilty under Special Counsel Robert Mueller's investigation or in related cases?

RESPONSE: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. If confirmed, I would advise the President to carefully consider these and other appropriate factors in exercising his pardon power.

- c. Would you agree that pardoning anyone who is subject to a current indictment or will be subject to a future indictment by the Special Counsel could be seen as undermining the Special Counsel's investigation and an abuse of the President's pardon power?

RESPONSE: To my knowledge, the President has not pardoned anyone subject to a current or future indictment in connection with the Special Counsel's investigation. As the nominee for Attorney General, I do not believe that I should address hypotheticals that may relate to the ongoing investigation.

- d. Do you believe it is proper for the President to use his pardon power to pardon his family members or any associates, businesses, foundations, campaigns, or organizations in which he has a personal interest?

RESPONSE: The President has an obligation to take care that the laws be faithfully executed and to exercise his authority in the best interests of the country.

Please also see my answer to Question 14(b) above.

- e. Will you recommend Donald Trump pardon any of the people convicted, indicted, or under investigation by Special Counsel Robert Mueller or any of the related cases in other districts that relate to President Trump’s business, foundation, campaign, inauguration, administration, family, or associates?

RESPONSE: I am not familiar with the facts and circumstances of the cases of those who have been convicted in connection with those investigations apart from media reports. I am not in a position to speculate about how I might advise the President in such circumstances.

15. At your hearing, you stated, “I will vigorously enforce the Voting Rights Act.” The Trump administration has not brought a single lawsuit to enforce the Voting Rights Act. Moreover, the administration has actually withdrawn the Justice Department’s claim against a Texas voter ID law that a federal district court judge found was enacted with discriminatory intent and reversed its position in a case by defending Ohio’s voter purge efforts that Justice Sotomayor recognized “disproportionately affected minority, low-income, disabled, and veteran voters.” In fact, career attorneys in the Civil Rights Division did not sign the amicus brief defending the voter purge efforts as they did the prior brief.

- a. Since you agreed that you would “vigorously enforce the Voting Rights Act,” should you be confirmed, will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

- b. Similarly, if confirmed, will you commit to investigating, evaluating, and reviewing those states and jurisdictions—including any that were formerly covered under the Voting Rights Act’s preclearance system—that have passed voting laws that tend to hinder voter turnout to determine if they are, in fact, discriminatory, and to bring Section 2 claims under the Voting Rights Act for any that are found to have a discriminatory impact or purpose?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

- c. Should you be confirmed, will you commit to working with Congress to support a fix to Section 5 of the Voting Rights Act, which was nullified by the Supreme Court in *Shelby County v. Holder*?

RESPONSE: If confirmed, I will be pleased to work with Congress regarding legislation that supports the Department's mission and priorities.

- d. If confirmed, will you commit to reviewing the decisions by the Justice Department to switch positions in the following two cases to determine whether customary processes for changing the government's position in a case were followed and what, if any, improper influences impacted those decisions? The two cases are: (1) *Veasey v. Abbott*, where the Department withdrew its claim that a Texas voter ID law was enacted with a discriminatory intent, despite a finding of discriminatory intent by a federal district court, and (2) *Husted v. A. Philip Randolph Institute*, where the Department reversed its position by defending Ohio's voter purge efforts under the National Voter Registration Act, even though Justice Sotomayor recognized such efforts "disproportionately affected minority, low-income, disabled, and veteran voters."

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. I understand from publicly available information that *Veasey v. Abbott* did not involve a change in legal position by the Department. Rather, it involved a change in law by the Texas Legislature. In particular, in 2017 the Texas Legislature amended the challenged voter ID law to largely incorporate the interim remedy that the federal courts had put in place for the 2016 election. In its most recent decision in this case in 2018, the Fifth Circuit agreed with the Department that this amendment was sufficient to remedy the alleged defects in the original law.

I also understand from publicly available information that the Supreme Court upheld the Department's position in *Husted v. A. Philip Randolph Institute*.

16. After the Supreme Court's decision in *Shelby County v. Holder*, many states passed voting restriction laws based on claims of going after voter fraud. But a 2014 study found a total of 31 credible allegations of voter fraud between 2000 and 2014 out of more than 1 billion votes cast.
- a. Are you aware of any credible study that confirms that there was massive voter fraud, not election fraud, in either the 2016 or 2018 election?
 - b. Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?

RESPONSE: I have not studied this issue and therefore have no basis to reach a conclusion on it.

17. In a 2017 report entitled *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that “its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement’s mandates.” But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions’s memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.

- a. Do you agree with the Civil Rights Division’s report that based on its experience, “court-enforceable consent decrees are most effective” in accomplishing complex institutional reforms in a transparent way that ensures accountability?

RESPONSE: I am not familiar with this study and, beyond what I have seen reported in the media, have no knowledge of the facts and circumstances surrounding these issues. As a result, I am not in a position to comment on this matter.

- b. Despite the Civil Rights Division’s finding regarding the historical effectiveness of consent decrees, Mr. Sessions’s memo warns that “the Department should exercise special caution before entering into a consent decree with a state or local governmental entity.” Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you now agree that that Mr. Sessions’s memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.

RESPONSE: Please see my response to Question 18(a) above.

- c. At your hearing, you recognized that “the Department has a role in pattern and practice violations.” Please specify what role you believe the Civil Rights Division should play in pattern or practice violations.

RESPONSE: In its discharge of its legal obligations, the Department should investigate all allegations that fall within the Department’s jurisdiction. If confirmed, I would work vigorously to uphold and enforce the federal laws within the Civil Rights Division’s jurisdiction.

18. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to

improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department's Civil Rights Division Vanita Gupta criticized this decision, saying "[e]nding programs that help build trust between police and the communities they serve will only hurt public safety."

Under the Collaborative Reform Initiative for Technical Assistance program, local police departments involved in controversial incidents, such as police-involved shootings, would ask the COPS Office to investigate and issue public reports with recommendations.

- a. If confirmed, will you reinstate this program?
- b. If confirmed, what steps will you take to support and promote community-oriented policing?

RESPONSE: As I am not currently at the Department, I am not familiar with the details of this particular program. If confirmed, I look forward to learning more about this issue. It is my understanding that the COPS Office and its program efforts continue to promote police and community engagement promoting responsibility and accountability. Working with law enforcement agencies to promote effective crime fighting, combined with a strong community engagement partnership, is a promising approach and creates mutual benefits for the law enforcement agencies and the communities being served.

19. The Washington Post published an article on January 3, 2019 that reported that a "recent internal Justice Department memo directed senior civil rights officials to examine how decades-old 'disparate impact' regulations might be changed or removed in their areas of expertise, and what the impact might be." In 2015, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, affirmed that the Fair Housing Act protects against discrimination based on a disparate impact.
 - a. Do you believe that there are actions that can have a discriminatory impact regardless of intent? If so, how do you propose such actions should be addressed or remedied?
 - b. Do you believe that a valid way to demonstrate discrimination is through a disparate impact analysis?
 - c. If you are confirmed, will you continue this reported DOJ effort to change or remove disparate impact regulations related to enforcing civil rights laws?

RESPONSE: As I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this specific matter. I note that Congress has enacted statutes that expressly impose disparate-impact liability, and the Supreme Court has recognized that other statutes also

impose disparate-impact liability. The Department is charged with enforcing all of the laws that Congress has enacted where warranted by the facts, the law, and Department policies and priorities. As with all matters, any decision to pursue an enforcement action based upon disparate-impact liability will be based upon a thorough analysis of the law, the facts, and Department policies and priorities.

20. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard's diversity admissions policies. When you worked for the Reagan administration you co-wrote a memo arguing that you "want[ed] a color blind society" and did not "embrace the kind of social engineering that calls for quotas, preferential hiring and the other approaches that do nothing but aim discrimination at other racial groups."
- a. Is it your view that policies that promote diversity are the same as discrimination against other racial groups?
 - b. If confirmed, will you commit to not intervening in the Harvard lawsuit or others like it?

RESPONSE: In my written testimony to the Committee, I emphasized the benefits of a diverse society. Specifically, I stated: "We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity." I do not believe that policies that promote diversity must necessarily result in discrimination against other groups. It is my understanding that the lawsuit referenced in your question is currently pending, and that the Department of Justice has filed a statement of interest. In light of this, it would not be appropriate for me to comment further.

21. The Justice Department includes the Office on Violence Against Women (OVW), which currently administers 25 grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation. VAWA protects and provides services to survivors of dating violence, domestic violence, sexual violence, and stalking – four issues that impact people of all genders and sexual orientations. The law also prohibits discrimination on the "basis of actual or perceived race, color, religion, national origin, sex, gender identity..., sexual orientation, or disability."
- a. Do you believe that VAWA's protections should be extended to LGBTQ survivors of violence more fully than the current level?

RESPONSE: I have not studied this issue, however, it is my understanding that the grant programs administered by the Office on Violence Against Women (OVW) improve responses to sexual assault, domestic violence, dating violence, and stalking against all victims, including providing services for all victims. The 2013

reauthorization of VAWA, in addition to enacting the nondiscrimination provision, expanded VAWA's definition of underserved populations to include populations who face barriers in accessing services because of sexual orientation and gender identity. If confirmed, I look forward to learning more about this issue and the needs of victims and the work of the Department.

- b. Should you be confirmed, how will you ensure that LGBTQ survivors of violence are included and represented in the services of OVW?

RESPONSE: If I am confirmed, I will enforce all federal laws, including the 2013 reauthorization of VAWA. Although I am not currently at the Department, it is my understanding that programs funded by OVW have always served all victims, and VAWA contains provisions specifically addressing the provision of services to victims underserved because of sexual orientation and gender identity. If I am confirmed, I will ensure that VAWA programs, and the funds made available for them by Congress, are employed in the most effective manner possible in furtherance of their stated missions.

22. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims.

If you are confirmed, what steps would you take to support access for vulnerable victims to VAWA's protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

RESPONSE: It is my understanding that the Department of Homeland Security is responsible for implementing VAWA's immigration protections for victims. However, the Department's Office on Violence Against Women (OVW) administers VAWA's grant programs, which include a number of provisions designed to ensure that services reach non-citizen victims of domestic violence, sexual assault, dating violence, and stalking. If I am confirmed, I will enforce all federal laws, including VAWA, and work to ensure that VAWA programs are implemented in the most effective manner possible in furtherance of their stated missions.

23. Native Americans experience higher rates of domestic violence and sexual assault. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes.

Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Natives, and American Indian survivors of domestic violence and sexual assault?

RESPONSE: If I am confirmed, I will continue to support the Office on Violence Against Women's (OVW) priority of addressing the needs of American Indian, Alaska Native, and Native Hawaiian victims. It is my understanding that OVW administers multiple grant programs to help ensure that Native Hawaiian, Alaska Native, and American Indian victims of these crimes receive needed services and that offenders are held accountable. I look forward to learning more about this important work.

24. When you left the Reagan Administration's Domestic Policy Council, you talked derisively about women's issues, calling feminist agenda items "pernicious" and saying, "I think the whole label women's issues is a crock."
- a. Do you still believe issues of equality for women in the workplace and elsewhere are a "crock"?
 - b. Do you believe women are discriminated against?
 - c. What is your view of the "Me Too" movement?
 - d. What do you think the role of the Justice Department should be in ensuring equality for women, and ensuring harassment-free workplaces and industries?

RESPONSE: As the father of three daughters, all of whom are practicing attorneys, I have always believed strongly in the issue of equality for women in the workplace and elsewhere. It is an unfortunate fact that women historically have been discriminated against in a number of areas, including the workplace. Although we have made great strides as a society over the years, work remains to be done, as the "Me Too" movement and others have dramatically demonstrated. If confirmed, I will continue the Department of Justice's important work enforcing the federal civil rights laws, including with respect to sex-based discrimination.

25. At your hearing, Sen. Blumenthal asked you if you would defend *Roe v. Wade* if it were challenged. You responded, without answering his question, stating: "Would I defend *Roe v. Wade*? I mean, usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that." You testified in 1992 that you believed the Supreme Court's decision in *Planned Parenthood v. Casey* "didn't go far enough" in allowing restrictions on abortions and that "*Roe v. Wade* should be overruled." Currently there are efforts to effectively gut *Roe* by narrowing it. For example, in last March, Mississippi enacted one of the most restrictive abortion laws in the country – a ban on abortions after 15 weeks. In striking down the law, the federal judge observed: "The State chose to pass a law it knew was unconstitutional to endorse a decades-long campaign, fueled by national interest groups, to ask the Supreme Court to overturn *Roe v.*

Wade.”

Should you be confirmed, if a case came before the Supreme Court or a lower court that presented the possibility of narrowing *Roe v. Wade*, would you have the Solicitor General or a DOJ component weigh in and argue for narrowing the scope of *Roe*, even if the case did not involve a federal statute or program?

RESPONSE: As I stated at the hearing, I would respond to any such case by consulting with the Solicitor General and other relevant members of the Executive Branch to determine our position based on the facts of the case, the governing law, and the federal government’s interests.

26. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the United States. It has integrated people with disabilities into American life in ways they had not been before.

Last Congress, the House of Representatives passed H.R. 620, the “ADA Education and Reform Act of 2017,” which would remove most incentives for businesses to accommodate people with disabilities, and reward businesses for ignoring their responsibilities under the law. It was opposed by disability rights groups, and seen as a giant step backward for the country.

- a. Do you support these restrictions on the ADA’s protections?

RESPONSE: I am not familiar with the details of that legislation. If confirmed, I can commit to working with Congress regarding legislation that supports the Department’s mission and priorities.

- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?

RESPONSE: If confirmed, I will enforce vigorously all federal civil rights laws enacted by Congress, including the ADA.

- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?

RESPONSE: Please see my response to Question 26(b) above.

27. You criticized former Acting Attorney General Sally Yates for refusing to defend Donald Trump’s Muslim Ban because she did not think it was constitutional. But at your 1991 confirmation hearing, you told Senator Paul Simon that you would do the same. He asked you, “...would you automatically defend [a statute] even if you believe it is unconstitutional?” You responded, “No. In fact, I have told agencies I wouldn’t defend regulations, not only if they raise constitutional questions, but if I don’t think the regulation

is consistent with Congress' intent. If the statute requires a certain action and if a regulation in my view is not consistent with the statute, then there is a legal problem with it."

Why did you criticize Sally Yates for doing what you told Senator Simon you would do?

RESPONSE: Your question compares commentary addressing two very different scenarios. As I explained in my op-ed, acting Attorney General Yates refused to defend an executive order signed by the President. If one or more of the political branches, such as the president or Congress, take an action that is reasonably defensible under the law, such as by issuing an executive order or passing a statute, then I believe that action is entitled to considerable weight and that the Department of Justice generally has an obligation to defend it in good faith. A different situation is presented by a regulation that is inconsistent with an underlying statute. In such a scenario, a federal agency arguably has taken an action that is inconsistent with the will of two political branches – both the president and Congress – as expressed in a statute. As I explained to Senator Simon, on those facts, the Department of Justice may be justified in refusing to defend the regulation based on that inconsistency.

28. More than a year after the 2016 election, you told the New York Times, "I have long believed that the predicate for investigating the uranium deal, as well as the foundation, is far stronger than any basis for investigating so-called 'collusion.'" Both Senator Leahy and Senator Blumenthal asked you about this at your hearing, but I found your answers unclear.
- a. Can you explain clearly and succinctly exactly what you believed the predicate for investigating the "uranium deal" and the Clinton Foundation were?
 - b. What evidence did you have to support your contention?
 - c. Where did you get that evidence?
 - d. What evidence supporting an investigation into the Trump campaign's possible collusion with Russia were you comparing it to?
 - e. What was your standard for comparison?
 - f. Now that you're aware of all of the evidence of contacts and cooperation between Russian officials (many in Russian intelligence) and high-ranking officials of the Trump campaign (Paul Manafort, Jared Kushner, Donald Trump, Jr., and Rick Gates, to name a few), has your assessment of the strength of the predicate for investigating possible conspiracy changed?

RESPONSE: My November 2017 comments to the New York Times were based on

media reporting regarding the Uranium One case and the Special Counsel's investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. Politics should never be part of the analysis of whether to launch a particular criminal investigation or prosecution. I am not aware of the extent to which the Uranium One case has been pursued by the Department of Justice, but as I noted during my hearing, it is my understanding from public reporting that U.S. Attorney John Huber may be looking into the matter.

As I stated during my hearing, I believe that it is in the best interest of everyone, the president, Congress, and the American people, that the investigation into Russian attempts to interfere in the 2016 election be resolved by allowing the Special Counsel to complete his work.

29. At your hearing, you promised Senator Graham you would "look in to see what happened in 2016."
- a. What exactly have you agreed to investigate?
 - b. How will it be different from any existing investigations into what the FBI was investigating related to the 2016 elections?
 - c. How will it be different from the DOJ Inspector General's investigation into "Various Actions by the Federal Bureau of Investigation and the Department of Justice in Advance of the 2016 Election," on which a report was issued in June 2018?

RESPONSE: I did not commit to conduct any investigations; I promised only to look into issues of concern to the Chairman and noted that an investigation may be underway right now.

In the hearing, Chairman Graham raised the issue of numerous inappropriate text messages exchanged by two FBI employees that appear to document personal or political bias for Secretary Clinton and prejudice against President Trump. Chairman Graham also spoke to the FBI's potential use of the Steele-authored "dossier" as a basis to obtain a Foreign Intelligence Surveillance Act (FISA) warrant from the FISA Court. FBI investigations must be based on the law and the facts, and should be conducted without regard to political favoritism. If confirmed, I will seek to better understand what internal reviews of these and related matters were undertaken, including any investigations conducted by the Inspector General, United States Attorney John Huber, and the Department's ethics and professional responsibility offices.

30. You also agreed at your hearing to look into a FISA warrant issued in relation to an investigation into Carter Page.
- a. What exactly have you agreed to investigate?
 - b. What evidence do you have to doubt the integrity of a decision made by the Foreign Intelligence Surveillance Court (FISC)?
 - c. Do you think it is wise to launch a politically-motivated investigation into decisions by the FISC?

RESPONSE: Please see my response to Question 29 above.

31. If Donald Trump declares a national emergency based on the crisis he has manufactured at the southern U.S. border, will you defend it, should you be confirmed?

RESPONSE: The legality of any hypothetical declaration of national emergency would depend on the specific facts and circumstances at the time. I have no knowledge of whether a national emergency will be declared nor of the facts and circumstances relevant to such a declaration beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter.

32. When I asked you at your hearing whether you agreed with former Attorney General Sessions's zero-tolerance policy that resulted in the separation of children from their parents, you replied that you "would have to see what the basis was for those decisions" to determine whether you agreed with the policy and would continue them if you were confirmed.

You then implied that family separations were no longer a problem because the Department of Homeland Security was currently not referring migrant families for prosecution and therefore, the Justice Department's policy of prosecuting all referrals for illegal entry under its zero-tolerance policy would not result in separating families.

- a. What more information do you need to know about the zero-tolerance policy that resulted in the separation of more than 2,000 children from their parents in order to determine whether you agree with that policy and whether you would continue it, if confirmed?

RESPONSE: As a private citizen, my knowledge of the Zero Tolerance Initiative is based on what is publicly available and what has been reported by news media.

Prior to making any judgment on the policy, I would need to review relevant statistics and data and understand other relevant factors and considerations, as well as review any developments in immigration law. I also note that President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

- b. If the Department of Homeland Security changed course again and referred families for prosecution of illegal entry, would you continue the zero tolerance policy, knowing that it would result in children being separated from their parents?

RESPONSE: President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry. If confirmed, I will evaluate this policy and other directives to determine how best to continue enforcement of the United States' immigration laws while balancing the Department's other priorities and resources.

- c. Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources? If yes, will you agree to provide the Senate Judiciary Committee a review of the impact of this policy on federal prosecutions across the Justice Department within 120 days, should you be confirmed?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units, but my understanding is that the Department of Homeland Security makes the decision as to whom they apprehend, whom they refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry. If confirmed, I will evaluate this policy and other directives to determine how best to continue enforcement of the United States' immigration laws while balancing the Department's other priorities and resources.

- d. If confirmed, will you continue to implement former Attorney General Sessions's April 11, 2017 memo that directs federal prosecutors to highly prioritize the enforcement of immigration laws?

RESPONSE: The Administration has deemed enforcement of immigration-related offenses a priority. If confirmed, I will evaluate this memo and other directives to determine how best to prioritize immigration enforcement while balancing the Department's other

priorities and resources.

33. Former Attorney General Sessions took the unusual action of intervening in an individual asylum application and deciding the case himself as a way of making policy. Mr. Sessions used the case *Matter of A-B* to overturn legal precedent and longstanding policies by significantly restricting the ability of victims of domestic violence and gang violence to obtain asylum relief. A court eventually struck down many of these new policies and ordered the government to bring prior claimants back to the United States who have already been deported so they can pursue their asylum claims.

- a. Should you be confirmed, will you comply with these court orders in a prompt manner?

RESPONSE: Because this issue is in active litigation, it would not be appropriate for me to comment on it specifically. But the Department of course complies with court orders and will continue to do so if I am confirmed.

- b. Do you think it is appropriate for an attorney general to intervene in immigration cases in order to set policies that narrow asylum protections that immigration judges have recognized were established by Congress?

RESPONSE: Pursuant to 8 C.F.R. § 1003.1(h)(1)(i) (2018), the Attorney General may direct the Board of Immigration Appeals to refer cases to him or her for review of its decisions. Attorneys General of both parties have exercised this authority for decades. Regarding any specific referred cases, it is my understanding that these issues are the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on those matters.

34. As you know, U.S. Immigration Courts operate as a component of the Department of Justice, which creates the possibility that Immigration Judges can be subjected to inappropriate political pressure. Moreover, former Attorney General Jeff Sessions decided to effectively subject Immigration Judges to quotas, which may make it difficult for these judges to review each case fully and fairly.

What is your view of how Immigration Judges ought to be categorized and treated?

RESPONSE: The Immigration and Nationality Act provides that an “immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.” Beyond that, I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I am committed to ensuring that immigration judges are supervised appropriately to ensure effective and efficient processing of immigration cases consistent with due process and other

applicable law.

35. When Sen. Ernst asked you at your hearing about legislation that requires Immigration and Customs Enforcement to detain an undocumented person who is charged with a crime resulting in death or serious injury, you stated that it “sounds like a very commonsensical bill” and “something that [you] would certainly be inclined to support.”
- a. When Donald Trump began separating families at the border he created hundreds of Unaccompanied Alien Children (UAC). These children, including infants, who did not speak English, were expected to represent themselves in court. Last year, I introduced, together with Senator Feinstein, the Fair Day in Court for Kids Act. It would require that legal counsel be provided for every Unaccompanied Alien Child. Studies show that when unaccompanied minors are represented by a lawyer, they are consistently more likely to show up for immigration court – in fact, a 2014 study found that 92.5% of children with counsel attended immigration proceedings. Do you agree that providing children with legal counsel so that a child does not have to appear before a judge alone is commonsensical? Is that something that you would be inclined to support?

RESPONSE: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- b. Last year I introduced the Immigration Courts Improvement Act, which was endorsed by the National Association of Immigration Judges. The bill would eliminate the use of numerical completion goals as a measurement of how judges are doing their job and would insulate them from the Attorney General’s control, treating them like independent decisionmakers rather than as DOJ attorneys. Do you agree that allowing Immigration Judges to act as independent decisionmakers and insulating them from inappropriate political pressure is commonsensical? Is that something that you would be inclined to support?

RESPONSE: By regulation, immigration judges exercise “independent judgment and discretion.” Additionally, by regulation, they are required to resolve cases in a “timely and impartial manner.” I am not familiar with the details of the legislation discussed above. If confirmed, I can commit to working with the Committee regarding legislation that supports the Department’s mission and

priorities.

36. In February 2018, the New York Times reported that former Attorney General Sessions had effectively shut down the Justice Department's Office for Access to Justice, even though he cannot officially close the office without notifying Congress. The purpose of that office is to promote fairness in the justice system and increase access to legal resources for indigent litigants.

- a. If confirmed, what steps will you take to ensure that the justice system is fair for all Americans, regardless of whether they are poor or rich and regardless of their racial or ethnic background?

RESPONSE: At my hearing, I committed to pursuing a justice system that is fair to all Americans. As I stated, it is the Attorney General's responsibility to enforce the law evenhandedly and with integrity. If confirmed, I will take whatever steps are available to me to ensure that our nation's laws are enforced fairly and impartially and that all Americans are treated equally under the law, without regard for economic status or racial or ethnic background.

- b. Will you commit to reinstating the Office for Access to Justice by reallocating resources to this office?

RESPONSE: The Office for Access to Justice did not exist when I was last at the Department. I believe its mission to help the justice system deliver outcomes that are fair and accessible to all is important, and I can commit that, if confirmed, I will ensure that this mission is continued.

37. In 2006, you wrote a letter to the Speaker of the House of the Massachusetts legislature to urge increased funding for the Massachusetts Legal Assistance Corporation. Donald Trump has submitted two budgets in a row proposing to defund the Legal Services Corporation. Do you agree with the President's proposal to defund the Legal Services Corporation?

RESPONSE: I understand the work of the Legal Services Corporation (LSC) and the role that they have played within the legal framework of the country. While LSC is not part of the Department's Budget, and I am not familiar with their current budget request, if confirmed, I look forward to working with Congress and the Administration on resource allocations, needs, and funding proposals.

38. The Department of Justice and its Office of Juvenile Justice and Delinquency Prevention enforce the Juvenile Justice and Delinquency Prevention Act that was passed in December 2018. The law bans states from holding children in adult jails even if they have been charged with adult crimes.

Is it still your view that chronic or serious juvenile offenders should be treated like an adult and tracked through the traditional criminal justice system? If so, if confirmed,

how would you implement the Juvenile Justice and Delinquency Prevention Act?

RESPONSE: If confirmed, I would ensure that the Juvenile Justice Reform Act of 2018 is effectively and appropriately implemented according to its terms. As I have said throughout my career, early intervention—which includes mentorship, research-based programs, and capacity-building of mentor organizations and sponsors—is critical to keeping juveniles on the right path, and the Department supports critical work in this area. But those who break the law – especially those who commit serious violent crimes – must be held accountable as provided by law.

39. In a report you issued as Attorney General laying out 24 recommendations to combat violent crime, you called it a “flawed notion[]” that “success in reforming inmates can be measured by their behavior in prison.” Is it still your view? Do you disagree with the approach taken by the First Step Act to expand the use of “good time” credits?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. My comments as Attorney General reflected that context. I believe “good time” credits are helpful in ensuring appropriate behavior in prison. Regardless, if confirmed, I would faithfully enforce and implement the FIRST STEP Act and the procedures by which offenders might be eligible for earned good time credits.

40. The Tax Cuts and Jobs Act eliminated the income tax deduction for moving expenses for most people. Accordingly, reimbursements for moving expenses received by federal employees, such as FBI Special Agents who are required to relocate in connection with their service, are now considered income subject to taxation by the IRS. This can result in extra withholding and higher tax liability for government employees.

While the General Services Administration has taken action to give clear authorization for agencies to use the Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) to reimburse most federal employees for their extra tax liability, we are still hearing questions from Justice Department employees about whether the Department is doing everything in its power to offset the increased tax liability being faced by employees.

Given that many Justice Department employees are required to relocate in connection with their work, will you commit to using the WTA and RITA, and taking any other actions within your power, to provide timely reimbursements for employees who face increased tax liability as a result of reimbursed moving expenses?

RESPONSE: If confirmed, I commit to using the WTA and RITA authorities to the extent permitted by law and consistent with the Department’s budgetary limitations. I understand the Department is currently making good use of these authorities.

41. In October 2018, The Washington Post published an article asserting that “Attorney

General Jeff Sessions and Solicitor General Noel J. Francisco have repeatedly gone outside the usual appellate process to get issues such as the travel ban, immigration and greater authority for top officials before the justices.” The article argued that they aggressively bypassed the normal process of appealing lower court decisions to circuit courts, and tried to short-circuit the judicial process on the Trump administration’s “signature issues by seeking extraordinary relief from a refortified conservative Supreme Court.”

- a. Do you believe this strategy is proper? Do you think such efforts to repeatedly bypass the normal judicial processes may erode public confidence in the judicial system?
- b. Should you be confirmed, will you review the Trump administration’s efforts to bypass the appellate courts and jump directly to the Supreme Court and reconsider this strategy?

RESPONSE: The proper litigation strategy in any case depends on its facts and the applicable law. The Supreme Court’s rules permit requests for emergency relief, and those requests can be appropriate in some circumstances—for example, when a lower court has entered an extraordinary form of relief such as a nationwide injunction of a significant Executive Branch policy. If confirmed, I would consider each case carefully on its facts and the applicable law.

42. In an op-ed published in The Washington Post on January 10, 2019, a former lawyer in the Justice Department’s Office of Legal Counsel (OLC) wrote:

“[W]hen I was at OLC, I saw again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people. The failure took different forms. Sometimes, we just wouldn’t look that closely at the claims the president was making about the state of the world. When we did look closely, we could give only nudges. For example, if I identified a claim by the president that was provably false, I would ask the White House to supply a fig leaf of supporting evidence. Or if the White House’s justification for taking an action reeked of unconstitutional animus, I would suggest a less pungent framing or better tailoring of the actions described in the order.”

She further explained that she “occasionally caught [her]self fashioning a pretext, building an alibi” for the President’s “impulsive decisions.”

- a. If you are confirmed, what steps will you take to prevent the Office of Legal Counsel from retroactively justifying the President’s decisions or policies based on a pretext or a fig leaf of evidence?

RESPONSE: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC’s attorneys since I ran the office nearly 30 years ago. I do not know the author of

the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has “seen an unprecedented tide of authoritarian-style politics sweep the country.” However, the author’s statement that “[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line” certainly reflects my experiences with the Office.

As I stated in my confirmation hearing, “I love the department . . . and all its components . . . I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity . . . And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.”

- b. If you are confirmed and find that the Office of Legal Counsel has justified the legality of the President’s decisions or policies based on a pretext or a fig leaf of evidence, will you agree to report such actions to the Senate Judiciary Committee?

RESPONSE: I have no reason to believe that the premise of your question is correct. If I am confirmed, however, the Department will work to meet the Committee’s information and oversight needs, consistent with the Department’s law enforcement, national security, and litigation responsibilities.

43. In a panel at Hastings Law School, you once said of judicial selection, “[o]f course you’re picking them for their personal beliefs....I think political philosophy is an important part of what makes a judge.”

If confirmed, will you recommend to judicial nominees – who are prepared for their hearings by Justice Department lawyers – that they answer questions posed by Senators about their personal beliefs? If political philosophy is an important part of what makes a judge, why should nominees be reluctant to discuss theirs?

RESPONSE: I believe judicial nominees should answer any questions that are appropriate under the Code of Conduct for United States Judges and relevant Senate precedent.

44. You also said at that Hastings event that you think the reason the President appoints judges is so the judiciary is “responsive to the popular will.” Donald Trump has given a

very large role in judicial selection to outside, non-governmental groups. In particular, he has chosen many of his lower court judges, and both of his Supreme Court justices, from a list compiled by the Federalist Society and the Heritage Foundation. Do you think the authors of the Constitution intended the judiciary to be responsive to the will of the Federalist Society and the Heritage Foundation?

RESPONSE: I am not familiar with the current judicial-selection process, but the text of Article II entrusts the nomination of federal judges to the President, with the advice and consent of the Senate.

45. In your written statement, you state, “As Attorney General, my allegiance will be to the rule of law, the Constitution, and the American people.” It does not appear that Donald Trump views the role of the Attorney General in that way. From the time he recused himself from the Russia investigation, former Attorney General Jeff Sessions became the target of merciless attacks by Donald Trump. Beginning in the summer of 2017, and continuing to the end of Mr. Sessions’s tenure, Donald Trump questioned and mocked him on Twitter. He called Mr. Sessions “weak,” “beleaguered,” and “disgraceful.” He is even reported to have asked his advisors, “Where’s my Roy Cohn?” after being “perturbed by Attorney General Jeff Sessions’s decision to recuse himself from supervising the investigation into the Trump campaign’s relationship with Russia.”
- a. Do you think the President agrees with your vision of the Attorney General’s duty?
 - b. If a conflict arises between your views of the Attorney General’s role and that of the President, how will you maintain your allegiance “to the rule of law, the Constitution, and the American people”?

RESPONSE: As I stated during my hearing before the Committee, President Trump has sought no assurances, promises, or commitments from me of any kind, express or implied, regarding my service as Attorney General and I have not given him any, other than that I would run the Department of Justice with professionalism and integrity. During my hearing, I testified that, if I were ever directed to do something unlawful, I would resign rather than carry out the order.

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR BOOKER

1. You testified that, if President Trump ordered you to fire Special Counsel Robert Mueller, you “would not carry out that instruction.”⁶ You have previously made the argument, however, that once the President issues an order, the Attorney General has two options: follow the order or resign.

In a February 2017 op-ed, you said that President Trump was “right” to fire Acting Attorney General Sally Yates for refusing to carry out the President’s first Muslim travel ban.⁷ She had determined the order was unlawful, and so she refused to direct the Justice Department to defend it.⁸ You wrote that Ms. Yates’s action was “unprecedented and must go down as a serious abuse of office.” You added that “neither her policy objection nor her legal skepticism can justify her attempt at overruling the president.” And you noted that “she was free to resign if she disagreed.”

This argument aligns with comments you made in 2006, describing the Attorney General’s constitutional relationship to the President as follows: “That is a presidential function you’re carrying out. If he doesn’t like the way you’re doing it or you don’t like what he’s telling you to do, you resign or he fires you, but it’s his function.”⁹

- a. If President Trump ordered you to fire Special Counsel Mueller without cause, why shouldn’t we expect that you would take the approach you suggested to Acting Attorney General Yates: either carry out the President’s order regardless of any doubts about its propriety or legality, or resign if you fundamentally disagree?

RESPONSE: I would resign rather than follow an order to terminate the Special Counsel without good cause.

- b. Based on the view that you previously expressed about Acting Attorney General Yates’s situation—follow the President’s order or resign—on what basis would

⁶ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

⁷ William Barr, *Former Attorney General: Trump Was Right To Fire Sally Yates*, WASH. POST (Feb. 1, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e05d_story.html.

⁸ Matt Apuzzo, Eric Lichtblau & Michael D. Shear, *Acting Attorney General Orders Justice Dept. Not To Defend Refugee Ban*, N.Y. TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/attorney-general-civil-rights-refugee.html>.

⁹ MILLER CENTER, UNIV. OF VA., PROCEEDINGS OF THE LLOYD N. CUTLER CONFERENCE ON THE WHITE HOUSE COUNSEL (Nov. 10-11, 2006), in SJQ Attachments to Question 12(d) at 61.

you refuse to carry out an order from President Trump to fire Special Counsel Mueller, as you pledged to this Committee?

RESPONSE: Please see my response to Question 1(a) above.

- c. If President Trump demanded the repeal of the Justice Department’s Special Counsel regulations—so that President Trump could try to personally fire Special Counsel Mueller—would you follow that order without questioning whether it was legal or proper?

RESPONSE: I do not believe that the Special Counsel regulations should be amended during the current Special Counsel’s work and would resign rather than alter the regulations for the purpose of firing the Special Counsel without good cause. As I testified, I believe that Robert Mueller should be allowed to finish his investigation. Any review of the existing regulations should occur following the conclusion of the Special Counsel’s work.

2. On the issue of making Special Counsel Mueller’s report public, you testified that “there are two different reports. . . . [U]nder the current regulations, the special counsel report is confidential. The report that goes public would be a report by the Attorney General.” You also testified: “[T]he regs do say that Mueller is supposed to do a summary report of his prosecutive and his declination decisions, and that they will be handled as a confidential document, as are internal documents relating to any federal criminal investigation. Now, I’m not sure—and then the A.G. has some flexibility and discretion in terms of the A.G.’s report. What I am saying is, my objective and goal is to get as much as I can of the information to Congress and the public. . . . I am going to try to get the information out there consistent with these regulations. And to the extent I have discretion, I will exercise that discretion to do that.”¹⁰
- a. Do those statements accurately reflect your interpretation of the relevant Special Counsel regulations,¹¹ or do you wish to clarify or amend them in any way?
 - b. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to make Special Counsel Mueller’s report to the Attorney General public?
 - c. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to share Special Counsel Mueller’s findings with the public in some format besides releasing the report itself?
 - d. In determining whether to publicly release Special Counsel Mueller’s report or other such information, would you apply the legal standard contained in the

¹⁰ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

¹¹ 28 C.F.R. § 600.8-.9.

regulations— namely, whether public release “would be in the public interest”?¹²

RESPONSE: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. See 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

3. In a July 2017 interview, you said that you “would have liked to see [Special Counsel Mueller] have more balance” among the attorneys he had hired.¹³ Do you think it is appropriate to ask prosecutors about their political views before assigning them to a case?

RESPONSE: In my interview statement, I was making the point that the apparent reason Deputy Attorney General Rosenstein appointed the Special Counsel was to

¹² *Id.* § 600.9(c).

¹³ Matt Zapotosky, *As Mueller Builds His Russia Special-Counsel Team, Every Hire Is Under Scrutiny*, WASH. POST (July 5, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/07/05/as-mueller-grows-his-russia-special-counsel-team-every-hire-is-under-scrutiny>.

buttress public assurance that the investigation would be nonpartisan. The eventual make-up of the Special Counsel's team caused many in the public to question that impartiality, which undermined that goal. It is never appropriate to ask any career employee, prosecutors included, about their political views. In general, it is a prohibited personnel practice and a violation of merit system principles to consider a career employee's political affiliation in the management of the federal workforce, which can include the assignment of work. *See* 5 U.S.C § 2301(b)(2); 5 U.S.C. § 2302(b)(1)(E).

4. President Trump has said, "I have absolute right to do what I want to do with the Justice Department."¹⁴ Do you agree?

RESPONSE: The President has the constitutional duty to take care that the laws are faithfully executed. On enforcement matters, the Department's investigative and prosecutorial decisions should be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and Department officials should make these decisions free of bias or political influence.

The Department, generally, and the Attorney General, specifically, also play two important other roles. First the Attorney General provides legal advice to the President. Second, the Attorney General assists in forming and executing the Administration's policy related to law enforcement issues. It is entirely appropriate for the President to involve himself or herself in these Department functions.

5. Presumably you are aware of the many public attacks President Trump has made against Special Counsel Mueller, his team, and his investigation.

A couple of decades ago, when an Independent Counsel was investigating the President, you coauthored an op-ed with other former Attorneys General to express concern about what you described as "attacks" on the Independent Counsel and his office "by high government officials and attorneys representing their particular interests."¹⁵

- a. Would you apply the same words to the present situation, and affirm that Special Counsel Mueller "should be allowed to carry out his or her duties without harassment by government officials and members of the bar"?¹⁶
- b. Again applying the same words to the present situation, are you in any way "concerned that the severity of the attacks" on Special Counsel Mueller and his team "by high government officials and attorneys representing their particular

¹⁴ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. 'Look Very Bad,'* N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html>.

¹⁵ Griffin B. Bell, Edwin Meese III, Richard L. Thornburgh & William P. Barr, *Let Starr Do His Job,* WALL ST. J. (Mar. 11, 1998), <https://www.wsj.com/articles/SB889562359714297500>.

¹⁶ *Id.*

interests . . . appear to have the improper purpose of influencing and impeding an ongoing criminal investigation”?

RESPONSE: I believe that the Special Counsel should be allowed to finish his work, and if confirmed it will be my intent to ensure that his investigation is completed without inappropriate outside influence. I am not in a position to speculate on the motivations behind any given comment, but I know Robert Mueller personally and I am confident that he is not affected by commentary or criticism.

6. In May 2017, you published an op-ed arguing that President Trump was “right” to fire FBI Director James Comey. You wrote, “Comey’s removal simply has no relevance to the integrity of the Russian investigation as it moves ahead.”¹⁷

Presumably you are aware of public reports that President Trump told Russian officials in the Oval Office, the day after he fired Mr. Comey, that he “faced great pressure because of Russia” that was “taken off” by firing him.¹⁸ Presumably you are also aware that, in a nationally televised interview, President Trump said that at the moment he decided to fire Mr. Comey, he was thinking, “This Russia thing with Trump and Russia is a made-up story.”¹⁹

In light of these remarks by President Trump, and knowing what you know today, do you still believe that his firing of Director Comey had “no relevance to the integrity of the Russian investigation”?

RESPONSE: Ordinarily, I would not expect the termination or removal of the head of an agency or office to impede investigations pending in that agency or office. As I stated in my editorial, the investigation into Russian interference in the 2016 election continued under the supervision of Deputy Attorney General Rosenstein and then-acting Assistant Attorney General Dana Boente even after the removal of former FBI Director Comey. And a short time after Mr. Comey’s removal, Special Counsel Mueller was appointed to take over the matter. In light of this, and the public actions taken by the Special Counsel since, I have no reason to believe that removing Mr. Comey had any adverse impact on the “integrity of the Russian investigation.”

7. During your time in private practice, have you represented any foreign governments, or any organization that represents a foreign government’s interests? If so, please specify to the extent permissible any such governments or organizations.

¹⁷ William Barr, *Former Attorney General: Trump Made the Right Call on Comey*, WASH. POST (May 12, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-made-the-right-call-on-comey/2017/05/12/0e858436-372d-11e7-b4ee-434b6d506b37_story.html.

¹⁸ Matt Apuzzo, Maggie Haberman & Matthew Rosenberg, *Trump Told Russians That Firing ‘Nutmeg’ Comey Eased Pressure From Investigation*, N.Y. TIMES (May 19, 2017), <https://www.nytimes.com/2017/05/19/us/politics/trump-russia-comey.html>.

¹⁹ Linda Qiu, *Did Trump Fire Comey Over the Russia Inquiry or Not?*, N.Y. TIMES (May 31, 2018), <https://www.nytimes.com/2018/05/31/us/politics/fact-check-trump-fire-comey-russia.html>.

RESPONSE: I do not have complete records reflecting all of the clients that I have represented over the course of my four-decade legal career. After leaving the Department of Justice in 1993, I worked in-house for a single U.S. corporation until 2008. Since then, I have represented a handful of corporate clients as a private attorney, none of which, to the best of my knowledge, represent a foreign government's interests. To the best of my recollection, any foreign clients that I have represented during my time as a private attorney are reflected in the questionnaire that I submitted to the Committee. Those clients include the government of the Philippines, which I represented in connection with litigation against Westinghouse, as well as Taiwan Power, which I understood to be a utility owned in part by the Taiwanese government.

8. It has been reported that, after President Trump offered you the Attorney General position, you "briefly" told him that your June 2018 memo about Special Counsel Mueller's investigation and obstruction of justice could become an issue at your confirmation hearing.²⁰
 - a. What did you tell President Trump about the June 2018 obstruction memo?
 - b. How did President Trump respond?

RESPONSE: On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

9. In December 1992, President Bush pardoned six Reagan Administration officials implicated in the Iran-Contra affair. In an interview nine years later, you recalled your role in this decision: "I went over and told the President I thought he should not only pardon [former Secretary of Defense] Caspar Weinberger, but while he was at it, he should pardon about five others. . . . There were some people arguing just for Weinberger, and I said, 'No, in for a penny, in for a pound.'"²¹
 - a. If President Trump told you that he was considering pardoning members of his

²⁰ Sadie Gurman & Aruna Viswanatha, *Trump's Attorney General Pick Criticized an Aspect of Mueller Probe in Memo to Justice Department*, WALL ST. J. (Dec. 19, 2018), <https://www.wsj.com/articles/trumps-attorney-general-pick-criticized-an-aspect-of-mueller-probe-in-memo-to-justice-department-11545275973>.

²¹ *William P. Barr Oral History: Transcript*, MILLER CTR., UNIV. OF VA. (Apr. 5, 2001), <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

Administration, campaign staff, or other associates—or even himself—in matters relating to Special Counsel Mueller’s investigation, would you give him the same advice now: “In for a penny, in for a pound”?

- b. Do you believe there are any specific limits on the President’s pardon power, aside from what is spelled out in the text of the Constitution? If so, what are those limits?

RESPONSE: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President’s power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President’s actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President’s pardon authority.

10. During your nominations hearing you assured me that you would “vigorously enforce the Voting Rights Act.”²² What actions are you planning to take to “vigorously enforce the Voting Rights Act”?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring enforcement actions under the Voting Rights Act will be based on a thorough analysis of the facts and the governing law.

11. According to the Justice Department’s website, the Civil Rights Division has filed *no* lawsuits to enforce Section 2 of the Voting Rights Act since President Trump took office. By comparison, the Civil Rights Division filed 5 such suits under President Obama, 15

²² *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

under President George W. Bush, and 16 under President Clinton. The Department's website also does not list any Section 2 suits from the periods when you served as Attorney General and Deputy Attorney General under President George H.W. Bush.²³

- a. Do you believe vigorous enforcement of the voting laws, as you pledged in your testimony, includes vigorous enforcement of Section 2 of the Voting Rights Act?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, including through enforcement of Section 2 of the Voting Rights Act where warranted upon a thorough analysis of the facts and governing law.

- b. In 2017, the Department of Justice reversed the federal government's position in *Veasey v. Perry*, which involved a challenge to what is often considered to be the nation's strictest state voter ID law.²⁴ The reversal came after almost six years of arguing that the Texas voter ID law intentionally discriminated against minorities.²⁵ Even the Fifth Circuit Court of Appeals, one of the most conservative circuits in the nation, ruled that the Texas voter ID law discriminated against minority voters.²⁶
 - i. Will you make a commitment to review the Department of Justice's position in this case?
 - ii. Will you report your conclusions to this Committee within the first 90 days of your tenure should you be confirmed?

RESPONSE: I understand from publicly available information that *Veasey v. Abbott* (formerly *Veasey v. Perry*) did not involve a change in legal position by the Department. Rather, it involved a change in law by the Texas Legislature. In particular, in 2017 the Texas Legislature amended the challenged voter ID law to largely incorporate the interim remedy that the federal courts had put in place for the 2016 election. In its most recent decision in this case in 2018, the Fifth Circuit agreed with the Department that this amendment was sufficient to remedy the alleged defects in the original law.

12. Since the Supreme Court's decision in *Shelby County v. Holder*,²⁷ states across the country

²³ *Civil Rights Division: Voting Section Litigation*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/crt/voting-section-litigation> (last visited Jan. 17, 2019); see Ian Millhiser, *DOJ's Civil Rights Division Has Not Filed a Single Voting Rights Act Case Since Trump Took Office*, THINKPROGRESS (Nov. 5, 2018), <https://thinkprogress.org/civil-rights-division-has-not-filed-a-single-voting-rights-act-case-under-trump-792914a2689a>.

²⁴ Pam Fessler, *Justice Department Reverses Position on Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

²⁵ *Id.*

²⁶ See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

²⁷ 570 U.S. 529 (2013).

have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.²⁸ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.²⁹ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?
- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?
- c. Do you believe that voter ID laws can disenfranchise otherwise eligible minority voters?
- d. Please provide an example of a voter ID law that you believe disenfranchises otherwise eligible minority voters.

RESPONSE: I have not studied these issues and therefore have no basis for reaching any conclusions regarding them. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

13. In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color and people of lesser means.³⁰
 - a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means?

²⁸ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR. FOR JUSTICE 6 (2007), <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

²⁹ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <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>.

³⁰ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You're Poor, Black, Latino or Elderly*, WASH. POST (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html; Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-pri-voter-suppression/565355>.

- b. Study after study has shown that in-person voter fraud is extremely rare.³¹ Do you believe that in-person voter fraud is a widespread problem in American elections?

RESPONSE: I have not studied these issues and therefore have no basis for reaching any conclusions regarding them. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

14. On January 3, 2019, the *Washington Post* reported that the Trump Administration is considering an expansive rollback of federal civil rights law.³² According to the article, “A recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be, according to people familiar with the matter.”³³
- a. Do you believe that actions that amount to discrimination, but that have no provable discriminatory intent, should be prohibited under federal civil rights law? In other words, is disparate impact a valid way to demonstrate discrimination?
 - b. If you don’t believe disparate impact is a valid way to demonstrate discrimination, how do you propose to remedy actions that have a disparate impact on minorities?
 - c. If confirmed as Attorney General, do you commit to halt this effort to rollback disparate impact regulations?

RESPONSE: As I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this specific matter.

I will note that Congress has enacted statutes that expressly impose disparate-impact liability, and the Supreme Court has recognized that other statutes also impose disparate-impact liability. The Department is charged with enforcing all of the laws that Congress has enacted where warranted by the facts, the law, and Department policies and priorities. As with all matters, any decision to pursue an enforcement

³¹ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

³² Laura Meckler & Devlin Barrett, *Trump Administration Considers Rollback of Anti-discrimination Rules*, WASH. POST (Jan. 3, 2019), https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html.

³³ *Id.*

action based upon disparate-impact liability will be based upon a thorough analysis of the law, the facts, and Department policies and priorities.

15. In January 2018, Attorney General Sessions rescinded the Cole Memorandum, which provided guidance to U.S. Attorneys that the federal marijuana prohibition should not be enforced in states that have legalized marijuana in some way or another.³⁴ When I asked you about this issue in your testimony last week, you stated: “My approach to this would be not to upset settled expectations and the reliance interests that have arisen as a result of the Cole Memorandum—and investments have been made, and so there’s been reliance on it, so I don’t think it’s appropriate to upset those interests. However, I think the current situation is untenable and really has to be addressed. It’s almost like a backdoor nullification of federal law. . . . I’m not going to go after companies that have relied on the Cole Memorandum. However, we either should have a federal law that prohibits marijuana everywhere—which I would support myself, because I think it’s a mistake to back off on marijuana. However, if we want a federal approach, if we want states to have their own laws, then let’s get there, and let’s get there the right way.”³⁵
- a. Do you intend to rescind Attorney General Sessions’s January 2018 memorandum on marijuana enforcement, either in part or in its entirety?
 - b. Do you intend to reinstate the Cole Memorandum?

RESPONSE: As discussed at my hearing, I do not intend to go after parties who have complied with state law in reliance on the Cole Memorandum. I have not closely considered or determined whether further administrative guidance would be appropriate following the Cole Memorandum and the January 2018 memorandum from Attorney General Sessions, or what such guidance might look like. If confirmed, I will give the matter careful consideration. But I still believe that the legislative process, rather than administrative guidance, is ultimately the right way to resolve whether and how to legalize marijuana.

16. On May 10, 2017, Attorney General Sessions changed the Department of Justice’s charging and sentencing policy and directed all federal prosecutors to “pursue the most serious, readily provable offense.”³⁶ After this announcement, I wrote a letter with Senators Mike Lee, Dick Durbin, and Rand Paul asking a series of question regarding the policy change because we believed the new policy would “result in counterproductive sentences that do nothing to make the public safer.”³⁷

³⁴ Memorandum from Jeff Sessions, Att’y Gen., to All U.S. Att’ys on Marijuana Enforcement (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

³⁵ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

³⁶ Memorandum from Jeff Sessions, Att’y Gen., to the U.S. Dep’t of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³⁷ Letter from Sen. Mike Lee et al. to Jeff Sessions, Att’y Gen., on the Department of Justice Charging and Sentencing Policy (June 7, 2016), <https://www.scribd.com/document/350652153/6-7-17-Letter-to-the-Attorney-General-on-DOJ-Charging-and-Sentencing-Policy-FINAL-SIGNED>.

- a. If confirmed, will you review Attorney General Sessions' decision to revert back to an old Department of Justice policy to "pursue the most serious, readily provable offense"?

RESPONSE: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. If confirmed, I will ensure that the Department's charging and sentencing policies demand a fair and equal application of the laws passed by this body, while providing the necessary flexibility to serve justice.

- b. Will you make a commitment to conduct a review of the effect the new charging and sentencing policy is having on crime deterrence, public safety, and reducing recidivism and report your findings to the Senate and House Judiciary Committees?

RESPONSE: Please see my response to question 16(a) above.

- c. The letter referenced above highlighted the cases of Weldon Angelos and Alton Mills.³⁸ Do you believe the punishment fit the crime in those two cases?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

- d. If you are not familiar with those cases, do you commit to have the Department of Justice respond to the May 2017 letter regarding whether it believed the punishment fit the crime in those two instances?

RESPONSE: It is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to accommodate the Committee's information needs, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will be pleased to work with Congress through the Department's Office of Legislative Affairs to provide appropriate information.

- e. Will you make a commitment to conduct a review of all federal criminal offenses carrying mandatory minimum sentences and reporting to the Senate and House Judiciary Committees those that you believe are unfair and need adjustment?

RESPONSE: As with any proposed legislative changes to current criminal statutes, if confirmed, I would welcome the opportunity to work with Congress on this issue.

³⁸ *Id.*

- f. According to Attorney General Sessions's memorandum, "prosecutors are allowed to apply for approval to deviate from the general rule that they must pursue the most serious, readily provable offense."³⁹ Do you commit to providing the Senate and House Judiciary Committees information detailing the number of requests that have been made to deviate from the Department's charging policy and a breakdown of whether those requests were approved or denied?

RESPONSE: I understand that the Department works to accommodate the Committee's information and oversight needs, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will be pleased to work with Congress through the Department's Office of Legislative Affairs to provide appropriate information.

17. In 2015, the Presidential Task Force on 21st-Century Policing issued a report setting forth recommendations focused on identifying best practices for policing and recommendations that promote effective crime reduction while building public trust.⁴⁰ Have you read the report? If not, do you intend to read the report?

RESPONSE: I have not had the opportunity to study this report. If confirmed, I look forward to learning more about it.

18. Communities of color have the lowest rates of confidence in law enforcement. A poll from 2015-2017 indicated that 61 percent of whites had confidence in police, only 45 percent of Hispanics and 30 percent of blacks felt the same way.⁴¹ If confirmed as Attorney General, what policies and practices will you implement to rebuild trust between law enforcement and minority communities?

RESPONSE: Trust between communities and law enforcement is critical to combating crime and keeping people safe. If confirmed, I will ensure that the Department continues to implement policies and programs intended to enhance the trust between the police and the communities they serve, whether through the Office of Community Oriented Policing Services, training and technical assistance provided by the Office of Justice Programs, or through national programs like the reinvigorated Project Safe Neighborhoods initiative, which brings together communities and all levels of law enforcement to collaboratively develop comprehensive strategies tailored to local violent crime conditions, issues, and resources. Collaborative approaches, where law enforcement and communities work together, will help rebuild trust and make communities across the country safer for everyone.

19. In the period leading up to Operation Desert Storm in the Gulf War, the FBI engaged in

³⁹ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

⁴⁰ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST-CENTURY POLICING (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴¹ Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>.

questioning of hundreds of Arab-American business and community leaders, on the asserted basis of collecting intelligence about possible terrorist threats. As Deputy Attorney General at the time, you said: “These interviews are not intended to intimidate. . . . The interviews are an opportunity to keep an open channel of communication with people who may be victimized if hostilities occur. At the same time, in the light of the terrorist threats . . . it is only prudent to solicit information about potential terrorist activity and to request the future assistance of these individuals.”⁴² Some community activists and others who had undergone questioning said the FBI interviews felt like “intimidation”⁴³ or “harassment.”⁴⁴

- a. Do you believe that racial profiling is wrong?
- b. Do you believe that racial profiling is an ineffective use of law enforcement resources? If not, please explain why.

RESPONSE: I am committed to the enforcement of federal laws and applicable regulations consistent with the Constitution. Unbiased law enforcement practices strengthen trust in law enforcement and foster collaborative efforts between law enforcement and communities to fight crime and ensure public safety. I do not believe that an individual’s particular race, ethnicity, religion, or national origin makes that person more dangerous or more likely to commit a crime. If confirmed, I will work to ensure that the Department’s resources are aligned to most effectively protect the public.

20. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.⁴⁵ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁴⁶ These shocking statistics are reflected in our nation’s prisons and jails.⁴⁷ Blacks are five times more likely than whites to be incarcerated in state prisons. In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴⁸
 - a. Do you believe there is implicit racial bias in our criminal justice system?

⁴² Sharon LaFraniere, *FBI Starts Interviewing Arab-American Leaders*, WASH. POST (Jan. 9, 1991), <https://www.washingtonpost.com/archive/politics/1991/01/09/fbi-starts-interviewing-arab-american-leaders/2c89a03e-d9c5-491a-981a-08726fcd273>.

⁴³ *Id.*

⁴⁴ Paul Hendrickson, *Caught in the Middle: Detroit’s Arab Americans*, WASH. POST (Feb. 15, 1991), <https://www.washingtonpost.com/archive/lifestyle/1991/02/15/caught-in-the-middle-detroits-arab-americans/e2e6721c-7007-432b-a806-c0770467dac4>.

⁴⁵ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

⁴⁶ *Id.*

⁴⁷ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴⁸ *Id.*

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?
- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

RESPONSE: I am not familiar with the Brookings Institution study you cite, and I have not studied the issue of implicit racial bias in our criminal justice system. Therefore, I have not become sufficiently familiar with the issue to say whether such bias exists. I believe the data confirm that people of color are disproportionately represented in our nation's jails and prisons. I reaffirm the commitment I made to you during my hearing that, if confirmed, the Department of Justice will work with its Bureau of Justice Statistics to examine racial disparities and the policies that may contribute to them.

21. According to Pew Charitable Trusts, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.⁴⁹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁵⁰
- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.
 - b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

RESPONSE: I have not studied this issue and do not know if there is a direct link between increases of a state's incarcerated population and decreased crime rates. Therefore, I have no basis on which to reach a conclusion on it.

22. Do you believe it is an important goal for there to be demographic diversity among law enforcement personnel? If not, please explain your views.

RESPONSE: I believe that there is strong consensus within the law enforcement community, with which I agree, that diversity among law enforcement personnel is positive. The question of how to achieve that diversity can be more divisive, however. Efforts to achieve diversity must be consistent with the individual rights protected by the Constitution and other federal laws.

⁴⁹ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

⁵⁰ *Id.*

23. In 1992, you were asked about a proposal to build a border wall along the U.S.-Mexico border. You described that border wall proposal as “overkill.”⁵¹ In fact, you said “I don’t think it’s necessary. I think that’s overkill to put a barrier from one side of the border to the other.”⁵² You then said, “In fact, the problem with illegal immigration across the border is really confined to major metropolitan areas. Illegal immigrants do not cross in the middle of the desert and walk hundreds of miles.”⁵³

At the time you made those comments in 1992, there were more than 1.1 million border apprehensions the previous fiscal year.⁵⁴ In Fiscal Year 2017, there were around 304,000.⁵⁵ That’s about an 800,000 drop in border apprehensions—a decline of about 73 percent.

Simultaneously, there have been significant increases in the amount of money spent on border enforcement. In 1992, \$326 million was spent on the U.S. Border Patrol’s budget.⁵⁶ Now, \$3.8 billion is appropriated to U.S. Border Patrol to secure our borders.⁵⁷

- a. Do you still believe building a border wall along the U.S.-Mexico border in 1992 was “overkill”?
- b. Do you believe building a border wall along the entire U.S.-Mexico border wall now is “overkill”?
- c. In 1992, during President George H.W. Bush’s administration, did you believe the United States was experiencing a “crisis” at the border?
- d. Do you believe the United States is experiencing a “crisis” at the U.S.-Mexico border now as President Donald Trump claims?
- e. Since 1986, what years would you characterize the situation at the border as “stable”?

⁵¹ Eric Tucker, *Trump’s Pick for AG Once Questioned Value of Border Wall*, ASSOCIATED PRESS (Dec. 31, 2018), <https://www.apnews.com/01712e03bb324664b870cc74cc2f9c8d>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ U.S. Border Patrol, *Southwest Border Sectors: Total Illegal Alien Apprehensions by Fiscal Year*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf> (last visited Jan. 16, 2019).

⁵⁵ *Id.*

⁵⁶ *The Cost of Immigration Enforcement and Border Security*, AM. IMMIGRATION COUNCIL 2 (Jan. 25, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf.

⁵⁷ *Id.*

RESPONSE: As I stated at the hearing, we need border security measures—including appropriate physical barriers—to properly secure our southern border. It is my understanding that the Department of Homeland Security apprehends hundreds of thousands of illegal aliens every year, and a physical barrier, in addition to other appropriate measures, would be helpful in preventing future illegal entries, as well as combatting transnational drug smuggling and human trafficking.

24. While you were Attorney General during the Bush Administration, you hired 200 additional Immigration and Naturalization investigators and created the National Criminal Alien Tracking Center to “combat illegal immigration and violent crime by criminal aliens.”⁵⁸ Also, during a 1992 interview with the *Los Angeles Times*, you appeared to partially hold undocumented immigrants accountable for the riots following the acquittal of law enforcement officers in the beating of Rodney King. You said, “The problem of immigration enforcement—making sure we have a fair set of rules and then enforce them—I think that’s certainly relevant to the problems we’re seeing in Los Angeles. . . . I think there was anger and frustration over the verdict in the Rodney King⁵⁹ incident that certainly wasn’t limited to Los Angeles, but I do think that there were a lot of unique circumstances in Los Angeles that came together in a way that added to the combustibility of the post-verdict hours and contributed to the intensity and the scale of the violence in Los Angeles.”⁶⁰
- a. Do you believe that immigrants—whether they are documented or undocumented—are prone to criminality?
 - b. If you believe that immigrants are prone to criminality, what studies are you relying on in making that judgment?

RESPONSE: It has been my experience that people of all backgrounds commit crimes.

25. In 2018, the Cato Institute, a libertarian think tank, issued a study that found that immigrants who entered the United States legally were 20 percent less likely to be incarcerated as native-born Americans.⁶¹ The research also found that undocumented immigrants were half as likely to be incarcerated as native-born Americans.⁶² Do you have any reason to doubt the findings of this research?

RESPONSE: I am not familiar with studies reaching this conclusion, and I have not studied this issue. Therefore, I have no basis for reaching a conclusion on this issue.

⁵⁸ *Department of Justice Authorization for Fiscal Year 1993 Before the Senate Committee on the Judiciary*, 103d Cong. (1992) (statement of William P. Barr, Att’y Gen.), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/06-30-1992.pdf>.

⁵⁹ Ronald J. Ostrow, *William Barr: A ‘Caretaker’ Attorney General Proves Agenda-Setting Conservative*, L.A. TIMES (June 21, 1992), http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2.

⁶⁰ *Id.*

⁶¹ Alex Nowrasteh, *Immigration and Crime—What the Research Says*, CATO INST. (July 14, 2015), <https://www.cato.org/blog/immigration-crime-what-research-says>.

⁶² *Id.*

26. On April 6, 2018, Attorney General Sessions announced a “zero tolerance” policy for criminal illegal entry and directed each U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all Department of Homeland Security referrals “to the extent practicable.”⁶³ A month later, on May 7, 2018, the Trump Administration announced that the Department of Homeland Security will refer any individuals apprehended at the Southwest Border to the Department of Justice.⁶⁴ This policy resulted in thousands of immigrant children being cruelly separated from their parents.⁶⁵
- a. Do you agree with Attorney General Sessions’s decision to institute a “zero tolerance” policy?
 - b. Do you believe it is humane to separate immigrant children and their parents after they are apprehended at the U.S.-Mexico border?
 - c. Will you make a commitment not to reinstitute a “zero tolerance” policy or anything resembling the policy?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they apprehend, whom they refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

27. On September 27, 2016, I sent a letter to then-Secretary Jeh Johnson opposing family detention and urging the Obama Administration to end its use of the practice.⁶⁶ The letter said, “Detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means.”⁶⁷ The letter also noted that “[t]here is strong evidence and broad consensus among health care professionals that detention of young children, particularly those who have experienced significant trauma as many of these children have, is detrimental to their development and physical health.”⁶⁸

⁶³ Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁶⁴ Jeff Sessions, Att’y Gen., Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁶⁵ Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018) <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

⁶⁶ Letter from Sen. Patrick Leahy et al. to Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 27, 2016), <https://www.leahy.senate.gov/imo/media/doc/Letter%20to%20Sec.%20Johnson%20re%20Berks%20Family%20Detention%20Center.pdf>.

⁶⁷ *Id.*

⁶⁸ *Id.*

- a. Do you agree that detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means?
- b. Do you believe that detention of children—regardless of whether it is with or without their parents—has a detrimental effect on their development and physical health?

RESPONSE: My understanding is that the Department of Homeland Security makes the decision as to who they are going to apprehend, who they are going to refer for criminal prosecution, and who they will hold—subject to applicable law. I cannot comment on matters within the purview of the Department of Homeland Security. It is also my understanding that part (a) of your question is a subject that is presently in ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me comment on this matter.

28. Attorney General Sessions made it virtually impossible for victims of domestic violence or gang violence to seek asylum in the United States.⁶⁹ He did so by personally intervening in an asylum application of a woman who was a victim of domestic violence at the hands of her husband.⁷⁰ He used her case to disqualify entire categories of claims that were legitimate grounds for asylum.⁷¹
 - a. Do you believe being a victim of domestic violence should be a valid reason for seeking asylum in the United States?
 - b. Do you believe being a victim of gang violence should be a valid reason for seeking asylum in the United States?
 - c. Do you commit to reversing Attorney General Sessions's decision invalidating domestic violence or gang violence as grounds for claiming asylum?

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

29. Census experts and senior Census Bureau staff agree that a last-minute, untested citizenship question could create a chilling effect and present a major barrier to participation in the 2020 Census. Many vulnerable communities do not trust the federal

⁶⁹ Katie Benner & Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

⁷⁰ *Id.*

⁷¹ *Id.*

government's commitment to maintaining the confidentiality of Census data and are fearful that their responses could be used for law enforcement, including immigration enforcement, purposes. A citizenship question would exacerbate their concerns.

Alarming documents revealed in the ongoing citizenship question litigation indicate that DOJ staff were open to reevaluating a formal Justice Department legal opinion from 2010 that there are no provisions within the USA PATRIOT Act that can be used to compel the Commerce Secretary to release confidential census information—that is, that supersede the strict confidentiality protections in the Census Act. In November, I joined my colleagues Senator Schatz and Senator Reed in a letter to Assistant Attorney General Eric Dreiband, seeking a clarification of the existing law, a commitment to maintaining the confidentiality of information collected by the Census Bureau, and assurances that personal Census responses cannot be used to the detriment of any individual or family, by the Justice Department, the Department of Homeland Security, or any other agency of government at any level.

Although litigation has continued for months, a federal district court—last Tuesday, the same day you appeared before this Committee—issued an exceptionally thorough and thoughtful ruling that blocked the Commerce Department from adding the citizenship question to the Census.

- a. When you were asked at the hearing about the Trump Administration's position in this case, you answered, "I have no reason to change that position."⁷² What circumstances would lead you to reconsider the Justice Department's defense of the Administration's position concerning the addition of the citizenship question to the Census?
- b. Do you agree that the confidentiality of Census data is fully protected by law?
- c. Will you make a commitment that, if confirmed, you will ensure the Justice Department abides by all laws protecting the confidentiality and nondisclosure of Census data, and that you will prohibit the use of Census data for the purposes of immigration-related enforcement against any person or family?
- d. Will you make a commitment that, if confirmed, you will reaffirm the Office of Legal Counsel's interpretation that the USA PATRIOT Act does not weaken or change any confidentiality protection embodied in the Census Act?

RESPONSE: It is my understanding that this matter is the subject of ongoing litigation. While I am not involved in that litigation, it would not be appropriate for me to comment on this matter.

30. Across the economy, the largest companies are taking over an ever greater share of the

⁷² *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

market—conducting mergers, acquiring other companies, and squeezing smaller competitors out. According to a 2016 study from the Levy Economics Institute at Bard College, the years between 1990 and 2013 saw the most sustained period of merger activity in American corporate history, with the concentration of corporate assets more than doubling during this period. The same study also found that the 100 largest companies in the United States now control one-fifth of all corporate assets. Another survey analyzed hundreds of U.S. industries and found that the top four companies in each industry expanded their share of revenues from 26 percent of the industry total in 1997 to 32 percent in 2012. The upshot is that competition is falling, prices are rising, and wages are stagnant.⁷³

- a. Do you believe that corporate concentration is a problem in the U.S. economy? If so, what measures would you consider taking through the Department of Justice’s antitrust authorities to address that problem?

RESPONSE: I have not yet had a chance to study this question. I would like to better understand the dynamics that are shaping the market outcomes that we are observing. I am interested in learning more from the Antitrust Division about its enforcement efforts, the current state of the law and economics, and explanations for any increases in concentration.

- b. Given the race to consolidate that is occurring in many industries, will the Justice Department on your watch engage in rigorous scrutiny, heed all applicable antitrust laws, and if necessary reject mergers that will cut down competition and hurt consumers?

RESPONSE: Yes. If confirmed, I will ensure that the Antitrust Division appropriately and effectively enforces all antitrust laws to protect competition and consumers.

- c. In your estimation, at what point does market concentration become excessive?

RESPONSE: I have not had the opportunity to study the implications of market concentration on competition and therefore currently have no opinion on the matter. If confirmed, I look forward to discussing these issues with the Antitrust Division.

- d. If the evidence shows that a merger will lead to an increase in the prices consumers pay, do you believe that such a merger would promote the public interest?

RESPONSE: I understand that the Antitrust Division has responsibility under Section 7 of the Clayton Act to investigate and, if appropriate, challenge mergers that may substantially lessen competition. If confirmed, I will ensure

⁷³ See Cory Booker, *The American Dream Deferred*, BROOKINGS INST. (June 2018), <https://www.brookings.edu/essay/senator-booker-american-dream-deferred>.

that the Antitrust Division fulfills that obligation in ways that promote consumer welfare.

- e. To take one example, the agriculture sector has become increasingly highly concentrated, favoring the interests of major corporations and squeezing small family farmers. Today 65 percent of all pork, 53 percent of all chicken, and 84 percent of all beef is slaughtered by just four companies.⁷⁴ Small family farmers often confront a hard choice: try to compete with huge corporations, or work for them through starkly one-sided contracts. Do you believe that corporate concentration in American agriculture should be the subject of careful regulatory scrutiny?

RESPONSE: I have not had the opportunity to study concentration in the agricultural sector and its implication on competition. I agree that the agriculture sector, including small family farmers, is an important part of the US economy. If confirmed, I look forward to discussing this topic with the Antitrust Division.

⁷⁴ Leah Douglas, *Consolidation Is Eating Our Food Economy*, NEW AM. (May 5, 2016), <https://www.newamerica.org/weekly/122/consolidation-is-eating-our-food-economy>

**QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL**

QUESTIONS FROM SENATOR HARRIS

1. At your confirmation hearing, you agreed to follow the Special Counsel regulations in your handling of Robert Mueller's investigation into Russian interference in the 2016 election. Among other things, those regulations require the Attorney General to notify the House and Senate Judiciary Committees, with an explanation for each action upon conclusion of the Special Counsel's investigation.
 - a. If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with the representations, descriptions, and summaries in your report(s) to Congress?
 - b. If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with any decision to withhold information from Congress, whether for privilege or otherwise?

RESPONSE: As I stated during my hearing before the Committee, I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including applicable regulations, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

The regulations also state that the Attorney General may publicly release the Special Counsel's report, if release is in the public interest and to the extent that release complies with applicable legal restrictions.

- c. If confirmed, what facts and principles will guide your decision about whether or not to publicly release the Special Counsel's report?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." See 28

C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

2. In August 2017, the Justice Department began investigating Harvard University for its affirmative action policies. One year later, the Justice Department filed a statement of interest in a federal case opposing Harvard University's affirmative action policies.
 - a. As a practical matter, do you believe that educational institutions are likely to be able to achieve meaningful racial diversity without recognizing and taking account of race?

RESPONSE: As I am not currently at the Department of Justice, I am not familiar with the Department's decisions regarding this issue or the facts on which these decisions have been made. As a general matter, I believe the Department should refrain from commenting on ongoing investigations and cases, as well as closed matters. Because this appears to be an ongoing issue, and because I am not familiar with the particulars of the underlying decisions, I am unable to comment further.

**APPENDIX TO THE QUESTIONS FOR THE
RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES
ATTORNEY GENERAL**

Letter from William P. Barr, nominee to be Attorney General of the United States, to Chairman Lindsey Graham, Senate Committee on the Judiciary (January 14, 2019)

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

January 14, 2019

Dear Chairman Graham:

Thank you for taking the time to meet with me last week. I appreciated the opportunity to speak with you about my upcoming hearing before the Senate Judiciary Committee and my plans for the Department of Justice if I am confirmed.

During our meeting, you asked me about the legal memorandum that I drafted as a private citizen in June 2018, a copy of which I provided to the Committee last month. Although the memorandum is publicly available and has been the subject of extensive reporting, I believe there may still be some confusion as to what my memorandum did, and did not, address.

As I explained in my January 10, 2019 letter responding to questions posed by Ranking Member Feinstein, the memorandum did not address – or in any way question – the Special Counsel’s core investigation into Russian efforts to interfere with the 2016 election. Indeed, I have known Bob Mueller personally and professionally for 30 years, and I have the utmost respect for him and the important work he is doing. When Bob was appointed, I publicly praised his selection and expressed confidence that he would handle the investigation properly. As I noted during our discussion, I personally appointed and supervised three special counsels myself while serving as Attorney General. I also authorized an independent counsel under the Ethics in Government Act. I believe the country needs a credible and thorough investigation into Russia’s efforts to meddle in our democratic process, including the extent of any collusion by Americans, and thus feel strongly that that the Special Counsel must be permitted to finish his work. I assured you during our meeting – and I reiterate here – that, if confirmed, I will follow the Special Counsel regulations scrupulously and in good faith, and I will allow Bob to complete his investigation.

As for the memorandum itself, as we discussed during our meeting, the memorandum’s analysis was narrow in scope. It addressed a single obstruction-of-justice theory under a specific federal statute, 18 U.S.C. § 1512(c), that I thought, based on public information, Special Counsel Mueller might have been considering at the time. The memorandum did not address any of the other obstruction theories that have been publicly discussed in connection with the Special Counsel’s investigation.

The principal conclusion of my memo is that the actions prohibited by section 1512(c) are, generally speaking, the hiding, withholding, destroying, or altering of evidence – in other words, acts that impair the availability or integrity of evidence in a proceeding. The memorandum did not suggest that a President can never obstruct justice. Quite the contrary, it expressed my belief that a President, just like anyone else, can obstruct justice if he or she engages in wrongful actions that impair the availability of evidence. Nor did the memorandum claim, as some have incorrectly suggested, that a President can never obstruct justice whenever he or she is exercising a constitutional function. If a President, acting with the requisite intent, engages in the kind of evidence impairment the statute prohibits – regardless whether it involves the exercise of his or her constitutional powers or not – then a President commits obstruction of justice under the statute. It is as simple as that.

During our meeting, you asked why I drafted the memorandum. I explained that, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony. For example, immediately after the attacks of September 11, 2001, I reached out to a number of officials in the Bush administration to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. More recently, I have offered my views to officials at the Department on a number of legal issues, such as concerns about the prosecution of Senator Bob Menendez.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under section 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with lawyer friends; wrote the memo to senior Department officials; shared it with other interested parties; and later provided copies to friends. I was not representing anyone when I wrote the memorandum, and no one requested that I draft it. I wrote it myself, on my own initiative, without assistance, and based solely on public information.

You requested that I provide you with additional information concerning the lawyers with whom I shared the memorandum or discussed the issue it addresses. As the media has reported, I provided the memorandum to officials at the Department of Justice and lawyers for the President. To the best of my recollection, before I began writing the memorandum, I provided

my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views.

As I explained during our meeting, I frequently discuss legal issues informally with lawyers, and it is possible that I shared the memorandum or discussed my thinking reflected in the memorandum with other people in addition to those mentioned above, including some who have represented clients in connection with the Special Counsel's work. At this time, I also recall providing the memorandum to, and/or having conversations about its contents with, the following:

- Professor Bradford Clark
- Richard Cullen
- Eric Herschmann
- Abbe Lowell
- Andrew McBride
- Patrick Rowan
- George Terwilliger
- Professor Jonathan Turley
- Thomas Yannucci

The foregoing represents my best recollection on these issues at this time. I look forward to discussing these issues further with you and your colleagues at my upcoming hearing.

Sincerely,



William P. Barr

**Letter from William P. Barr, nominee to be Attorney General of the
United States, to Ranking Member Diane Feinstein, Senate
Committee on the Judiciary (January 10, 2019)**

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

January 10, 2019

Dear Senator Feinstein:

Thank you for your letter of December 21, 2018 regarding a memorandum that I drafted earlier last year, a copy of which I provided to the Senate Judiciary Committee last month.

As you note, my memorandum was narrow in scope, addressing only a single obstruction theory that I thought, based on public information, the Special Counsel might have been considering. The memorandum did not address – or in any way question – the Special Counsel’s core investigation into Russian interference in the 2016 election. Indeed, I have known Bob Mueller personally and professionally for 30 years, and I have the utmost respect for him and the important work he is doing. Having appointed and supervised three special counsels myself while Attorney General, I understand that the country needs a credible and thorough investigation into Russia’s efforts to meddle in our democratic process, including the extent to which any Americans were involved. For this reason, it is vitally important that the Special Counsel be permitted to finish his work. I will carry out the Special Counsel regulations scrupulously and in good faith, and I will allow Bob to complete his work.

Given my background, I am naturally interested in legal issues that have significant implications for our country. I have a deep commitment to the law and I enjoy researching, analyzing, and writing about legal issues. I frequently discuss my views with friends, colleagues, and public officials, and I have worked on a number of amicus briefs, written a law review article, published op-eds, spoken publicly on legal issues, and provided testimony to Congress.

In 2017 and 2018, based on public accounts, it appeared to me that the Special Counsel might be considering subpoenaing the President to explore his motives for terminating the FBI director on the theory that the removal may have constituted obstruction under 18 U.S.C. § 1512(c). I was concerned that predicating obstruction under this statute based solely on the removal of an FBI director would stretch the provision beyond its text and intent, and doing so could have implications well beyond the Special Counsel’s investigation. As my thoughts took shape during informal discussions with other lawyers, I eventually decided to reduce my thinking on this issue to writing in a memorandum. I wrote as a private citizen. I was not representing anyone. No one requested that I write the memorandum. I drafted it myself without assistance and based on public information.

As the media has reported, and as I have explained to a number of your colleagues, I provided the memorandum to and had discussions about the issue with lawyers on all sides of the

Special Counsel's investigation, including officials at the Department of Justice and the White House, as well as lawyers for the President. Over time, I also provided the memorandum to several lawyer friends and had discussions about the issue with them and many others.

Thank you for the opportunity to address these issues. I look forward to discussing them further with you and your colleagues at my upcoming hearing.

Sincerely,



William P. Barr

**Confirmation Hearing for William P. Barr to be Attorney General
of the United States Before the Senate Committee on the Judiciary
(November 12 and 13, 1991)**

**Colloquy with Senator Edward Kennedy located on pages 29-34 of
the transcript**

**CONFIRMATION HEARINGS ON FEDERAL
APPOINTMENTS—WILLIAM P. BARR**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE
FEDERAL JUDICIARY

NOVEMBER 12 AND 13, 1991

Part 2

Serial No. J-102-7

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entitled to make that purchase is because of a criminal record or history of mental illness or other disqualifying factor.

Now, the Brady waiting period the administration is willing to accept as part of the crime package applies only to handguns. Assault weapons, obviously, are at least as lethal, and why shouldn't we expand the scope of the Brady bill to encompass assault weapons, as well?

Mr. BARR. On the assault weapon front, the proposal before us is the DeConcini amendment. I think—I don't know if this is a new statement or not, but I would support both the Brady bill waiting period and the DeConcini amendment, provided they were parts of a broader and more comprehensive crime bill that included tough enforcement provisions, including very tough provisions on the use of firearms in crimes and illegal purchase and trading in firearms, which are part of the package that passed the Senate.

Now, to be candid, on the waiting period, I would prefer an approach that was directed toward point of sale, and I know that we are not at that point yet technologically. It is going to require more investment, and I have been involved in infusing those resources to upgrade the records. But the important thing, I think, ultimately, will be a system that is based on State records, a State system. And so I think the House approach is preferable, frankly, to the Senate approach.

On the DeConcini amendment, I would prefer a limitation on the clip size, but ultimately I would recommend the President sign a bill that had the Brady waiting period and a DeConcini assault weapons provision in it, as long as we had other tough crime measures in it that dealt with the other problems.

I have not considered before whether the waiting period should apply to assault weapons and would want to think about that, but off the top of my head, I don't think there should be an objection to that.

Senator KENNEDY. Well, as you know, DeConcini on the assault weapons does not provide for the waiting period for the assault weapons. And although it includes a number—I believe it is 11 sets of assault weapons, there are clearly others that result in the same kind of destruction and havoc and threat to law enforcement personnel.

I think the fact that you are forthcoming in terms of the waiting period for assault weapons is very constructive. We have—

The CHAIRMAN. And unusual for an Attorney General nominee.

Senator KENNEDY. We have here just the application for the purchase of weapons, and as you are familiar, prior to 1968, they didn't even ask the six or seven questions, which are probably the most rudimentary questions that there are. Of course, without having the opportunity to give local law enforcement the opportunity to check those, the significance and importance of them are significantly compromised. And it has been to try and give that period of time to local law enforcement that the waiting period has been supported, and there have been some important successes. In New Jersey over a period of time some ten thousand convicted felons trying to buy guns have been identified. I am not going to take the time of the committee to go through those.

But the fact that you would be willing to consider seems to me to be logical. If it is important in terms of dealing with violence on the hand guns and on the kinds of weapons that have been used that have brought such destruction and violence to our fellow citizens, would certainly be justified as well, and that are threatening many of those in the law enforcement community.

Just let me ask you on one other related area, and that is on reviewing the licensing requirements for the sale of assault weapons, as you probably know, and I won't go through in great detail. But it is virtually four or five of the same kinds of questions, and you can get a license to sell these assault weapons and sell them to virtually anyone. And it seems to me that if it is good enough in terms of the purchase of the hand guns, in terms of checking out the background, and good enough in terms of trying to deal with the assault weapons, having some kind of idea about who is going to be selling these, who is going to be the licensee, given some of the recent information about who is selling assault weapons is worthwhile, as well.

Would you be at least willing to visit and talk about that particular issue and see what suggestions you might have on that?

Mr. BARR. Sure, Senator. I am always willing to consider that. In considering restrictions on the lawful sale of guns, I do start out with the threshold considerations that the most effective way ultimately of dealing with violent crime is to deal with violent criminals, and that anything that focuses exclusively on lawful sale is somewhat of a feckless exercise. But as part of a comprehensive approach, I think it is legitimate to take a look at reasonable steps, recognizing that there is a tradition of private gun ownership in this country and a legitimate interest in that, but nevertheless looking at reasonable steps as part of a broader approach to controlling the deadly use of firearms that is becoming an increasing part of the plague of violence, the crime that we have in our streets.

Senator KENNEDY. I liked your earlier answer better, but I am glad to hear this one, too. [Laughter.]

I would say to my good friend from South Carolina, if you need any recommendations on those vacancies up in Massachusetts, to fill those, I would be glad to help.

Let me go to another area, and that is the area that we talked about at the time that we had our visit, which I very much appreciated. That is with regard to the Wichita Operation Rescue case and the decision to file a brief in the Wichita Operation Rescue case, the *Women's Health Care Services v. Operation Rescue*. As we understand, historically the Federal Government has protected the individual rights, and when protesters attempted to prevent the black Americans from attending newly integrated schools by blocking the students' access, the Federal Government stepped in to ensure the students' safe entry. That was done at a time when there were many that really, out of a sincere belief, believed that the law was wrong during that time. It wasn't really a question whether they believed it was right or wrong. Still, the Justice Department acted.

But in this case, the U.S. Justice Department reached out to the district court in Kansas and entered the dispute on the side of the

lawbreakers. It weighed in with those who would forcibly deny a woman a Federal constitutional right to abortion. And it, as far as I am concerned, poured gasoline on an already volatile situation by making it appear that the Government supported the clearly unlawful acts of Operation Rescue.

The Government had already stated its position in a brief before the Supreme Court, defended in both cases the same entity, Operation Rescue, was even represented by the same attorney so there is no reason to believe the judge in Kansas would not be appraised of the pending Supreme Court case.

Why did the Government feel it necessary to sort of fan the flames in Wichita and to argue that Operation Rescue should be free from the Court's order prohibiting its illegal activities?

Mr. BARR. Well, thank you, Senator. This gives me the opportunity to describe what happened because I think it has been mischaracterized, largely, and people drew the wrong conclusions from the way it was publicly presented.

In describing it, I would like to emphasize three points. First, this was not viewed as an abortion issue in the Department. It was viewed as an issue of jurisdiction and the reach of the so-called Ku Klux Klan Act of 1871.

Second is that the Department did not side with the demonstrators. On the contrary, we condemn those who break the law and who violate other people's legal rights.

Third, this was not a gratuitous action by the Department where we reached out and tried to stir up an issue. On the contrary, we felt that circumstances came about that really drew us into it, and we tried in good faith to deal with it in a lawful way as we understood it.

The first point that I think bears emphasis is that Operation Rescue demonstrators who block abortion clinics are lawbreakers. They are treading on other people's legal rights. I do not support or endorse or sympathize with those tactics. As the President said, everybody has an obligation to obey the law, and as a Government official, my responsibility is to enforce the law and to protect people's rights.

The issue in Wichita was not whether those demonstrators should be dealt with. The issue in Wichita was which statute should be used to deal with them, which law enforcement agency should be used, and what court system should be used to deal with the demonstrators. And we believe that the applicable statutes were local and that the local police should be the law enforcement agency and that the local courts could deal with it. And this has been—in fact, in city after city around the country, that is how it has been handled—locally.

In Wichita, there was an attempt to federalize the issue. The clinics went to Federal court claiming that there was a violation of the Ku Klux Klan Act and seeking the intervention of Federal marshals to enforce their rights of access. Now, before Wichita, I learned at the time—I hadn't really focused on it before until the Wichita matter came up to me—but before Wichita, as you mentioned, this same effort had been made to federalize this issue, and that was in the Washington, DC, area. And that had been litigated up to the Supreme Court, and 3 to 4 months before Wichita, the

Department had filed a brief in the *Bray* case in the Supreme Court, saying that the Ku Klux Klan Act did not give Federal jurisdiction in these kinds of matters, that it required a class-based animus, certainly racial and possibly sexual class-based animus. But that was the limit of the jurisdiction under the Ku Klux Klan Act. So that was a position we had already taken by the time Wichita arose.

We had the additional situation where the district court judge in Wichita bought into the Ku Klux Klan Act theory. He issued a very broad injunction, sweeping injunction that had very stiff—as a condition of demonstrating, imposed a—I have forgotten what the term is now. But, anyway, the demonstrators had to pay in substantial moneys as a condition of demonstrating.

That concerned us, and then the order itself, the injunction itself, had very detailed instructions to the marshals about how to enforce the order.

The judge started holding press conferences and made statements—at least they were reported to me—about filling the jails, statements hostile to the elected officials, and also indicating that the Department of Justice fully supported his position. A number of components expressed concern about this state of affairs, and we had wide consultations within the Department, and it was decided that the best way to proceed, since we had already taken the position that the marshals did not have the jurisdiction to go in and do the things that they were now being told to do by the district court judge, was have the marshals obey the judge, have them obey the law, and call on everyone to obey the law, and then file an amicus with the court where we submitted the *Bray* brief—not rearguing the matter, just giving the judge a copy of the *Bray* brief to make it clear what our legal position was, but at the same time telling everyone to follow the judge's order.

I think for a period of time it helped defuse the situation out there and focus the attention on the courts and the legal process where it should be, rather than on the streets. But several days after that action, it appeared to me that other elements in Operation Rescue rekindled it and violated the law. They were arrested by—most of the arrests were by local police, but the marshals also made arrests. And I believe a number of them are being prosecuted for interfering with U.S. marshals.

But it was a legal question about the jurisdiction of the Ku Klux Klan Act, as I said, and we felt it was the proper thing to do, given the earlier position we had taken.

Senator KENNEDY. I am wondering if I could just finish. This is a very helpful statement and a good one.

The CHAIRMAN. Sure.

Senator KENNEDY. Just a final couple of points on this, if I could inquire, Mr. Chairman.

Do I understand you are saying that you think the Federal courts should not have jurisdiction to prevent interference with a woman exercising her constitutional right to choose abortion?

Mr. BARR. I was saying that the Ku Klux Klan Act doesn't provide that jurisdiction. I wasn't taking a policy position.

Senator KENNEDY. Well, you are aware that three Federal Courts of Appeals have decided this issue—the Second, Third, and Fourth

Circuits—as well as at least 12 Federal District Courts have held that section 1985-3 can be used to prevent groups like Operation Rescue from blockading clinics. The rulings have been based on interference with the right to travel. Only three District Courts, no Courts of Appeals, have taken views espoused by the Justice Department, which would deny women seeking abortions protection from these law-breakers.

I mean, effectively you are saying on the one hand they have a constitutional right, but you are leaving it up to the local law enforcement. And even in this case, you advocated that they lift the injunction against those that had been interfering with the clinic, and even in the face of the attorney that said, even if they don't lift it, I am not going to urge that they not continue their interference and their activities. And we are trying to find out what really the distinction is between the Justice Department that was prepared to go the extra mile on the basis of race over a period of 30 years to guarantee a constitutional right, and not prepared, evidently, to give the assurance of the protection and the safety to an individual here that is trying to pursue a constitutional right.

Mr. BARR. I think the issue for us as a matter of law was whether the Ku Klux Klan Act of 1871 was intended to provide that basis. I was not taking a position on whether the Government should or should not do that. Let me give you an example, and I do not mean to equate the two or analogize here, but I went to Columbia University during the riots in the late 1960's. People interfered, private citizens interfered with my constitutional rights, and I am not saying this is an analogous situation completely, but people blocked me from getting into the library, I know how it feels to be blocked when you are going about your lawful rights and it is quite offensive.

But even though I was being blocked in the exercise of my constitutional rights, I was being blocked not by the State, but by private people. And my remedy there was to go to State courts and get the city police to get them out of my way, which is what ultimately happened.

Now, with the Ku Klux Klan Act, the Federal Government has been given a role to play in certain circumstances where private parties combine to interfere with constitutional rights, but that is an exception to the rule. And the issue was whether that statute, passed in 1871, was designed to give the Federal Government that kind of a role in the matter of abortion and when this issue came to me the Department had already taken an issue on the position.

Senator KENNEDY. Well, I would just cease and hope you give responses.

I understand the 1985 Act prohibits a conspiracy to deprive a person, a class of persons from equal protection or equal privileges. Operation Rescue blockades are aimed at preventing pregnant women from obtaining abortions. Now, Congress said in the Pregnancy Discrimination Act, and that passed 75-to-11, that discrimination based on pregnancy is a sex discrimination under title VII.

So the Justice Department action in Wichita abandoned its traditional role of advocating the protection of civil rights under title VII. If we said that it is under title VII, with the Pregnancy Discrimination Act, falls within that, it would appear to me that there

are those kinds of requirements for the protection of individuals. I do not know whether you have any kind of comment, my time is gone.

Mr. BARR. I would want to have, you know, I would want to see that issue briefed before reaching a conclusion, but off the top of my head, my feeling there is if the class that is being invidiously discriminated against are pregnant women then title VII might apply, but that is not what was happening here. These people were not invidiously discriminating or demonstrating against all pregnant women. They were against abortion, both the patients and the people performing the abortion, that was the activity they were demonstrating against.

But I would want to have that issue fully briefed before I reached any conclusions on it.

Senator KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask the nominee as well as the committee a scheduling issue here. This was noticed for continuing tomorrow as well. I have no intention of ending now. We are going to go for a while longer, but it is my inclination, but I would be interested in my colleagues input that we finish today about 5:30. And that would get us so that we have at least two more of our colleagues, excuse me, three to four more of our colleagues be able to ask questions and then begin tomorrow at 10 o'clock.

Things are going fairly smoothly, I think we can just keep going along at that pace, if that is all right with the committee. Is that appropriate?

Well, then why do we not give you a chance to stretch your legs, a five-minute break right now, and then we will continue.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Senator GRASSLEY. And before you begin, Senator, I am told that there is going to be a vote around 5:15 and so hopefully we can get three or four more of our colleagues in before we break for that vote, if that is possible.

I have not been following, but what has been our time allotment? I forget.

The CHAIRMAN. Technically it has been 15 minutes, and in almost every case it has gone longer.

Senator GRASSLEY. OK, well, I probably will not use more than 15 minutes.

Mr. Barr, as you probably remember and I am sure that we have talked privately at other times when you have been around my office, of my interest in the False Claims Act of 1986. I was involved with the writing of that act, and as everybody knows that act was passed to give incentives for individuals who know about fraudulent use of taxpayer's money, the ability to take cases to the court and get a judgment or get a portion of what the Treasury would find in a favorable judgment.

For the False Claims Act to work it is very important that the Justice Department not fight efforts by private qui tam relators to pursue claims on behalf of the Treasury. Sometimes I have had cause for concern whether or not there has been a real commitment on the part of DOJ to prosecute in qui tam suits.

829

February 6, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

On January 25, I submitted responses to Questions for the Record received from members of the Committee. Last week, I received additional "Questions for the Record" from Ranking Member Feinstein and Senator Leahy. Although it is my understanding that the time for submitting and responding to Questions for the Record has passed and that the record is now closed, I nevertheless am voluntarily providing additional information in an effort to be responsive to the Committee. Enclosed please find my responses.

Sincerely,



William P. Barr

FOLLOW-UP QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

FOLLOW-UP QUESTIONS FROM SENATOR FEINSTEIN

1. In the Questions for the Record, you were asked whether you had “discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?” (Feinstein QFR 1(a)) You responded that you “*recall having general discussions about the possibility that any Special Counsel report may include categories of information that could be subject to certain privileges or confidentiality interests, including . . . information subject to executive privilege.*” You also wrote: “*I do not recall any discussions regarding the use of executive privilege to prevent the public release of any such report.*” (Barr Response to Feinstein QFR 1(a))

You did not indicate with whom you had these general discussions; when those discussions or occurred; or what you discussed as requested.

- a. Please identify the individual or individuals with whom you had the discussions you referenced. Please state their names and titles/positions.
- b. Please identify the date(s) when they occurred.
- c. Please identify what was discussed.
- d. Did you discuss whether information from Mueller’s report may not be provided to Congress or the public (based on privilege, confidentiality, or any other basis) with anyone? If so, what specifically was discussed, when, and with whom?
- e. You acknowledged in your response that you did discuss executive privilege, but said you could “not recall any discussions regarding the use of executive privilege to prevent the public release of any such report.” What specifically did you discuss with respect to executive privilege?

RESPONSE: As I stated in my response to your Question for the Record 1, I do not know what will be included in any report prepared by the Special Counsel, what form such a report will take, or whether it will contain confidential or privileged material. In my prior response, I was referring to general discussions that occurred following the announcement of my nomination, in the course of preparing for my hearing before the Committee. To the best of my recollection, I recall discussing the possibility that a Special Counsel report could include categories of information that could be subject to certain privileges or confidentiality interests, including classified information, grand jury information, and information subject to executive privilege. To the best of my recollection, I had those discussions with the individuals who were preparing me for my testimony before the Committee. I do not recall any

discussions regarding the use of executive privilege to prevent the public release of any such report or its release to Congress. If confirmed, I will follow the law, Department policy, and established practices, to the extent applicable, in determining whether any confidentiality interests or privileges may apply and how they should be evaluated and asserted. If it turns out that any report contains material information that is privileged or confidential, I would not tolerate an effort to withhold such information for any improper purpose, such as to cover up wrongdoing.

As I testified repeatedly during my hearing and reiterated in my responses to multiple Questions for the Record, I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the applicable regulations, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

2. In the Questions for the Record, you were asked for specific details regarding the drafting and dissemination of your June 2018 Mueller memo. (Feinstein QFR 5). You provided a general narrative that covered some of the requested details, but failed to disclose others.
 - a. You responded that before you wrote the memo, you spoke with Deputy Attorney General Rosenstein "*at lunch in early 2018*" and with Assistant Attorney General Steven Engel "*later, on a separate occasion.*" For each of these discussions, please explain the circumstances, including who initiated the meeting or discussion and what specifically was discussed.

RESPONSE: As I explained in my January 14, 2019 letter to Chairman Graham, in my testimony during the hearing, and in my answers to multiple Questions for the Record, to the best of my recollection, before I began writing the memorandum, I provided my views on the issue discussed in the memorandum to Deputy Attorney General Rod Rosenstein at lunch. To the best of my recollection, I suggested that we have lunch together, and he invited me to the Department in late March 2018. After we discussed other unrelated topics, I explained my concerns. As I testified during my hearing, he did not respond. Later, on a separate occasion, I briefly provided my views on the issue discussed in the memorandum to Assistant Attorney General Steven Engel in May 2018, when I stopped by his office while at the Department on unrelated business. As I have previously explained, during my interactions with Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

- b. You also responded that, after you wrote the memo, you provided copies to lawyers for the President. Specifically, you say you sent a copy to Pat Cipollone and discussed the issues raised in your memo with “*him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow.*”
- i. When did your conversations with Mr. Cipollone take place? If he was not yet serving as White House Counsel, were you aware that he was under consideration for that position? Please also explain who initiated these conversations, who else was present, and what specifically was discussed.
 - ii. With regard to your discussions with Marty and Jane Raskin and Jay Sekulow, please similarly explain when these conversations took place, who initiated these conversations, who was present, and what specifically was discussed.

RESPONSE: As I explained in my January 14, 2019 letter to Chairman Graham, a copy of which was attached to my responses to the Committee’s Questions for the Record, I sent a copy of my June 2018 memorandum to Pat Cipollone and have discussed the issues raised in the memo with him, Marty and Jane Raskin, and Jay Sekulow. To the best of my recollection, I explained my views to Mr. Cipollone and Mr. and Mrs. Raskin in May 2018, and at that time did not know whether or if Mr. Cipollone was under consideration to become the White House Counsel. After I sent Mr. Cipollone the memorandum, I explained my views to him, Mr. and Mrs. Raskin, and Mr. Sekulow in or around June 2018.

- iii. In your letter to Senator Graham (dated January 14, 2019 and referenced in your response), you list Abbe Lowell, who has been representing Jared Kushner in the ongoing Russia investigation, as someone to whom you gave your memo and discussed your views. Please explain when you gave Mr. Lowell the memo or discussed it with him, who initiated these contacts, who was present for these discussions, and what specifically was discussed. Was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed.
- iv. Your letter to Senator Graham also lists Richard Cullen, who has been representing Vice President Pence in the ongoing Russia investigation, as someone to whom you gave your memo and discussed your views. Please explain when you gave Mr. Cullen the memo or discussed it with him, who initiated these contacts, who was present for these conversations, and what specifically was discussed. Was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed

- v. Have you shared a copy of or discussed your memo with any other individual who is currently or has represented clients in connection with the Mueller investigation? If so, with whom? Please also explain who initiated the meeting or discussion, and what specifically was discussed.
- vi. Your letter to Senator Graham also lists Jonathan Turley, a law professor who testified at your hearing, and George Terwilliger, a former colleague of yours at the Justice Department, as individuals to whom you gave your memo and discussed your views. Did you discuss with either Professor Turley or Mr. Terwilliger whether they would testify regarding your memo, or defend you or the memo in another context such as a publication, or otherwise?

RESPONSE: As I explained in my January 14, 2019 letter to Chairman Graham, a copy of which was attached to my responses to the Committee's Questions for the Record, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day—sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony. For example, I have offered my views to officials at the Department on a number of legal issues, such as concerns about the prosecution of Senator Bob Menendez, who was represented by Abbe Lowell, a lawyer with whom I have been friends for many years.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority—not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department. My purpose in doing so was to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with lawyer friends, wrote the memorandum to senior Department officials, shared it with other interested parties, and later provided copies of the memorandum to friends.

It was in that spirit that I provided the memorandum to the individuals identified in my January 14, 2019 letter to Chairman Graham. To the best of my recollection, I briefly mentioned the memorandum to Abbe Lowell and provided a copy at his request in or around August 2018. We had no follow-up discussions regarding the memorandum. To the best of my recollection, I mentioned my views to Richard Cullen, who is a longtime friend, in or around May 2018 and provided him a copy of the memorandum in or

around June 2018. Other than Mr. Cullen briefly acknowledging receipt and complimenting the memorandum, I do not recall a follow-up discussion regarding the memorandum. Further, as my letter to Chairman Graham explained, it is possible that I shared the memorandum or discussed my thinking reflected in the memorandum with other people in addition to those mentioned, including some who have represented clients in connection with the Special Counsel's work.

- vii. Have you ever discussed your June 8, 2018 memo with Vice President Pence? If so, when, who initiated the conversation, and what specifically did you discuss? In any discussions with Vice President Pence, was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed.

RESPONSE: To the best of my recollection, I have not discussed the memorandum with Vice President Pence.

3. Previously, you were asked whether you would “specifically commit to timely responding to minority requests” and “not just requests from a Chair or members of the majority.” (Feinstein QFR 16(a)) You responded in relevant part: *“I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department’s law enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department’s Office of Legislative Affairs.”* (Barr Response to Feinstein QFR 16(a))

As you may know, on June 7, 2017, then-Chairman Grassley wrote a letter to the President expressing his strong disagreement with conclusions in the OLC memo dated May 1, 2017. Then-Chairman Grassley stated that the OLC memo “falsely asserts that only requests from committees or their chairs are ‘constitutionally authorized,’ and relegates requests from non-Chairmen to the position of ‘non-oversight’ inquiries — whatever that means.” (June 7, 2017 Letter from Chairman Grassley to President Trump) In response, former White House Director of Legislative Affairs Marc Short wrote that “the OLC Letter was not intended to provide, and did not purport to provide, a statement of Administration policy.” Mr. Short also wrote that “[t]he Administration’s policy is to respect the rights of all individual Members, regardless of party affiliation, to request information about Executive Branch policies and programs. The Administration will use its best efforts to be as timely and responsive as possible in answering such requests consistent with the need to prioritize requests from congressional Committees” (July 20, 2017 Letter from WH Director of Legislative Affairs Marc Short to Chairman Grassley)

- a. Do you agree with Mr. Short’s statement that the May 1, 2017 OLC opinion is not a statement of Administration policy?

- b. If confirmed, what specific policy will you follow with regard to requests from the minority?
- c. Given the May 1, 2017 OLC opinion, and the White House letter of July 20, 2017, will you specifically commit to timely responding to minority requests, if you are confirmed, and not just to requests from a Chair or members of the majority?

RESPONSE: It is my understanding that the Department responds to legitimate requests for information from *all* Members of Congress. I understand how important it is to receive information from the Executive Branch. I agree with the June 20, 2017 letter to Senator Grassley from the White House Director of Legislative Affairs, which explains that the Administration will “use its best efforts to be as timely and responsive as possible in answering” requests from all Members, including minority Members, “consistent with the need to prioritize requests from congressional Committees, with applicable resource constraints, and with any legitimate confidentiality or other institutional interest of the Executive Branch.” If confirmed, I commit that the Department will follow this Administration policy while continuing to protect its law enforcement, litigation, and national security obligations and legal requirements.

- 4. Previously you were asked whether you had “spoken with anyone about possible recusal from the Special Counsel’s investigation? If so, with whom, when, and what was discussed?” (Feinstein QFR 20) You responded that you “*discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest.*” (Barr Response to Feinstein QFR 20) But you did not identify the specific individuals or what was discussed, including whether you were provided with any advice regarding your potential recusal from the Mueller investigation.
 - a. Please identify the individual or individuals within the Justice Department with whom you had these discussions. Please state their names and titles/positions.
 - b. Please identify the date(s) when you had these discussions.
 - c. Please identify what was discussed with respect to possible recusal from the Mueller investigation, including whether anyone provided any advice about your possible recusal from this investigation.

RESPONSE: As I explained in my answer to your Question for the Record 20, after the President announced on December 7, 2018, that he intended to nominate me to serve as Attorney General, I discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest. As was publicly reported on December 19, 2018, senior Department ethics officials conveyed their view that my memorandum would not pose a conflict of interest. I was also told that any recusal decision could not be

made until after I assumed office and all relevant facts and circumstances were known.

5. In Questions for the Record, you were asked whether “you still believe that *Roe v. Wade* should be overruled.” (Feinstein QFR 29(a)) You responded that *Roe* “*is precedent of the Supreme Court and has been reaffirmed many times,*” adding: “*I understand that the Department [of Justice] has stopped, as a routine matter, asking that Roe be overruled.*” (Barr Response to Feinstein QFR 29(a))
- a. Please clarify whether you believe that *Roe v. Wade* should be overruled. If so, on what basis?
 - b. Please clarify whether, if confirmed, you will seek to ask for *Roe* to be overruled.

RESPONSE: As I explained in my answers to the Committee’s Questions for the Record, in the Reagan and George H.W. Bush Administrations, the Solicitor General routinely asked the Supreme Court to overrule *Roe v. Wade*. But at that time, *Roe* was less than 20 years old.

Since then, the Supreme Court has reaffirmed *Roe* in a number of cases, and *Roe* is now 46 years old. Moreover, it is my understanding that a number of Justices have made clear they believe that *Roe* is settled precedent of the Supreme Court under *stare decisis*.

In addition, the Department has stopped routinely asking the Court to overrule *Roe*. I think the issues in abortion cases today are likely to relate to the reasonableness of particular state regulations, and I would expect the Solicitor General will craft his positions to address those issues. At the end of the day, I will be guided by what the Solicitor General determines is appropriate in a particular case and will ensure that the Department enforces existing law.

6. In Questions for the Record, you were asked: “*In your view, what are the options for holding a president accountable for abuse of the pardon authority?*” (Feinstein QFR 12(e)) You did not respond to this question. Please clarify, in your view, what are the options for holding a president accountable for abuse of the pardon authority?

RESPONSE: As I explained in my answers to the Committee’s Questions for the Record, under the Constitution, the President’s power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. As I explained in my testimony, under applicable Department of Justice policy, if a President’s actions constitute a crime, he or she may be subject to prosecution after leaving office. In addition, a president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate.

7. You were previously asked a question about enforcement of the Americans with Disability Act (ADA): “If confirmed, what specific steps will you take to ensure that the

ADA is vigorously enforced?" (Feinstein QFR 54) You responded: "*If confirmed, I will enforce all federal civil rights law enacted by Congress, including the ADA.*" (Barr Response to Feinstein QFR 54) Please identify the specific steps you will take, if confirmed, to enforce the ADA. Please provide details about enforcement under both Titles II and III.

RESPONSE: If confirmed, I look forward to meeting with the senior leadership of the Civil Rights Division and discussing with them the Department's current implementation of Titles II and III of the ADA as well as steps that could be taken to improve the Department's implementation, to the extent that such steps exist. As Attorney General, my focus would be on ensuring that the ADA, as well as all federal civil rights laws, are enforced vigorously throughout this country.

FOLLOW-UP QUESTIONS FROM SENATOR LEAHY

1. I appreciate that you acknowledged in your testimony that it is “very important that the public and Congress be informed of the results of the Special Counsel’s work.” But I am concerned that, based on some of your other responses to senators, you may believe you are restricted from informing the public or Congress of any potential wrongdoing committed by the President provided the Special Counsel does not recommend he be indicted, consistent with current Department policy governing sitting presidents. In response to Senator Durbin’s questions for the record you cited Department of Justice guidance that the required report under 28 C.F.R. § 600.8 is “handled as a confidential document, as are internal documents relating to any federal criminal investigation.” You also cite to the Justice Manual, § 9-27.760, which “cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties.”
 - a. As it is current Department policy that a President may not be indicted while in office, do you interpret the Department’s regulations and guidance to require that a report that details misconduct by a President currently in office cannot be released to Congress or the public because the President would be an uncharged third party?

RESPONSE: As I explained in my answers to the Committee’s Questions for the Record, I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can, consistent with the law, including the applicable regulations, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

2. In addition to being a criminal investigation, the investigation led by Special Counsel Mueller consists of a counter-intelligence investigation into foreign interference in the 2016 election. It is not clear that the special counsel regulations contemplated the potential of a counter-intelligence investigation, which would not typically lead to “prosecution or declination decisions” under 28 C.F.R. § 600.8.
 - a. What standard would you apply in deciding whether to release to Congress findings from a counter-intelligence investigation conducted by the Special Counsel?

RESPONSE: Please see my response to Question 1(a) above, as well as my responses to questions about disclosing the Special Counsel's findings in the Committee's Questions for the Record.

3. The special counsel regulations require that a report be transmitted confidentially to the Attorney General upon the conclusion of an investigation. But the regulations do not state that the Attorney General lacks the discretion to make such report public if it is in the public interest and with required redactions, if any.
 - a. Do you agree that an Attorney General retains the discretion to transmit the Special Counsel's report to Congress or make it public with appropriate redactions if it is in the public interest?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

Please also see my answer to Question 1(a) above.

4. During your confirmation hearing, when I asked whether you would commit to both seek and follow the advice of career ethics officials regarding potential recusal from the Special Counsel investigation, you testified that "under the regulations, I make the decision as the head of the agency as to my own recusal." You later elaborated that you would not follow the ethics officials' recommendation should you disagree with their advice. Like all agency heads, however, the Attorney General is obligated to follow the established ethics protocols as laid out in the Standards of Ethical Conduct for Employees of the Executive Branch to avoid the appearance of loss of impartiality.
 - a. Given your previous public comments on the Special Counsel's investigation—including your comment that you saw more basis for investigating the Uranium One deal than "so-called collusion," and your memo sent to both the Justice

Department and President's lawyers—if you received a recommendation from career, nonpartisan ethics officials that you need to recuse from the Special Counsel's investigation, wouldn't the refusal to accept that recommendation not give further rise to an appearance of a conflict?

RESPONSE: Under the governing regulations, the Attorney General, as the head of an agency, makes the final decision on whether to recuse under 5 C.F.R. § 2635.502. See 5 C.F.R. § 2635.102 (“Any provision [of this part] that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.”). As I explained in my responses to the Committee's Questions for the Record, if confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith and based on the facts and applicable law and rules.

February 6, 2019

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter of February 4, 2019, bringing to my attention an exchange you had with Chairman Graham during last week's Judiciary Committee meeting. I understand from your letter that you would like me to review my responses to certain Questions for the Record submitted by you and consider supplementing or revising my answers. Although it is unclear from your letter which specific questions you would like me to revisit and what further information you are requesting, I have reviewed my responses with the two topics you mention in mind in an effort to be responsive to you and your colleagues.

As I explained at my hearing, stated in my written answers to Questions for the Record from members of the Committee, and reiterated to Chairman Graham when I met with him recently to discuss these issues, I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. As a private citizen, I do not know what will be included in any report prepared by the Special Counsel or what form such a report will take. As I have stated, however, if confirmed, my goal will be to provide as much transparency as I can regarding the results of the Special Counsel's work consistent with the law, including the applicable regulations, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

I believe that this letter as well as the answers that I provided during my hearing and in writing to the Committee provide an appropriate and complete response to the issues raised in your letter.

Sincerely,



William P. Barr



**NATIONAL
FRATERNAL ORDER OF POLICE®**

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

30 January 2019

The Honorable Lindsey O. Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

On behalf of the more than 345,000 members of the Fraternal Order of Police, I would like to thank you for your invitation to share the views of our members on the nomination of William P. Barr to be the next Attorney General of the United States. We strongly support this nomination and look forward to the Committee's consideration early next month.

I am pleased to respond to questions for the record from Senators Hirono and Klobuchar. I have attached those responses to this letter.

If I can be of any further assistance, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,


Chuck Canterbury
National President

ANSWER IN RESPONSE TO SENATOR HIRONO, Question (a)

Under the leadership of former U.S. Assistant Attorney General Vanita Gupta, the FOP and the Civil Rights Division at the U.S. Department of Justice enjoyed a professional and collaborative working relationship. She changed the tone and approach of the Civil Rights Division from an adversarial one to a more collaborative one. To achieve this, she sometimes called upon the Collaborative Reform Initiative within the Office of Community Oriented Policing Services (COPS) for assistance. While there is always dynamic tension between the regulator and the regulated, we felt that our relationship with AAG Gupta lent itself to a more productive and less destructive give-and-take.

It is important to recognize, however, that it is the Civil Rights Division that serves as the formal investigative component and not the COPS Office, which is largely unfamiliar with the legal aspects of such investigations and their remedies. Under former Attorney General Sessions, collaborative reform efforts are not triggered by a Civil Rights Division investigation. Instead, these efforts are now pro-active and outreach-based, allowing agencies to seek assistance and support on their own initiative.

If the Justice Department had ended collaborative reform efforts, then Ms. Gupta's criticism would be valid. However, this is not the case—the Collaborative Reform Initiative and Technical Assistance Center (CRI-TAC) has assembled a remarkable coalition of labor and police management membership organizations, including the FOP and the International Association of Chiefs of Police, and is delivering much needed resources and support to the local level at no cost to these agencies.

We would submit that this Justice Department is actually doing a better job at assisting agencies with collaborative reform with the newly implemented structure.

ANSWER IN RESPONSE TO SENATOR HIRONO, Question (b)

If Mr. Barr is confirmed as Attorney General, we would urge him to continue with the existing collaborative model and support the ongoing work of CRI-TAC, which is designed to meet the wide range of needs in local, State and tribal law enforcement agencies of every size and in every region of the country. The new approach focuses on developing local solutions and strategies by drawing on a national pool of subject matter experts from the field. The process is both collaborative and comprehensive, employing the latest innovations in community policing supported by evidence-based practices.

The FOP is proud to be a very active part of this effort to promote anti-crime measures and improved policing strategies, combined with a strong commitment to community outreach and engagement, benefiting the agencies and the communities they serve.

ANSWER IN RESPONSE TO SENATOR KLOBUCHAR

The programs administered by the Office of Community Oriented Policing Services (COPS) are among the most critical for local, State and tribal law enforcement. We are particularly grateful to you, Senator Klobuchar, for your leadership in protecting and expanding these programs and for sponsoring the reauthorization of the COPS Office in the last several Congresses. We look forward to working with you again on this issue.

The COPS Office administers a variety of programs, including the:

- Coordinated Tribal Assistance Solicitation (CTAS);
- Community Policing Development (CPD) Program;
- School Violence Prevention Program (SVPP);
- COPS Anti-Methamphetamine Program (CAMP); and
- COPS Anti-Heroin Task Force (AHTF) Program.

In 2016, you helped the FOP by cosponsoring S. 2840/PL 114-199, the Protecting Our Lives by Initiating COPS Expansion (POLICE) Act, which established a new program within the COPS Office to help train law enforcement officers to respond to active shooter situations. The bill was signed into law and now the Preparing for Active Shooter Situations (PASS) Program is able to assist with agencies who need this type of training.

The COPS Office assumed the administration of the National Blue Alert Program, a public safety program designed to enlist the help of the public to capture individuals who attack or kill law enforcement officers.

The recently enacted Law Enforcement Mental Health and Wellness Act is currently being implemented by the COPS Office and will no doubt build upon the research and results they have had to date as part of their Officer Safety and Wellness program.

Of course, the primary mission of the COPS Office is to get more officers on the street through the hiring program which is the central tenet in our nation's community oriented policing strategy. This approach was validated by a Government Accountability Office (GAO) study of the COPS program which stated: "COPS-funded increases in sworn officers per capita were associated with declines in the rates of total index crimes, violent crimes, and property crime."

We believe that community oriented policing is the most effective way to promote public safety and to enhance the quality of life in a community. By involving the community, the police have more resources available to help in crime prevention. By familiarizing themselves with the members of the community, officers are more likely to obtain valuable information about criminals and their activities, and they are more likely to obtain a reliable evaluation of the needs of citizens and their expectations of the police. The work of the COPS Office and its local, State and tribal partners provides the community with a sense of commitment, reliability and trust from law enforcement. Without the trust and involvement of the community, our streets and neighborhoods are less safe.

We also believe that the independence of the COPS Office is critical to the success it has had. There have been proposals, regulatory and statutory, that seek to make this vital component of our national policing strategy just another grant program under the Bureau of Justice Assistance (BJA).

Unlike some Federal programs which provide assistance to local, State and tribal law enforcement, the COPS Office has cultivated and maintained excellent partnerships with officers in the field. The office and its staff draw on real world experience, as many are former law enforcement officers. The officers in the field know this and the COPS Office enjoys their full confidence and trust. The COPS Office is a brand and to subjugate the office to the BJA would anonymize it and ultimately erode that trust and, subsequently, its value to the men and women in law enforcement. We will look to you and our new Attorney General to help the COPS Office maintain its independence and value to our nation's law enforcement officers.

**HEARING ON THE NOMINATION OF WILLIAM BARR
FOR UNITED STATES ATTORNEY GENERAL**

**ANSWERS BY DERRICK JOHNSON
TO QUESTIONS FROM SENATOR MAZIE K. HIRONO**

Questions From Senator Mazie K. Hirono:

In your opening statement, you criticized the Trump Administration for curtailing the use of consent decrees to address abuse by police agencies. I specifically asked Mr. Barr about this topic during his confirmation hearing. I asked him whether he agreed with former Attorney General Jeff Sessions' memo in which he made it harder for the Justice Department's Civil Rights Division to enter into consent decrees to address systemic police misconduct. He responded that he "agree[d] with that policy."

Please describe the importance of consent decrees in addressing police abuse and the impact continuing former Attorney General Sessions' policy would have on civil rights enforcement more generally.

ANSWER: William Barr's response to your important question that he would, in fact, continue Jeff Sessions' policy to limit the ability of the Civil Rights Division to enter into consent decrees is extremely distressing. The authority of the Department of Justice to rely on the use of consent decrees is vitally important to its mission to enforce our federal civil rights laws. Consent decrees allow the Department to obtain defendants' compliance with civil rights laws without having to litigate cases to judgment. They are particularly effective in cases involving systemic abuse and misconduct by local police agencies. These decrees are joint, mutually binding agreements that set forth compliance plans for reform which usually include training, revision of policies and procedures, data collection and enhanced communication with local communities of color. Invariably, police agencies entering into consent decrees experience increased trust and confidence of the communities they serve. Restricting or eliminating their use in these cases undermines decades-long progress in achieving desperately needed reform of our criminal justice system.

It is also deeply disturbing that William Barr would restrict the Civil Rights Division from relying on consent decrees to address other systemic forms of discrimination. The Civil Rights Division has significantly utilized consent decrees over decades to address unlawful action by state and local governments in other areas of civil rights enforcement such as education and housing. Without this important enforcement tool, both defendants and the communities protected by our federal civil rights laws will suffer. Voluntary agreements, without a court-approved consent judgment, will be less effective in achieving compliance with civil rights laws. If consent decrees are not an option, the Department may be forced to pursue costly litigation that could have been otherwise avoided.

**HEARING ON THE NOMINATION OF WILLIAM BARR
FOR UNITED STATES ATTORNEY GENERAL**

**ANSWERS BY DERRICK JOHNSON
TO QUESTIONS FROM SENATOR PATRICK LEAHY**

1. During his first stint as Attorney General under President George H.W. Bush, Mr. Barr was adamant that “increasing prison capacity is the single most effective strategy for controlling crime.” In your view, is increasing prison capacity really the most effective strategy to control crime? If not, what in your opinion are the most effective strategies?

ANSWER: Increasing prison capacity is certainly not the most effective strategy to address crime, and that has been proven over the years. The United States is home to the world’s largest prison population. Expanded prison capacity and tough-on-crime laws have put an unprecedented number of non-violent offenders behind bars. The NAACP advocates for smarter, results-based criminal justice policies to keep our communities safe, including treatment for addiction and mental health problems, judicial discretion in sentencing, and an end to racial disparities at all levels of the justice system.

2. Mr. Barr also stated that he thought our justice system was “fair and didn’t treat people differently.” Based upon your own experience, does our justice system really treat every person the same regardless of the race or background of the individual?

ANSWER: Absolutely not. The justice system is anything but fair. The African-American community constantly experiences racial disparities at every point within the criminal justice process, through racial profiling, arrests, bail-setting, selective prosecution, jury selection, sentencing, prison conditions, and the effects of incarceration on re-entry. We see this in individual communities and on a national scale. We must work to ensure fairness in all components of the system.

3. Mr. Barr stated before this committee that while he once supported strong penalties on drug offenders, he now understands that things have changed since 1992. Are you concerned about Mr. Barr’s historic approach to drug crimes, and how he would handle such issues as Attorney General? What in your opinion is the best way to lower crime rates associated with drug use?

ANSWER: Yes, we are very concerned about Mr. Barr’s heavy-handed approach to incarcerating persons with drug offenses. This model has been proven ineffective and discriminatory, and now is universally rejected. Although African Americans and whites use drugs at similar rates, African Americans are arrested and imprisoned at higher rates. Specifically, only 12% of drug users are African American, yet nearly 40% of those arrested for drug offenses are African American. The result is that African Americans are imprisoned for drug offenses at rates almost six times that of whites. Flawed drug policies must be replaced with evidence-based practices that address the root cause of drug use and abuse. Rehabilitation and treatment programs must be expanded as alternatives to prison, and we must reduce sentencing for non-violent drug offenses and provide more discretion in their application.

4. As indicated in Mr. Barr's discussion with Senator Blumenthal, Mr. Barr stated that he believed it was the right thing under the law to segregate people with HIV who were seeking asylum in Guantanamo Bay. Was Mr. Barr correct when he said this policy was right under the law? Do you believe Mr. Barr handled that situation appropriately?

ANSWER: Mr. Barr was incorrect. A federal judge ruled that the segregation and indefinite detention of HIV-positive Haitians without medical care was in violation of the Constitution. The government was required to provide access to attorneys and to bring the HIV-positive patients to the U.S. for treatment. Mr. Barr's handling of the situation was appalling and inhumane.

QUESTIONS FROM SENATOR LEAHY FOR PROF. NEIL KINKOPF

1. In your written testimony, you expressed your opinion that the Barr Memo argues that “[the President] alone is the Executive branch,” which you claim moves the executive from a Unitary Executive to an Imperial Executive.

a. Do you believe Mr. Barr’s views on executive power are outside the mainstream of legal thought? Were his view of an “imperial presidency” to come to fruition, what checks would remain on the President’s power?

Mr. Barr’s view of executive power represents a radical departure from the Constitution’s text and structure. It is also deeply incompatible with the constitutional design the Framers themselves expounded.

Under his Imperial Theory of presidential power, the President is free to exercise his vast constitutional authority as he sees fit during his term. The only checks on his exercise of executive power are Congress’s power to hold oversight hearings,¹ impeachment, and political considerations.² Under this vision, the President and the Administration may exercise their executive powers as they see fit, free from any legal constraint. Here is how the Barr Memo expresses its vision:

In framing a Constitution that entrusts broad discretion to the President, the Framers chose the means they thought best to police the exercise of that discretion. The Framers’ idea was that, by placing all discretionary law enforcement authority in the hands of a single “Chief Magistrate” elected by all the People, and by making him politically accountable for all exercises of that discretion by himself or his agents, they were providing the best way of ensuring the “faithful exercise” of these powers. Every four years the people as a whole make a solemn national decision as to the person whom they trust to make these prudential judgments. In the interim, the people’s representatives stand watch and have the tools to oversee, discipline, and, if they deem appropriate, remove the President from office. Thus, under the Framers’ plan, the decision whether the President is making decisions based on “improper” motives or whether he is “faithfully” discharging his responsibilities is left to the People, through the election process, and the Congress, through the Impeachment process.³

¹ It bears noting that Barr’s longstanding view is that Congress’s oversight authority is extremely limited. See, e.g., Congressional Requests for Confidential Executive Branch Information, 13 Op. O.L.C. 153, 160 (1989).

² See Memorandum from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, re: *Mueller’s “Obstruction” Theory* (June 8, 2018)(hereinafter, The Barr Memo). At least, these are the only checks recognized in the Barr Memo. In discussing checks on presidential power, the Barr Memo never mentions the judiciary. It is therefore unclear to what extent, if any, judicially enforceable limits – such as individual constitutional rights – might operate as a constraint on presidential power. In this connection, it is relevant to note that the Barr Memo frequently refers to the President’s constitutional executive powers as “illimitable,” a description that would appear to run against the judiciary as well. It is also relevant that the Barr Memo regards it as inappropriate (presumably for courts as well as investigators) to look behind facially-legitimate exercises of power. E.g., *id.* at 9-12.

³ The Barr Memo at 11.

This passage purports to describe the Framers' design for the constitutional allocation of powers between the President and Congress. It is not surprising that it does not cite any actual Framers, because it is difficult to imagine a more fundamentally mistaken interpretation of our Constitution. In *The Federalist* nos. 47, 48, and 51, James Madison offers a comprehensive account of the Constitution's structure and distribution of power within the federal government. In *The Federalist* no. 47, Madison explains that each branch is accorded "a partial agency" in, meaning a "control over, the acts of each other."⁴ In numbers 48 and 51, Madison explains that the reason for granting overlapping and coordinated, rather than exclusive and distinct, powers was to establish the system of checks and balances that is so familiar to us. Within this system, Madison regarded Congress as the most powerful branch. "The legislative department derives [its] superiority in our government[] from ... [the fact of i]ts constitutional powers being at once more extensive, and less susceptible of precise limits"⁵ By contrast, "the executive power [is] restrained within a narrower compass"⁶ Madison's account of the Constitution's design would be obviously wrong if the Barr Memo's description, quoted above, were accurate.

The fundamental flaw in the Barr Memo's description of the constitutional system of checks and balances is that it completely ignores Congress's most important power – the power to legislate. To take federal criminal law as an example, the Constitution vests Congress with an array of substantive powers that authorize it to enact the vast expanse of federal criminal law contained in the U.S. Code. In addition, Congress is empowered to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof."⁷ Congress, therefore, clearly holds the authority to establish a Department of Justice to investigate and prosecute violations of those criminal laws. It also has the authority to confer investigative and prosecutorial authorities upon particular officers, such as the Attorney General, and to establish the rules that anyone who prosecutes and investigates must follow.

The Barr Memo's Imperial Executive theory, however, ignores the existence of these legislative powers. Instead, it extols "[t]he illimitable nature of the President's law enforcement discretion"⁸ and claims "the full measure of law enforcement authority is placed in the President's hands, and no limit is placed on the cases subject to his control and supervision."⁹ The Memo takes the view that the President and his subordinates in the Department of Justice are at liberty to investigate and prosecute as they see fit, subject only to the (vanishingly small) possibility of impeachment or the inconvenience of legislative oversight hearings. This is not the system our Constitution adopts or our Founders envisioned.

a. Mr. Barr claimed that he would support the release of the Special Counsel's report as far as he was able to under the law. In your view, what implications does Mr. Barr's expansive view of executive power have for

⁴ *The Federalist Papers* No. 47, at 302 (Madison)(Clinton Rossiter ed. 1961).

⁵ *Id.* no. 48, at 310.

⁶ *Id.* at 309.

⁷ U.S. Const. art I, §8, cl. 18.

⁸ The Barr Memo at 11.

⁹ *Id.* at 10.

his ability to ensure the Special Counsel's report is released to the public and not subject to, for example, unwarranted claims of executive privilege?

Mr. Barr's long held view of presidential authority regards the President as constitutionally empowered to withhold from Congress any reports or other documents produced by the Administration that do not comport with the Administration's position on a given matter. Mr. Barr, in 1989, castigated legislation that required executive officials to submit reports concurrently to Congress. Such requirements, he claimed, "prevent[] the President from exercising his constitutionally guaranteed right of supervision and control over executive branch officials. Moreover, such provisions infringe on the President's authority as head of a unitary executive to control the presentation of the executive branch's views to Congress."¹⁰

This view has significant ramifications for Mr. Barr's assurance that he would support the release of the Special Counsel's report. Under Barr's view, it is the President – not the Attorney General – who has the ultimate authority to decide what information the executive branch should share with Congress. Moreover, Mr. Barr also made it clear that he views it as proper procedure for the Department of Justice to refuse public comment on any matter it has investigated and declined to prosecute. This testimony should be understood in conjunction with his testimony that he is inclined to adhere to the position – which he takes to be established Department of Justice policy – that a sitting President may not be indicted. Together these statements mean the President may not be indicted and it would be improper for the Department to comment (including by issuing a report) on any investigation of the President. In short, Mr. Barr's "consistent with law" caveat swallows the seeming assurance that he will support the release of Special Counsel Mueller's report.

2. In your written statement, you stated that the Barr Memo is clear that anyone who exercises prosecutorial discretion is subject to the President's supervision and control. But in his testimony before the committee, Mr. Barr also gave several assertions that he would allow the Special Counsel to do his job and would not allow interference with the investigation.

a. Do these assertions assure you that Mr. Barr would allow the Special Counsel to finish his investigation and potentially any subsequent prosecutions?

No. They assure me that he would not interfere with or terminate the special Counsel's investigation of his own accord. Mr. Barr's view of presidential power is, as I set forth in my written statement, quite clear that the President himself may exercise complete supervision and control over any federal criminal investigation, including an investigation of the President himself or of the President's family members. Nothing in Mr. Barr's testimony offers any kind

¹⁰ *Common Legislative Encroachments on Executive Branch Constitutional Authority*, 13 Op. O.L.C. 248, 255 (1989).

of assurance that he would instruct the President that it would be a violation of law (in particular, of the regulation establishing the Special Counsel) for the President to interfere or to terminate the investigation or to terminate the Special Counsel without cause. Indeed, the Barr Memo makes perfectly clear that Mr. Barr would advise the President that he has the constitutional authority to interfere with or terminate the Special Counsel's investigation.

b. Does the Barr memo potentially undermine Mr. Barr's ability to prevent presidential interference in the Special Counsel's investigation – under his own analysis that anyone who exercise prosecutorial discretion falls under the control of the President?

Yes. Under Mr. Barr's theory, the Attorney General may not prevent the President from interfering with the Special Counsel's investigation. In fact, if the President were to seek the opinion of the Attorney General as to whether the President has the authority to supervise, control, or direct the Special Counsel's investigation, Mr. Barr would answer in the affirmative – *i.e.*, that the President has such authority. In the Barr memo, he goes so far as to assert that the President may manipulate the investigation in his own favor by “plac[ing] his thumb on the scale in favor of lenity.”¹¹ Mr. Barr, then, would actually facilitate the President's manipulation of the investigation.

3. The President has expressed interest in declaring a national emergency in order to use funds allocated to other departments to build a “border wall” along the Southern Border.

a. In your academic and professional view, do you believe that President Trump declaring a national emergency to build the border wall would constitute an exercise of power by the “Imperial Executive”?

My understanding is that the President would rely on statutory authorities. If so, I would not regard that as “imperial” inasmuch as such a move would be predicated upon congressional authorization rather than upon unilateral and illimitable power to declare and respond to emergencies. Having said that, the legality of such a move would depend on the specific statutes upon which the President purports to rely. There are many statutes that authorize the President to declare specific types of national emergencies and to take specific types of actions in response. A proper view of executive power holds that the President is constrained by the terms of those statutes. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

b. Do you believe that Mr. Barr, as Attorney General and given his views on executive power, would push back on President Trump declaring a national emergency to seize funds to build his border wall as a violation of the powers granted to the Executive Branch?

¹¹ The Barr Memo at 9.

Mr. Barr's legal opinions strongly indicate that he would not constrain the President's exercise of statutory authorities. Indeed, those opinions indicate that Mr. Barr would most likely act to facilitate expansive and unwarranted assertions of statutory powers. The Memo that Mr. Barr wrote last summer on the issue of whether the President is subject to the obstruction of justice statute is alarming in this regard. It demonstrates that Mr. Barr will read statutes in a way that facilitates his underlying view of the President's constitutional authority – which, again, is itself an extreme view. Were Mr. Barr to follow the same approach to statutory interpretation that he applied in his June 2018 memo, he would read statutory limits on the President's emergency powers narrowly or as inapplicable altogether.

I want to emphasize that I have no doubt that Mr. Barr would uphold legal limits on the President's authority where he sees them as applicable. My concern is that Mr. Barr too often sees statutory limits on the President's power as inapplicable or unconstitutional. In other words, I do not mean to challenge Mr. Barr's character. It is the substance of his theory of presidential power that I find dangerous.

4. Mr. Barr stated before the Senate Judiciary Committee that politics degenerating into investigating political officials would lead us to a banana republic.

a. Do you believe there is a legal basis to indict a sitting president if there is clear evidence of wrongdoing? Would this lead us to a banana republic, or would this be upholding the rule of law?

Yes. I believe there is a legal basis for indicting a sitting President. It is often asserted that the Department of Justice has reached a settled view to the contrary. Former Assistant Attorney General for the Office of Legal Counsel Walter Dellinger has explained that the Department's position is actually much more equivocal on this point and has emphasized that it would be consistent with the Department's views to indict a President and postpone actual prosecution until the President has left office.¹² I agree. Given the Supreme Court's ruling in *Clinton v. Jones* that requiring a sitting President to subject himself to civil litigation while in office is constitutionally permissible, it is difficult to see how an indictment on its own would unconstitutionally prevent the President from performing his constitutional duties.

Regardless of the Department's position, I believe the question of whether a sitting President may be prosecuted while in office is a close one. I think it especially close, and one to which the Department has paid scant attention, if the basis of the indictment and prosecution is conduct that took place before the President took office. In *Clinton v. Jones*, 520 U.S. 681 (1997), the Supreme Court thought this crucial and distinguishing of the precedents (*e.g.*, *Nixon v. Fitzgerald*, 457 U.S. 731 (1982)) that held the President could not be sued for conduct undertaken while in office. It is difficult to imagine that a criminal prosecution would be any more disruptive to a sitting President than Paula Jones's lawsuit was to President Clinton.

¹² Walter Dellinger, *Indicting a Sitting President Is Not Foreclosed: The Complex History* Lawfareblog (June 18, 2018), available at <https://www.lawfareblog.com/indicting-president-not-foreclosed-complex-history>.

Politicization of the criminal justice system would, to use your term, render us “a banana republic.” The threat of politicization is greatest where an incumbent administration uses its prosecutorial powers against its political opponents, as Mr. Barr has seemingly suggested with respect to investigating Hillary Clinton. The threat of politicization also arises when the President and his allies are given more favorable treatment than ordinary citizens. The rule of law demands that the law be applied without fear or favor. That means the President must be amenable to the law and that the investigation of a sitting President vindicates, rather than vitiates, the rule of law.

Questions for the Record for Prof. Neil J. Kinkopf from Senator Mazie Hirono

Section 1 of the 14th Amendment states that “[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” During Mr. Barr’s confirmation hearing, I asked him whether he believed birthright citizenship is guaranteed by the 14th Amendment. He responded that he “ha[d] not looked at that issue” and that he would have to ask the Office of Legal Counsel whether eliminating birthright citizenship is “something that is appropriate for legislation.”

a. Is birthright citizenship guaranteed by the 14th Amendment?

Yes. Birthright citizenship is unequivocally guaranteed by the Fourteenth Amendment.

b. Can birthright citizenship be eliminated by legislation?

Certainly not. There can be no more bedrock principle of civil liberty than birthright citizenship. If Congress could, by simple legislation, eliminate birthright citizenship, Congress could define who is a citizen entitled to fundamental rights under the Constitution, and who is not.

This is not merely my interpretation of the Constitution; it is the long-standing view of the Supreme Court. *See, e.g.,* United States v. Wong Kim Ark, 169 U.S. 649 (1898); *Afroyim v. Rusk*, 387 U.S. 253 (1967); *see also Rogers v. Bellei*, 401 U.S. 815, 835 (1971). Mr. Barr’s asserted need to consult with the Office of Legal Counsel is puzzling, as the view that Congress may not by statute eliminate birthright citizenship is the settled position of the Office of Legal Counsel and the Department of Justice. *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340 (1995).

**Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2019**

QUESTIONS FROM SENATOR LEAHY FOR MARC MORIAL

1. During his first stint as Attorney General under President George H.W. Bush, Mr. Barr was adamant that “increasing prison capacity is the single most effective strategy for controlling crime.”
 - a. **In your view, is increasing prison capacity really the most effective strategy to control crime? If not, what in your opinion are the most effective strategies?**

Response:

Increasing prison capacity is absolutely not the most effective strategy to control crime! The most effective strategies are holistic in nature, i.e., the use of sensible and smart law enforcement such as effective community policy practices; prevention programs such as early childhood education and workforce training and employment placement; mental health programs; health programs to prevent and treat drug addiction; as well as a range of supportive services targeted to vulnerable individuals and families.

2. Mr. Barr also stated that he thought our justice system was “fair and didn’t treat people differently.”
 - a. **Based upon your own experience, does our justice system really treat every person the same regardless of the race or background of the individual?**

Response:

The years of debate on how to reform our criminal justice system has led to abundant studies documenting the racially discriminatory impact of our justice system on people of color – particularly African Americans.ⁱ According to a recent brief by the Vera Institute of Justice, Black men comprise about 13 percent of the male population, but about 35 percent of those incarcerated. One in three Black men born today can expect to be incarcerated in his lifetime, compared to one in six Latino men and one in 17 white men. Black women are similarly impacted: one in 18 Black women born in 2001 is likely to be incarcerated sometime in her life, compared to one in 111 white women. The brief outlines the systemic challenges faced by African Americans where “bias by decision makers at all stages of the justice process disadvantages black people. Studies have found that they are more likely to be stopped by the police, detained pretrial, charged with more serious crimes, and sentenced more harshly than white people.”ⁱⁱ

According to Senator Cory Booker, in Mr. Barr’s written response to the Senator’s question pertaining to implicit bias in criminal justice where Senator Booker asked if Mr.

Barr would continue the Department of Justice policy of implicit bias training, Mr. Barr responded that he had not studied implicit bias and was unaware of this issue.

3. Mr. Barr stated before this Committee that while he once supported strong penalties on drug offenders, he now understands that things have changed since 1992.

- a. **Are you concerned about Mr. Barr's historic approach to drug crimes, and how he would handle such issues as Attorney General?**

Response:

Mr. Barr's record reveals that he appears to hold a dated 1980s and 1990s view on how to approach drug crimes. During his testimony at his confirmation hearing, Mr. Barr presented himself as having matured in his views since then. However, in light of his whole-hearted support for former Attorney General Jeff Sessions in his recent op-edⁱⁱⁱ we are left confident that his approach has not changed.

- b. **What in your opinion is the best way to lower crime rates associated with drug use?**

Response:

The best strategy is multifaceted. First and foremost, it requires that we treat drug use as a public health issue if we are to stymie the demand for drugs. It also requires that we ferret out the trafficking of drugs and its distribution, and that law enforcement be community invested and focus on violence and serious offenses, as opposed to focusing on minor violations.

4. As indicated in Mr. Barr's exchange with Senator Blumenthal, Mr. Barr stated that he believed it was the right thing under the law to segregate people with HIV who were seeking asylum in Guantanamo Bay.

- a. **Was Mr. Barr correct when he said this policy was right under the law?**

Response:

My response to this issue is based on research and adherence to justice on behalf of the Haitian immigrants who were cruelly harmed by this policy, since I have not had professional involvement on this issue at the time that it occurred. Research informs that this policy was ruled to be a gross violation of the U.S. Constitution by a federal judge who deemed the Guantanamo Bay detention center an "HIV prison camp."^{iv}

Do you believe Mr. Barr handled that situation appropriately?

Response:

Absolutely not. His decision was political, racist, cruel and inhumane. While the Guantanamo Bay base was under American control, it was not technically part of the United States and left asylum seekers in a legal gray area where detainees were essentially stripped of the “right to have rights.”^v His views on HIV/AIDS were not governed by experts in the health professions who argued that AIDs was not a highly infectious disease such as tuberculosis because it cannot be contracted through the air or casual contact.^{vi} Research shows that William Barr admitted to politics – not the law – playing a role in the detention of HIV-positive asylum seekers.^{vii}

According to Lucas Guttentag, the founding national director of the Immigrants' Rights Project of the American Civil Liberties Union and co-counsel in fighting for the refugees' freedom, “Detention at Guantanamo was a calculated effort to deny any constitutional or legal rights to bona fide refugees and targeted and stigmatized Haitians because of their illness. The conditions were deplorable, and the callous lack of sensitivity to human suffering and fundamental human rights was shocking.”^{viii} According to The Daily Beast, “Navy doctors, stymied by the lack of resources necessary to treat hundreds of HIV-positive refugees, requested the medical evacuation of several detainees from Guantanamo, which the Justice Department almost universally denied.”

We do not need an Attorney General such as Mr. Barr who continues to hold these views at the helm of the Justice Department.

^vSee: Federal Bureau of Prisons, “Offenses,” Last Updated January 27, 2018. Accessed at https://www.bop.gov/about/statistics/statistics_inmate_race.jsp; United States Sentencing Commission, “An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System,” July 2017, p.36. Accessed at https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf; The Sentencing Project, “Shadow Report to the United Nations on Racial Disparities in the United States Criminal Justice System,” August 31, 2013, Accessed at <https://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>; Top Trends in State Criminal Justice Reform, 2017, Accessed at <https://www.sentencingproject.org/publications/top-trends-state-criminal-justice-reform-2017/>; “Racial Impact Statements, Changing Policies To Address Disparities,” by Marc Mauer, Accessed at <https://www.sentencingproject.org/wp-content/uploads/2016/01/ABA-Racial-Impact-Statements.pdf>; and *Transforming Prisons, Restoring Lives Final Recommendations of the Charles Colson Task Force on Federal Corrections*, January 2016, p. 25, Accessed at <https://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>

^{vi}*An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*. By Elizabeth Hinton, Assistant Professor, Department of History and Department of African and African American Studies, Harvard University, LeShae Henderson, Special Assistant, Research, Vera Institute of Justice, and Cindy Reed, Senior Editor, Vera Institute of Justice, Accessed at https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf

^{vii}We are former attorneys general. We salute Jeff Sessions,” by William P. Barr, Edwin Meese III, and Michael B. Mukasey, November 7, 2018, See, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527c5830-e2cf-11e8-8f5f-a55347f48762_story.html?uom_term=.6996b10fe367

¹⁵⁴William Barr, Trump's Attorney General Nominee, Held Immigrants in 'HIV Prison Camp,' " by Scott Bixby, The Daily Beast, January 15, 2019, *Accessed at* <https://www.thedailybeast.com/trumps-attorney-general-nominee-held-immigrants-in-hiv-prison-camp>

¹⁵⁵Ibid.

¹⁵⁶http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house

¹⁵⁷William Barr, Trump's Attorney General Nominee, Held Immigrants in 'HIV Prison Camp,' " by Scott Bixby, The Daily Beast, January 15, 2019, *Accessed at* <https://www.thedailybeast.com/trumps-attorney-general-nominee-held-immigrants-in-hiv-prison-camp>

¹⁵⁸Ibid.

**Questions for the Record for Marc H. Morial
From Senator Mazie K. Hirono**

In your opening statement, you criticized former Attorney General Jeff Sessions's review of the Justice Department's use of consent decrees to address police misconduct, calling it "a subterfuge to undermine a crucial tool in the Justice Department's efforts to ensure constitutional and accountable policing." I specifically asked Mr. Barr about this topic during his confirmation hearing. I asked him whether he agreed with former Attorney General Sessions's memo in which he made it harder for the Justice Department's Civil Rights Division to enter into consent decrees to address systemic police misconduct. He responded that he "agree[d] with that policy."

Please describe the importance of consent decrees in addressing police abuse and the impact continuing former Attorney General Sessions's policy would have on civil rights enforcement more generally.

Response:

With regards to ensuring constitutional and accountable policing, consent decrees serve as voluntary agreements that include city leaders, the police department, and the Department of Justice to secure reforms of unconstitutional policing practices. The use of consent decrees occurs only after an exhaustive investigation of the police department by the Department of Justice, and with the agreement of the City and its police department.

Consent decrees are not meant to be punitive and arise only after documented pattern and practice of violations of citizens' constitutional rights. It is the responsibility of the Attorney General to enforce provisions of law requiring the investigation of complaints made by citizens and in high profile incidents, such as occurred with the police shootings of unarmed citizens who are disproportionately Black and brown individuals.

Former Attorney General Jeff Sessions did not fulfill his responsibility to enforce the law by his opposition to consent decrees and sought to re-write federal law by executive fiat. Where progress has been made, Sessions' actions place communities of color at risk of regression from such progress. Where reform of police use of force is warranted, Sessions' abandonment of the use of consent decrees places citizens in vulnerable communities at serious risk of continued abuse, further unconstitutional policing practices, and deadly unarmed shootings.

According to a recent briefing report by the U.S. Commission on Civil Rights (USCCR)ⁱ on police use of force:

There have been several police departments that have experienced positive changes through consent decrees with the Justice Department. Former Obama Department of Justice Acting Assistant Attorney General (AAG) Vanita Gupta cites East Haven, Connecticut, Los Angeles, California, and Seattle, Washington as having successful transformations. She states that these transformations are "more than just [an] enactment of specific reforms. It really is a fundamental change in how the community relates to the police department and vice versa."ⁱⁱ

The USCCR report cites the impact that a consent decree is having in the New Orleans Police Department:

The Deputy federal monitor for the New Orleans Police Department consent decree, David L. Douglass argues that while “Consent decrees are costly, ad hoc, and necessarily limited responses to a historically rooted and widespread problem, one that has become more prominent, divisive, and volatile . . .” taken collectively they “constitute a compendium of best practices for constitutional, effective, community-oriented policing.” He further posits that these agreements can empower communities and strengthen community-police relationships by enforcing the elements of constitutional and effective policing and providing a foundation for reform.ⁱⁱⁱ

William Barr’s testimony in response to your question to him during his confirmation hearing that he agrees with former Attorney General Sessions’ policy on consent decrees would be devastating to especially Black and brown communities and would represent a total abandonment of the efforts under the previous Administration to address systemic reforms pertaining to police misconduct.

ⁱPOLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES, BRIEFING Report, United States Commission on Civil Rights, November 2018, See <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>

ⁱⁱIbid. p. 92. For additional, comprehensive discussion on police reform and consent decrees, See also, <http://politics.uchicago.edu/news/entry/a-look-at-the-doj-ferguson-probe-with-vanita-gupta>

ⁱⁱⁱIbid. p. 90.

RESPONSES OF REV. SHARON WASHINGTON RISHER TO QUESTIONS
SUBMITTED BY SENATOR KLOBUCHAR AND SENATOR LEAHY

Response to Senator Klobuchar -

What other steps should Congress and the Department of Justice do to close loopholes?

Thank you for introducing legislation to protect victims of domestic abuse by closing the boyfriend loophole that allows certain convicted abusers and stalkers to obtain weapons. This legislation is necessary and needed.

I was pleased to hear the bipartisan support among the Judiciary Committee members for red flag legislation that allows family members and law enforcement to petition a court for the temporary restriction of access to firearms when an individual is a risk to themselves or others. Red flag laws are a critical intervention tool that could protect other families from harm, and I support legislation introduced last Congress by Senators Graham and Blumenthal to establish a federal red flag law.

Congress should do more to prevent the daily gun violence that is plaguing our communities. A foundation for preventing gun violence starts with strengthening the background check system to prevent prohibited purchasers from obtaining weapons. As I discussed at the hearing, our background check system should provide law enforcement with enough time to fully assess a person's background before a weapon is sold. Allowing gun dealers to proceed with a sale with missing or incomplete background check information is irresponsible and increases the risks to public safety.

I am pleased that the new Congress has made background checks a priority and I hope that members will consider this important legislation that can help save lives.

Response to Senator Leahy -

Barr testified that Congress must keep guns out of the hands of mentally ill individuals. Single most important thing. Do you agree? What other suggestions to reduce mass shootings and gun violence?

I agree with Mr. Barr that we must keep guns out of the wrong hands and prevent prohibited purchasers from obtaining a gun. Mr. Barr stated his support for red flag laws that allow a close family member or law enforcement to petition a court to temporarily restrict access to firearms when an individual is a risk to himself or others. Many members of the Committee also expressed support for red flag laws, which 13 states have enacted to protect their communities. I support legislation introduced last Congress by Senators Graham and Blumenthal to establish a federal red flag law.

Congress also has an obligation to strengthen the background check system so that we can address our nation's gun violence epidemic. To date, the background check system has stopped more than 3.5 million sales to prohibited purchasers. Despite the law's success, it was drafted before the internet became what it is today and has not kept pace with modern changes in society. Today, in over 30 states, a person with a dangerous history who is legally prohibited

from buying a gun can find a gun online advertised by an unlicensed seller and meet up in a parking lot to buy it, and there would be no law requiring a background check on the sale. Congress should close this loophole and update the background check law to meet our current times.

Finally, Congress should repeal the law that prevents victims of gun violence from seeking justice in court. The Protection of Lawful Commerce in Arms Act, known as PLCAA, provides the gun industry with broad protection for their negligent or irresponsible actions that cause death or injury. No other industry receives this level of protection and it is wrong to bar the courthouse door to gun violence survivors and victims.

January 9, 2019

The Honorable Lindsey Graham, Chairman
The Honorable Dianne Feinstein, Ranking Member
United States Senate
Committee on the Judiciary
Washington D.C. 20510

Re: Nomination of William P. Barr as Attorney General of the United States

Dear Chairman Graham and Ranking Member Feinstein,

We former officials and employees of various administrations and the Manhattan District Attorney's Office write to express our strong and enthusiastic support for the nomination of William P. Barr to serve once again as Attorney General of the United States.

Bill is that rare combination of intellect and principle who has served our country and the Department of Justice with great distinction and then excelled as a senior executive in the private sector.

President George H.W. Bush recognized Bill's powerful intellect and legal acumen by nominating him to increasingly important roles in the Department of Justice; initially as Assistant Attorney General for the Office of Legal Counsel, later as Deputy Attorney General and ultimately as Attorney General. As a 41 year-old nominee, Bill enjoyed overwhelming bi-partisan support in his three confirmations as well as bi-partisan respect for a job well done.

Bill's career reveals a character of unwavering commitment to the rule of law without regard to favor or politics. Instructive in this regard are his pivotal roles in such matters as the successful prosecutions of those responsible for the Savings and Loans Crisis and his oversight of the successful clean-up of that industry; working with then-Assistant Attorney General Robert Mueller III on the investigation of the Pan Am 103 Lockerbie bombing, the prosecution of Manuel Noriega and the prosecution of the police officers in the Rodney King matter; enforcing the Americans with Disabilities Act; and Bill's personal development of the theories and outreach to then-Manhattan District Attorney Robert Morgenthau that allowed the Department to resolve the longstanding multi-jurisdictional investigation of the Bank of Credit and Commerce International (BCCI).

In addition, Bill did not hesitate when required by the law to appoint or seek the appointment of Special/Independent Counsels for high-profile matters such as the House Bank investigation, the

Banca Nazionale del Lavoro (BNL/"Iraqgate") matter, the Clinton passport file search ("Passport-gate") and the Inslaw investigation.

Bill was and remains highly respected and admired by the career prosecutors, investigators and staff of the Department he oversaw and its various components, including the FBI and DEA. Bill also developed great partnerships with state and local law enforcement around the country through the Department's Executive Working Group, creating joint task forces to combat white collar crime, drug trafficking and violent crime across the nation.

We can attest that Bill's style was to consult widely, hear from those closest to a matter, and consider others' views with an open mind. Bill was always considerate and respectful of those with whom he worked throughout the Justice Department, no matter how high- or low-ranking.

It is his patriotism and respect for the institution that bring Bill Barr back before you. We urge you in the strongest manner possible to confirm him to the job he is uniquely qualified to perform again.

Respectfully,¹

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U.S. Attorney General (2007-09)
U.S. Dist. Judge, SDNY (1987-2006)

Alberto R. Gonzalez
U.S. Attorney General (2005-07)
Counsel to the President (2001-05)

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U.S. Attorney General (2001-05)
U.S. Senator MO (1995-01)
Governor of Missouri (1991-92)
Attorney General MO (1977-85)

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U.S. Attorney, Dist. VT (1986-91)
AUSA, Dist. DC and Dist. VT (1978-86)

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Judge, U.S. Court of Appeals for the Third Circuit (2003-05)
Assistant Attorney General Criminal Division (2001-03)
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William H. Webster
Director, CIA (1987-91)
Director, FBI (1978-87)
U.S. Court of Appeals Judge, 8th Circuit (1973-78)
U.S. Dist. Judge, E.D. MO (1970-73)
U.S. Attorney, E.D. MO (1960-61)

Louis J. Freeh
Director, FBI (1993-2001)
U.S. District Judge, SDNY (1991-93)

¹ Permission to include each signator's name received via e-mail.

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January 14, 2019

Chairman Lindsey Graham
Senate Judiciary Committee
United States Senate

Ranking Member Dianne Feinstein
Senate Judiciary Committee
United States Senate

Dear Chairman Graham and Ranking Member Feinstein,

We write on behalf of 28 reproductive health, rights and justice organizations in unified opposition to the nomination of William Barr for the role of the United States Attorney General. Given his long and explicit record of opposition to reproductive rights and his alignment with extreme anti-abortion organizations, we strongly believe that former Attorney General Barr does not possess the ability to fairly oversee the Department of Justice and meet its obligations to protect reproductive health care rights and access without prejudice.

The mission of the Department of Justice (DOJ) is to “ensure fair and impartial administration of justice” as the chief enforcer of our nation's laws. With this great responsibility, the DOJ plays a critical role in our nation's ongoing progress by defending and enforcing existing federal laws that reflect the values and principles of our country. Those landmark policies that DOJ is entrusted with defending include the Affordable Care Act, Medicaid, and the right to safe, legal abortion.

In 2011, Barr joined other former Republican Attorneys General on an amicus brief in opposition to the Affordable Care Act in the *Commonwealth of Virginia v. Sebelius* in which they argued that Congress sought to coerce healthy patients into the insurance market through the ACA and that the law was unconstitutional.¹ If the ACA were invalidated, 62 million women would lose access to no-cost preventive services, including birth control, STI screenings, and life-saving screenings such as breast cancer screenings, Pap tests, and HIV screenings, with women of color being disproportionately impacted. By actively opposing the ACA, Barr proved that he is willing to put ideology over women's health.

Barr also submitted an amicus brief with other former Republican Attorneys Generals in *Zubik v. Burwell* in which they advocated against the ACA birth control benefit. The DOJ is currently

¹ Brief of Amici Curiae Former United States Attorneys General William Barr, Edwin Meese, III, and Dick Thornburgh, In Support of Appellees, *Commonwealth of Virginia v. Sebelius* (4th Cir. 2011) (Nos. 11-1057 & 11-1058)

refusing to defend the Affordable Care Act's birth control benefit and entering into illegal settlement agreements with employers who object to the birth control coverage.²

In addition, the Department of Justice is charged with investigating and prosecuting federal crimes targeting abortion providers, and thus impacts the safety of abortion providers and their patients more than any other agency. Specifically, the Attorney General is responsible for enforcing the Freedom of Access to Clinic Entrances (FACE) Act which, when enforced, has a clear impact on the number of violent acts directed against clinics and providers. While Barr was Deputy Attorney General, the Department of Justice intervened in several cases in support of anti-abortion protesters who were blocking access to abortion clinics.³ Given his previous stance, Barr cannot be trusted to protect abortion access.

The Attorney General also oversees the work of the critical National Task Force on Violence Against Health Care Providers. The Attorney General has discretion and authority regarding resources and staffing, and can decide whether to pursue FACE cases, in addition to what level of priority the Task Force takes within the Department of Justice.

Based on his record, we do not believe that Barr will fulfill his obligation to protect health care including reproductive health care and access to safe, legal abortion.

In fact, Barr made clear his disdain for women's access to abortion on several occasions before and during his tenure as Attorney General. During his 1991 nomination hearing, Barr was asked about his views on privacy rights as they relate to abortion, to which he responded that he does not believe that the right to privacy extends to abortion and that *Roe v. Wade* was incorrectly decided and should be overturned.

In addition, as Attorney General, Barr sent a letter in 1992 to the Senate expressly opposing the Freedom of Choice Act (FOCA), legislation that would have enshrined *Roe v. Wade* into law. The letter stated that he would advise then-President H.W. Bush to veto the legislation if it were approved by Congress. Barr penned a similar letter to Representative Henry Hyde incorrectly stating that FOCA would "impose an unprecedented regime of abortion on demand" throughout the country that would go beyond the requirements of *Roe*. This statement is factually inaccurate because FOCA would have simply codified *Roe* into law as opposed to expanding abortion rights beyond that which is specified in the case.

²<http://www.scotusblog.com/wp-content/uploads/2016/01/Former-Justice-Department-Officials-LSP-Amicus.pdf>

³ Justice Dept. Joins Wichita Case, Backing Antiabortion Protestors, Washington Post (Aug. 6, 1991), https://www.washingtonpost.com/archive/politics/1991/08/07/justice-dept-joins-wichita-case-backing-anti-abortion-protesters/9f95ffab-0b6c-4142-bd31-76949c6f8a5d/?utm_term=.8ab64037d06f; Amicus Brief by Department of Justice in support of Appellants, *Bray v. Alexandria Women's Clinic*, 506 U.S. 263 (1993); <https://www.justice.gov/sites/default/files/osq/briefs/1990/01/01/sq900229.txt>

Barr continued his public opposition to abortion while Attorney General when he appeared on CNN after the *Planned Parenthood v. Casey* (1992) decision to discuss his disappointment in the Supreme Court's ruling. Barr again emphasized his belief that *Roe* should be overturned and went on to predict that the decision will ultimately be overturned because "it does not have any constitutional underpinnings."⁴

Barr's hostility towards abortion has not only appeared during the course of his work at DOJ but also through his personal writings and affiliations both before and after his tenure at DOJ. In his 1995 article for the *Catholic Lawyer* entitled "*Legal Issues in a New Political Order*," Barr lamented what he called "the breakdown of traditional morality," citing *Roe* as a "secularist" effort to "eliminate laws that reflect traditional moral norms." This statement is direct evidence that Barr will not respect *Roe* as existing law as Attorney General. Also, Barr has long term associations with groups with known hostility towards abortion rights. Barr was on the Board of Advisors for the Becket Fund for Religious Liberty, a group that has opposed women's reproductive rights including challenging the Affordable Care Act's contraceptive-coverage policy on the grounds of religious freedom in the *Hobby Lobby v. Burwell* Supreme Court case.

Barr's extensive history of opposing laws protecting health care access and reproductive health care is the reason for concern and objection from the reproductive health, rights and justice community. We cannot permit the personal ideology of our next United States Attorney General to prevent the DOJ from both fairly enforcing our laws and protecting our constitutional rights. We urge you to oppose the nomination of William Barr for the post of U.S. Attorney General.

Sincerely,

Advocates for Youth
 Catholics for Choice
 Feminist Majority Foundation
 Global Justice Center
 In Our Own Voice: National Black Women's Reproductive Justice Agenda
 International Women's Health Coalition
 Lady Parts Justice League
 NARAL Pro-Choice America
 National Abortion Federation
 National Asian Pacific American Women's Forum
 National Council of Jewish Women
 National Health Law Program
 National Institute for Reproductive Health
 National Latina Institute for Reproductive Health
 National Network of Abortion Funds
 National Organization for Women

⁴ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992)

National Partnership for Women and Families
National Women's Health Network
Not Without Black Women
PAI
Physicians for Reproductive Health
Planned Parenthood Federation of America
Population Connection Action Fund
Population Institute
Sexuality Information and Education Council of the United States
SIA Legal Team
URGE: Unite for Reproductive and Gender Equality



PRESIDENT
NAN ARON
CHAIR
KEN GROSSINGER

January 9, 2019

Dear Senator,

On behalf of the Alliance for Justice, a national alliance representing 130 groups committed to equal justice and access to justice, I write to urge you to reject the nomination of William Barr to be Attorney General of the United States.

William Barr's nomination is not occurring in a vacuum; it must be colored by President Trump's repeated attacks on the rule of law. The President has made clear he expects personal loyalty from those in law enforcement. He has tried to eviscerate any notion of an independent Justice Department, repeatedly demanded investigations into the media and political opponents, and consistently tried to undermine independent investigations of himself, his campaign, and his Administration. The President has attacked judges who have ruled against him. He has abused his pardon authority. He has repeatedly acted in ways struck down by courts.

President Trump fired Acting Attorney General Sally Yates because she acted independently, based on the Constitution. He fired Jeff Sessions because Sessions refused to quash the Mueller probe. He then replaced Sessions with Matt Whitaker, an individual whose most notable qualification was likely his public criticism of the Mueller investigation. And, Trump has now nominated William Barr, who also very likely threatens the independent investigation of the President, shares the President's expansive views of unchecked executive power, and will not restrain the President's attacks on the rule of law.

William Barr has a lengthy record of opposing independent investigations of the President, and in fact strongly considered firing Lawrence Walsh when Barr previously served as Attorney General. Barr also played a key role in George H.W. Bush's controversial Iran-Contra pardons that the independent counsel at the time assailed as a cover-up.

It has been reported that President Trump has already asked if Barr would recuse himself from the Mueller investigation. Moreover, Barr is already on record minimizing the seriousness of allegations regarding President Trump and Russia. And, Barr already submitted a lengthy memorandum, shared with the White House, arguing that Robert Mueller should not be able to investigate President Trump for obstruction of justice. He is even on record opposing "congressional incursions" into the president's power to fire officials, which would be precisely the issue should Congress enact legislation to protect Mueller.

The Attorney General is critical for protecting the Constitution and rule of law. Yet, there is nothing in the record suggesting Barr will be an independent check on any illegality or untoward conduct by the President. For example, Barr heavily criticized Sally Yates's decision to follow the Constitution when she directed Department of Justice lawyers not to defend the original discriminatory Muslim Ban (which was struck down by multiple courts). He sees nothing wrong with the president calling for an investigation of his political opponents. Barr reportedly played

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a role in approving a bulk data collection program and supported immunity for tech companies that helped violate Americans' civil liberties. And, he pushed back on efforts by Congress to prohibit torture.

While our concerns with the Mueller probe and executive power are foremost, AFJ has other grave concerns with Barr's nomination.

Attorney General Barr will be the most influential figure in enforcing some of our nation's civil rights laws. Unfortunately, the Justice Department under Attorney General Sessions repeatedly took positions hostile to the rights of *all* Americans. The Department has attacked the rights of persons of color, women, LGBTQ Americans, persons with disabilities, and immigrants, and we believe William Barr's confirmation would also undermine equal justice under the law.

Barr has a troubling record on the protection of rights of LGBTQ Americans. He has spoken disparagingly of gays and lesbians. He led the effort to maintain a policy of preventing HIV-positive non-citizens from entering the country and was reportedly a proponent of keeping HIV-positive Haitians housed at Guantanamo Bay, even though they were approved for asylum. And, Barr praised Jeff Sessions's decision to rescind guidance protecting transgender Americans.

Barr also has a troubling record on women's rights; he has repeatedly called for overturning *Roe v. Wade*. As just one example, after the Supreme Court decided *Planned Parenthood v. Casey*, Barr said "I think *Roe v. Wade* should be overturned" and he reaffirmed that the Justice Department "will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation."

Further, Barr has a troubling record with regard to persons of color. Barr served as attorney general during the so-called War on Drugs, which disproportionately impacted communities of color. Notably, he wrote a report titled "The Case for More Incarceration." In a 1992 speech, Barr said "The choice is clear. More prison space or more crime." He defended laws that made prison sentences for crack cocaine much harsher than prison sentences for powder cocaine, which had a significantly disparate impact on communities of color. He opposed the bipartisan Sentencing Reform and Corrections Act of 2015 and applauded Jeff Sessions's decision to revert to harsh charging policies.

Barr also has a disturbing record on the rights of immigrants. He supported President Trump's discriminatory Muslim Ban. He has argued that "[o]ne of the biggest problems we have with immigration . . . is the abuse of the asylum laws." He tried to prevent Haitian asylum seekers from reaching the U.S. After the Rodney King riots in LA, Barr stated that "the problem of immigration enforcement – making sure we have a fair set of rules and then enforce them – I think that's certainly relevant to the problems we're seeing in Los Angeles."

Finally, we do not believe a Barr Justice Department will truly ensure the Justice Department serves *all* Americans. At the same time that the Trump Justice Department has fought to have a

court declare the Affordable Care Act unconstitutional – taking away health insurance from millions of Americans – it is perhaps no coincidence that the President has nominated an individual who also challenged the constitutionality of the landmark law, filing a brief arguing the law was unconstitutional. Moreover, Barr, who received \$10 million from Verizon when he left the company, has fought vigorously against critical consumer protections for internet users. He has opposed important protections for investors Congress put in place after the Enron and WorldCom scandals. He has opposed the False Claims Act.

Given all these concerns, and as detailed on our fact sheet on his nomination, which can be found at the following link, <https://afj.org/reports/william-barr>, the Senate should reject William Barr's nomination to be U.S. Attorney General.

Regards,



Nan Aron
President



January 14, 2019

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

ADL (the Anti-Defamation League) was founded in 1913 with a simple but timeless mission: to stop the defamation of the Jewish people and to secure justice and fair treatment to all. To strive towards these goals, ADL has maintained a core set of principles for more than 100 years—fighting anti-Semitism and all forms of bias and hate, as well as eliminating discriminatory barriers that deny equal opportunities to individuals based on their race, religion, gender, national origin, sexual orientation or other immutable characteristics. We have also worked to ensure the preservation of individual rights, including the constitutional guarantees of freedom of religion and expression and other rights that must be protected to maintain a pluralistic and democratic nation.

We write to you with respect to the confirmation hearings on the nomination of former Attorney General William P. Barr to the position of Attorney General of the United States. ADL has commented on presidential nominees for key cabinet and Department of Justice positions across many years and administrations, whether by submitting letters to the Committee ahead of pending hearings or otherwise issuing statements setting forth ADL's concerns and questions.¹ This letter follows our established practice when engaging in such communications: we focus on areas of particular concerns that we may have with a given nominee's positions and plans.

We have long worked closely with the DOJ on areas of importance to ADL, and look forward to continuing that relationship, particularly in this time of rising instances of anti-Semitism and other hate crimes and incidents. These confirmation hearings take place less than three months after the murder of 11 congregants in a synagogue in Pittsburgh, the deadliest attack on the Jewish community in the history of the United States. As we detail below, the recent alarming increase in hate crimes and hate

¹ For example, in 1976, the ADL issued a statement expressing grave concern about President Jimmy Carter's then-Attorney General-designee Griffin Bell's membership in private clubs that discriminated against African-Americans and Jews. On several occasions the ADL has also spoken out about its concerns regarding Assistant Attorney General nominations made by presidents of both parties.

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Ben Saxe
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Information Technology
Artur Reich
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Eric Hodas
Leadership
Tracy Grossman/Tracy Treger
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Lawrence Miller
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Philanthropic Partnerships
Beth Mathison, VP
Innovation & Strategy
Adam Neuhoff, VP
Regional Operations & Advancement
David S. Warren, VP
Anti-Defamation League Foundation
President
Glen G. Levy

incidents, including the significant increase in anti-Semitic incidents, makes it even more important for the American people to gain clear insight into the views and priorities of the nominee for the nation's top law enforcement position.

We know Mr. Barr to be an able attorney, respected and admired across many communities. He is known to many as a man of faith, and has been described to us as a "straight shooter" and a person of high integrity. Mr. Barr has demonstrated his qualifications as well as his laudable commitment to government service, including appointments as the 77th Attorney General, Deputy Attorney General and Assistant Attorney General overseeing the Office of Legal Counsel under President George H.W. Bush. He worked in the White House under President Reagan and, prior to that, worked at the CIA while studying law. In 1991 then AG-nominee Mr. Barr stated in his confirmation testimony that "[D]iscrimination is abhorrent, and strikes at the very nature and fiber of what this country stands for...[E]nforcing the civil rights laws would be a high priority of mine. I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected."² ADL could not agree more with regard to the high priority that should be given to enforcement against discrimination against vulnerable groups, and a number of the questions we hope the Committee will raise at the upcoming hearing focus on civil rights and the Attorney General-Designee's views on enforcement.

For many years Mr. Barr has made clear his views on many subjects of great concern to the American people and of specific interest to ADL. ADL differs sharply with Mr. Barr's positions on a number of key issues, but would expect him to fulfill his enormous responsibilities with integrity and a commitment to the Constitution and rule of law. A confirmation hearing is an opportunity to inquire and examine these obligations and Mr. Barr's views, and to determine where his have remained constant, and where he may have modified them. Accordingly, we urge you and your colleagues on the Judiciary Committee to closely examine Mr. Barr's views on the role of the Attorney General and the Justice Department in interpreting and enforcing provisions of the United States Constitution and federal law that guarantee and protect fundamental civil rights and individual liberties.

Specifically, we believe there are six main areas which deserve the Committee's special attention. These include Mr. Barr's position on: (1) the enforcement of federal civil rights and hate crime laws; (2) the First Amendment's religious liberty clauses; (3) the protection of voting rights; (4) criminal justice reform and law enforcement training; (5) LGBTQ rights; and (6) immigration enforcement.

² *Confirmation Hearings on Federal Appointments -- William P. Barr*, S. Hrg. 102-505, Pt. 2, page 25 at <http://civilrightsdocs.info/pdf/ag-vacancy/1991-AG-Nomination-Hearing-Transcript.pdf>

Hate Crimes Prevention and Prosecution

For more than three decades, ADL has spearheaded the drafting, enactment, and implementation of hate crime laws, working in partnership with other civil rights and religious organizations, law enforcement groups, civic agencies, industry and business leaders. Hate crimes merit a priority response because of their special impact on the victim and the victim's community. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Because hate crimes often render members of minority communities fearful, angry, and/or suspicious of other groups—and of the power structure that is supposed to protect them—these incidents can damage the fabric of our society and fragment communities.

Criminal activity motivated by bias is distinct and different from other criminal conduct. These crimes occur because of the perpetrator's bias or animus against the victim on the basis of actual or perceived status – the victim's race, color, religion, national origin, sexual orientation, gender, gender identity, or disability. In the vast majority of these incidents, no crime would have occurred at all were it not for the victim's personal characteristic.

Statistics recently released by the FBI³ show that in 2017 the nation's law enforcement agencies reported that there were 7,175 hate crimes in the United States, which reflects a 17% increase from 2016. Race has been the most frequent basis of hate crimes over the past 25 years, with 4,131 incidents (more than 58% of the total) in 2017. Crimes against African-Americans made up the vast majority of that category with 2,013 incidents (28%). Crimes directed against individuals and institutions on the basis of religion were the second most frequent (1,564, over 21%) hate crimes category. Crimes against Jews and Jewish institutions increased 37%, accounting for almost 60% of the religion category. Although there was actually a small decrease in anti-Muslim hate crimes—from 307 in 2016 to 273 in 2017—the number documented by the FBI was still the third highest number of such crimes since the FBI began collecting the data. In addition, 1,130 (16%) of the hate crimes victims were targeted because of their sexual orientation and 119 (almost 2%) were targeted because of their gender identity.

The FBI has been collecting this hate crime data from law enforcement authorities across the country since 1991, under the Hate Crime Statistics Act ("HCSA").⁴

³ *2017 Hate Crimes Statistics*, FBI: Uniform Crime Reporting (2018), <https://ucr.fbi.gov/hate-crime/2017>

⁴ 28 U.S.C. § 534.

In 2017, the most recent year for which data is available, 92 cities over 100,000 in population either did not report any data to the FBI or affirmatively reported zero (0) hate crimes. Though 16,149 law enforcement agencies participated in the FBI 2017 HCSA data collection effort, only 2,040 of these agencies (less than 13%) reported one or more hate crimes. Astonishingly, 87% of all participating agencies affirmatively reported zero (0) hate crimes to the FBI. And more than 1,000 law enforcement agencies did not report any data to the FBI (including nine cities with populations over 100,000). It is hard to believe the agencies that affirmatively reported zero hate crimes to the FBI, or the agencies that did not report any data to the FBI, are accurately tracking the crimes in their jurisdictions.

The state of Alabama reported nine hate crimes and Mississippi reported one. By contrast, in 2017, the city of Phoenix reported 219 hate crimes, the city of Seattle reported 234 hate crimes, and the city of Boston reported 140 hate crimes, reflecting the faith that victims of hate crime in these cities have that they can rely on their police and civic leaders to effectively respond to hate violence.

We respectfully request that the Committee question the nominee with respect to the following:

➤ **What steps would you take as Attorney General to ensure that police departments and other law enforcement groups are well trained to identify, report, and respond to hate crimes that occur in their jurisdictions?**

➤ **What steps would you take to make hate crime data collection efforts more inclusive and comprehensive?**

The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), signed into law on October 28, 2009, is the most important, comprehensive, and inclusive hate crime enforcement law enacted in the past 40 years.⁵ Among other things, the HCPA extended federal hate crimes protections to victims targeted because of their sexual orientation, gender, gender identity, or disability. It also closed gaps in federal enforcement authority, encouraged partnerships between state and federal law enforcement officials to address hate violence more effectively, and provided limited expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act.

⁵ Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (2009).

Under the HCPA, the Attorney General or a designee must sign off on all criminal prosecutions brought under the Act. Federal hate crimes cases have significant national import. Hate crimes charges filed by the Department of Justice in recent years include cases involving organized hate groups, cases with special community or national impact, and cases in which local authorities lacked the resources, or the will, to vindicate justice.

In addition, since passage of the HCPA, lawyers at the Department of Justice have worked with FBI officials, U.S. Attorneys, and professionals from the Community Relations Service to organize dozens of training programs on the tools the Act provides, enforcement strategies, and community engagement—including training programs in each of the five states with no hate crime laws.⁶ Several thousand state and local law enforcement officials have been trained at these sessions. The Justice Department, in coordination with several lead U.S. Attorneys, has also vigorously defended the HCPA against both facial and as-applied constitutional challenges.

Hate crimes occur both online and in physical spaces. Unfortunately, current state and federal hate crimes laws do not adequately provide legal redress for victims of cyber hate crimes, including but not limited to bias-motivated cyberstalking, doxxing, and swatting. Addressing cyber hate crimes comes with the additional challenge of considering harassment and the First Amendment; however, victims of these crimes deserve protection and such legal complexities should not be an excuse for complacency. In order to protect victims of cyberhate, it is imperative to prosecute cyber hate crimes in a constitutionally-sound and proactive manner. Additionally, law enforcement officials should receive more training on how to respond to these dangerous practices, which use online activity to harm victims in the physical world.

In a 1992 speech to Agudath Israel of America, Mr. Barr highlighted work the Justice Department, under his leadership, had done to prosecute hate crimes perpetrators, neo-Nazi skinheads, and the notorious murderers of Denver radio talk show host Alan Berg.⁷

As Attorney General, Mr. Barr would be required to sign off on all federal hate crimes prosecutions. Mr. Barr's tenure as Attorney General preceded the enactment of the HCPA, which provided federal jurisdiction to investigate and prosecute certain hate crime directed against individuals because of their sexual orientation, gender, or gender identity. Additionally, the prevalence and impact of cybercrimes has significantly

⁶ The five states without hate crimes laws are Arkansas, Georgia, Indiana, South Carolina, and Wyoming.

⁷ May 1992 key note speech at the Agudath Israel of America 1992 Humanitarian Award Dinner <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/05-31-1992b.pdf>

increased since Mr. Barr last served as Attorney General. We believe it is imperative to ask the nominee about his positions on the full range of hate crime prosecutions and hate crimes laws. We respectfully request that the Committee question the nominee with respect to the following:

➤ **Will you sign off on charges brought pursuant to the HCPA, including for gender-based crimes and crimes targeting members of the LGBTQ community? What would be your approach to making determinations on these charges?**

➤ **Will you continue the Department of Justice’s training programs, including and especially in the five states that have no hate crimes laws, and ensure that U.S. Attorneys, FBI agents, and local law enforcement agents have the tools they need to prevent bias-motivated crimes and to prosecute them diligently and effectively?**

➤ **What steps would you take to ensure that federal hate crime laws are drafted and enforced to take into consideration cyber hate crimes?**

➤ **In light of the U.S. Supreme Court’s unanimous 1993 *Wisconsin v. Mitchell* decision, upholding a state hate crime law against a First Amendment challenge, will you defend the constitutionality of the HCPA in court should it be challenged, as the current Justice Department has done on several occasions⁸?**

➤ **According to a recent ADL report, “the number of white supremacist murders in the United States more than doubled in 2017 compared to the previous year, far surpassing murders committed by domestic Islamic extremists and making 2017 the fifth deadliest year on record for extremist violence since 1970.”⁹ Would you prioritize Department of Justice resources to address the threat from white supremacist violence? If so, how? If not, why not?**

Separation of Church and State

ADL believes deeply in the importance of preserving and safeguarding freedom of religion for all Americans in our increasingly pluralistic nation. We strongly believe that government should neither promote nor be hostile to religion. This position reflects a profound respect for religious freedom and recognition of the extraordinary diversity of religions represented in the United States. Our nation’s religious freedom safeguards are

⁸ Department of Justice, *Hate Crimes*, <https://www.justice.gov/crt/hate-crimes-0>.

⁹ Anti-Defamation League *Murder and Extremism in the United States 2017*

<https://www.adl.org/resources/reports/murder-and-extremism-in-the-united-states-in-2017>

shield for faith and not a sword to harm or discriminate against others with different beliefs or practices. Both as a matter of law and as a matter of good public policy, the First Amendment should be read to protect religious groups, particularly minorities, from being subject to the coercion and pressure of state-instituted religion.

Of particular concern to ADL is the proper role of religion in our nation's public schools. On this issue, the U.S. Supreme Court has been clear: "[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family."¹⁰ Thus, it is well-settled that government-sponsored prayer in the public-school setting, whether in the classroom or at a school event, violates the First Amendment to the United States Constitution.¹¹ Indeed, the only type of prayer that is constitutionally permissible is private and voluntary student prayer. Government-sponsored or organized prayers at athletic events, graduation ceremonies, and even school board meetings send an exclusionary message to students and community members of favoring one religion over others.

Mr. Barr's views on religious freedom and the separation of church and state raise some concerns—particularly in light of a 1995 article in which he wrote, "[W]e live in an increasingly militant secular age."¹²

The article laments that "secularists continually seek to eliminate laws that reflect traditional moral norms." Two examples he cites are the elimination of barriers to divorce and "laws against abortion."¹³ Mr. Barr further asserts that "... secularists use law as a weapon is to pass laws that affirmatively promote the moral relativist viewpoint ... to ratify, or put on an equal plane, conduct that previously was considered immoral." As examples he cites a law that would prevent a landlord from discriminating in favor of a married couple over a "cohabitating couple," and a law that would "compel Georgetown University to treat homosexual activist groups like any other student group." Referring to the U.S. Supreme Court's 1992 *Lee v. Weisman* decision prohibiting school-sponsored prayer at public school graduation ceremonies, Mr. Barr also criticizes "efforts to use the Establishment Clause to exclude religiously motivated citizens from participation in public benefits and from the public square generally."¹⁴

¹⁰ See *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

¹¹ See, e.g., *Engel v. Vitale*, 370 U.S. 421 (1962); *School District of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963); *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290 (2000).

¹² Barr, William P. "Legal Issues in a New Political Order." *The Catholic Lawyer*. 36: 1-12, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tcl> (1995).

¹³ *Id.* at 8.

¹⁴ *Id.* at 9.

Based on Mr. Barr's positions regarding religious liberty and the separation of church and state, we urge Committee members to ask the nominee questions on these issues:

➤ **What is your position on the constitutional breadth and parameters of the separation between church and state?**

➤ **Do you believe that a non-theist or person who does not observe a faith tradition can be equally as moral as a religiously observant person?**

➤ **Do you support organized prayer at official public school events, including graduation and athletic events? If so, on what basis do you do so, given the U.S. Supreme Court's clear guidance in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000)?**

➤ **Do you believe that faith-based organizations that provide federally-funded social services have the right to discriminate on the basis of religion in hiring for taxpayer-funded jobs?**

➤ **Do you believe that faith-based organizations that provide federally-funded social services have the right to discriminate against beneficiaries who refuse to participate in an organization's privately funded religious activities as a condition of receiving publicly funded services?**

Voting Rights

Voting rights are the keystone of our democracy and ADL believes that the necessity of securing and safeguarding the right to vote for all eligible Americans cannot be underscored enough. Recognizing the Voting Rights Act of 1965 (VRA) as one of the most important and most effective pieces of civil rights legislation ever enacted, ADL has strongly supported the VRA and its extensions since its passage almost 50 years ago. ADL has consistently filed briefs before the U.S. Supreme Court supporting the constitutionality of the VRA, including in *Shelby County v. Holder*.¹⁵

In the role of Attorney General, Mr. Barr would be tasked with protecting the right to vote for all Americans. Because it is not known where Mr. Barr stands on current voting rights issues, we would urge the Committee to ask the nominee the following questions in this area:

¹⁵*Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

- **Do you support the *Shelby County v. Holder* decision? How broad do you believe the Justice Department's authority is now to enforce the Voting Rights Act?**
- **Overwhelming evidence documents that in-person voter impersonation is almost non-existent; however, clear evidence exists that Voter ID restrictions limit access for minority, poor, old, disabled, and young voters. Do you support voter ID requirements?**

Criminal Justice Reform and Law Enforcement Training

It is well known that the criminal justice system disproportionately impacts minority individuals through systemic biases. In recent years, there have been multiple proposals at both federal and state levels to reform criminal justice and police policies. Some key proposals include: reforming pretrial detention; adopting alternatives to arrest and incarceration for minor, non-violent offenses; appointing special prosecutors in cases of police involvement in fatalities of unarmed civilians and allegations of serious police misconduct; requiring law enforcement officers to wear body cameras; expanding FBI and Justice Department data collection on police use of lethal force; providing treatment, rather than incarceration, for substance abuse and mental health; limiting mandatory minimum sentences to the most serious offenses; ensuring fairness in the selection of jurors and grand jurors; focusing prisons on rehabilitation efforts; and promoting best practices to ease reentry and reduce recidivism.

ADL supported the Sentencing Reform and Corrections Act of 2015, as well as other reform efforts designed to reduce mass incarceration, oppose racism, reform practices that disproportionately impact communities of color, create safe environments for all communities, and build trust between law enforcement and the communities they serve and protect.

ADL is the largest non-governmental provider in the United States for law enforcement training on hate crimes, extremism and terrorism. In recent years, we have welcomed a number of well-crafted police reform initiatives, including the President's Task Force on 21st Century Policing.¹⁶ ADL has strongly supported the work of the Task Force. In fact, an ADL representative presented testimony before the Task Force focused on our flagship Law Enforcement and Society (LEAS) core values program and a range of other policing practices designed to promote effective crime reduction while building

¹⁶ President's Task Force on 21st Century Policing 2015, *Final Report of the Task Force on 21st Century Policing*, Office of Community Oriented Policing Services (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

public trust and collaborative relationships between law enforcement officials and the communities they serve and protect.¹⁷

In the past, the Department of Justice has also engaged in leadership work to accomplish police reform and promote improved police-community relations and trust through the Civil Rights Division's active enforcement of its civil "pattern or practice" authority to address policing that violates the Constitution or other federal laws.

These critically important cases focus on systemic police misconduct and involve very substantial investigations. If the Department does find a pattern or practice of police misconduct, it works with local government and police authorities to address and remedy the situation, usually through a consent decree overseen by a federal court and an independent monitoring team. Immediately before he resigned as Attorney General, Jeff Sessions issued a memorandum outlining new, severely limiting standards and procedures for Justice Department attorneys involving in civil action against a state or local governmental entity that is resolved by consent decree or settlement agreement.¹⁸

In June 2016, the Justice Department announced that every federal law enforcement official and every federal prosecutor would participate in implicit bias training in the coming months. ADL applauded this announcement¹⁹ and had recommended such core-values training initiatives in its submissions to the President's Task Force on 21st Century Policing.

Mr. Barr's positions regarding criminal justice reform and law enforcement training raise concerns. As Attorney General, Mr. Barr released a 1992 Justice

¹⁷ Press Release, Anti-Defamation League, President Obama's Task Force on 21st Century Policing Consults with ADL on Law Enforcement Training (Feb. 14, 2015), <http://www.adl.org/press-center/press-releases/miscellaneous/presidents-task-force-21st-century-policing-consults-adl.html?referrer=https://www.google.com/#.WG-EvCMrKM4>.

¹⁸ *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities*, <https://www.justice.gov/opa/press-release/file/1109621/download>, November 7, 2018.

Vanita Gupta, former Acting Assistant Attorney for Civil Rights, called this memo "another attack on the core mission" of the Department of Justice, which amounted to "a slap in the face to the dedicated career staff" in DOJ's Civil Rights Division. *Jeff Sessions Dealt Police Reform One Final Blow On His Way Out The Door* https://www.huffingtonpost.com/entry/jeff-sessions-doj-police-reform-consent-decrees-us_5be5ae51e4b0e84388973547

¹⁹ Press Release, Anti-Defamation League, ADL Applauds Department of Justice Commitment to Implicit Bias Training (Jun. 27, 2016), <http://www.adl.org/press-center/press-releases/civil-rights/justice-dept-applauded-commitment-to-implicit-bias-training.html?referrer=https://www.google.com/#.WG-JbiMrKM4>.

Department 37-page report entitled “The Case for More Incarceration.”²⁰ In this report, Mr. Barr argued that “there is no better way to reduce crime than to identify, target, and incapacitate those hardened criminals who commit staggering numbers of violent crimes whenever they are on the streets.” Mr. Barr continued, saying that “of course, we cannot incapacitate these criminals unless we build sufficient prison and jail space to house them. Revolving door justice resulting from inadequate prison and jail space breeds disrespect for the law and places our citizens at risk, unnecessarily, of becoming victims of violent crime.”

More recently, Mr. Barr has written extensively on his support for “mandatory minimums.”²¹ Mr. Barr was one of forty signatories to a December 16, 2015 letter to the House leadership entitled “Opposition to S.2123, the ‘Sentencing Reform and Corrections Act of 2015.’” The letter states that “we, the undersigned, are former government officials who were responsible for the preservation of public safety and the pursuit of justice. We know firsthand the value of tough, mandatory minimum sentences.”

Furthermore, Mr. Barr utilized the inconclusive and extensively challenged “Ferguson Effect.” In a November 7, 2018 *Washington Post* opinion piece supporting outgoing Attorney General Jeff Sessions, Mr. Barr, joined by two other former Attorneys General, stated that: “Sessions took office after the previous administration’s policies had undermined police morale, with the spreading ‘Ferguson effect’ causing officers to shy away from proactive policing out of fear of prosecution.”²² Mr. Barr then praised Mr. Sessions’ tactics in combating crime.

Mr. Barr’s views raise concerns that he would maintain and exacerbate the current Justice Department’s restrictions on pattern and practice cases and support policies that lead to discriminatory mass incarceration. Therefore, we would urge the Committee to probe the nominee’s views on criminal justice issues and ask the following questions:

- **Do you believe mass incarceration has a disproportionate impact on communities of color?**
- **What is your view on efforts to address mass incarceration?**

²⁰ US Department of Justice, “The Case for More Incarceration.” 1992, NCJ-J39583, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

²¹ “Opposition to S.2123, the ‘Sentencing Reform and Corrections Act of 2015.’” <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>

²² “We are former attorneys general. We salute Jeff Sessions,” *The Washington Post* (November 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.56b43946e122

- **Do you support the use of consent decrees and settlement agreements to address a pattern and practice of police misconduct? Do you support the November 7, 2018 memorandum on settlements and consent decrees issued by former Attorney General Jeff Sessions?**
- **Can you identify specific police misconduct consent decrees entered into by the Obama Justice Department with which you disagree?**
- **Would you commit to reinstating the Justice Department’s important implicit bias training initiative? If not, why not?**
- **Do you still support mandatory minimum sentencing?**
- **What is your view on formerly convicted felons being granted the right to vote?**

LGBTQ Equality

In recent years, the Justice Department had been a powerful voice in support of LGBTQ equality and it was a strong supporter of codifying the constitutionality²³ and importance²⁴ of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), legislation that, among other things, provided authority for FBI investigations and Justice Department prosecutions of certain bias-motivated crimes, including crimes directed at individuals because of their sexual orientation or gender identity. The FBI updated its excellent Hate Crime Training Manual with thoughtful definitions and scenarios to aid police in understanding hate crimes directed against members of LGBTQ communities.²⁵

²³ Robert Raben, *Constitutionality of the Matthew Shepard Hate Crimes Prevention Act: Memorandum Opinion for the Assistant Attorney General Office of Legislative Affairs* (Jun. 16, 2009), https://www.justice.gov/sites/default/files/olc/opinions/2009/06/31/shepard-hate-crimes_0.pdf.

²⁴ Eric Holder, *Attorney General Eric Holder Before the Committee on the Judiciary United States Senate at a Hearing Entitled, 'The Matthew Shepard Hate Crimes Prevention Act of 2009.'* (Jun. 25, 2009), <https://www.justice.gov/ag/justice-news-3>.

²⁵ Law Enforcement Support Section, *Hate Crime Data Collection Guidelines and Training Manual* (Feb. 27, 2016), <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>.

In the same 1995 *Catholic Lawyer* article referenced above, Mr. Barr objected to the “Moral Relativism” that he believes is undermining “objective standards of right and wrong.”²⁶ In the article, Mr. Barr wrote that:

Moral tradition has given way to moral relativism. There are no objective standards of right and wrong. Each individual has his or her own tastes and we simply cannot say whether or not those tastes are good or bad. Everyone writes their own rule book. So, we cannot have a moral consensus or moral culture in society. We have only the autonomous individual.

And, as previously mentioned, Mr. Barr stated in that 1995 article that another example of “moral relativism” was “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student group. This kind of law dissolves any form of moral consensus in society. There can be no consensus based on moral views in the country, only enforced neutrality.”

More recently, in the same *Washington Post* article referenced above commending former Attorney General Sessions for his work, Mr. Barr also applauded Sessions for rolling back the gender identity statutory protections (to “help restore the rule of law”) first established by the Obama administration.²⁷

ADL strongly supports equality for LGBTQ communities. We urge the Committee to probe the nominee’s views on LGBTQ equality issues and ask questions on the following:

- **Do you believe same-sex marriage equality is the settled law of the land?**
- **Do you believe that individuals should be able to violate federal, state, or local civil rights laws if their non-compliance is grounded in religious or moral objections?**
- **Will you enforce existing protections against LGBTQ discrimination?**

²⁶ Barr, William P. “Legal Issues in a New Political Order.” *The Catholic Lawyer*. 36: 1-12, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tc> (1995).

²⁷ “We are former attorneys general. We salute Jeff Sessions,” *The Washington Post* (November 7, 2018). https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.56b43946e122

- **Do you support the President’s ban on transgender service in the military? If so, in light of the testimony from all four service chiefs that there is no impact on morale or readiness as a result of open transgender service and statements by medical and mental health professionals that the Department of Defense’s implementation report on the transgender ban misrepresents established scientific consensus, how do you justify such a ban that targets a specific group because of a personal characteristic?**

Immigration

ADL has advocated for fair and humane immigration policies since its founding in 1913. Most recently, ADL has helped expose anti-immigrant hate that has been a fixture of today’s immigration debate, and has called for a responsible public discourse that will honor America’s history as a nation of immigrants.

The Attorney General and the Department of Justice have tremendous power over immigration law. The Department of Justice has the power to prosecute immigration violations and the responsibility to administer immigration courts. As head of the Department of Justice, the Attorney General oversees the Executive Office for Immigration Review and the Board of Immigration Appeals, giving him or her broad authority over the enforcement of immigration laws and the fate of asylum seekers, which are often life-and-death decisions.

Former Attorney General Jeff Sessions and others have supported changes to the Fourteenth Amendment to deny citizenship to American-born children of undocumented immigrants. The Fourteenth Amendment to the U.S. Constitution states that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state in which they reside.”²⁸ Section 301(a) of the Immigration and Nationality Act similarly codifies that “a person born in the United States, and subject to the jurisdiction thereof,” is a national and citizen of the United States at birth.²⁹ It is long-settled law that “the Fourteenth Amendment affirms the fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens.”³⁰ The right, commonly referred to as “birthright citizenship,” extends equally to all persons born in the United States, regardless of their parents’ citizenship or immigration status.

²⁸ U.S. Const. amend. XIV, § 1.

²⁹ 8 U.S.C. §1401(a).

³⁰ *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898)

In 1991, as the then-Deputy Attorney General, Mr. Barr advocated for the Department of Health and Human Services to stop allowing immigrants with HIV/AIDS to enter the United States.³¹ In a *New York Times* article detailing the debate over whether the immigrants with HIV/AIDS would be allowed to enter, Mr. Barr was among those Justice Department officials who “argued that it was completely impractical for an immigration examiner to make a sophisticated analysis of an alien’s infection and health insurance coverage to determine whether that person might become a public charge in 5 or 10 years.” Mr. Barr was ultimately successful in preventing these otherwise-eligible immigrants from entering the country.

In a 2001 oral history project interview, Mr. Barr said that “[o]ne of the biggest problems we have with immigration—or had, I think it’s still a problem—is the abuse of the asylum laws.” He described a system he put in place with the State Department to funnel asylum seekers into six main airports so that U.S. officials could screen people before letting them into the United States.³²

More recently, in a 2017 opinion to the *Washington Post*, Mr. Barr wrote of his support for President Trump’s impactful and discriminatory “Muslim Ban.”³³ In this article, Mr. Barr stated that, in regard to President Trump’s executive order barring immigrants from majority-Muslim countries, he saw “no plausible grounds for disputing the order’s lawfulness.” Mr. Barr also said the “[executive order] falls squarely within both the president’s constitutional authority and his explicit statutory immigration powers. Nonetheless, over the past several days, the left, aided by an onslaught of tendentious media reporting, has engaged in a campaign of histrionics unjustified by the measured steps taken.”

Given the Attorney General’s power over immigration and Mr. Barr’s past support for preventing certain otherwise-eligible immigrants from entering the country and his support for the Muslim travel ban, ADL believes it would be appropriate to question the nominee in depth about his intentions. In particular, we respectfully request that the Committee question him with regard to the following:

³¹ Pear, Robert, “Health Dept. Loses in AIDS Rule Dispute,” *The New York Times* (May 28, 1991) <https://www.nytimes.com/1991/05/28/us/health-dept-loses-in-aids-rule-dispute.html>

³² “William Barr reflects on law-related issues, from the war on drugs to the Gulf War, as a major figure in the Department of Justice,” UVA Miller Center Presidential Oral Histories, Interview Date, April 5, 2001

³³ Barr, William, “Former attorney general: Trump was right to fire Sally Yates,” *The Washington Post* (February 1, 2017) https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.71744aa8f130

- **How—and to what extent—do you intend to use Department of Justice resources to prosecute immigration cases?**
- **In a 2001 interview you said that “one of the biggest problems we have with immigration—or had, I think it’s still a problem—is the abuse of the asylum laws.” You then discussed a plan you put in place to limit the number of people who made it into the United States to seek asylum by pre-screening them overseas. Do you believe that the asylum laws are still being abused? What do you think are U.S. obligations toward those seeking asylum under U.S. and international agreements?**
- **Do you believe that immigrants, including undocumented immigrants, have due process rights? Do you believe that people who have overstayed their visas should be prosecuted and sentenced to time in jail or prison? Do you believe that people who re-enter the country unlawfully after a removal should be prosecuted and sentenced to time in jail or prison?**
- **What is your position regarding the status of people who received Deferred Action for Childhood Arrivals?**
- **If the federal government were to pass a law withholding federal funding from so-called “sanctuary cities,” how would you prioritize Department of Justice resources to file charges against cities that did not comply?**
- **Would you defend the civil rights of people with undocumented parents who had received citizenship by virtue of being born in the United States? If so, would that include the rights of those children to attend public schools? If not, on what basis do you hold that view, given the Supreme Court’s clear guidance in *Plyler v. Doe*, 457 U.S. 202 (1982)?**

We know you share our view of the importance of the Senate's "advice and consent" role in the nomination process and we very much appreciate your leadership in addressing the important issues raised in this letter. We trust that the nominee's answers to Committee members' questions on these areas of interest and concern will help in the Committee's overall evaluation of Mr. Barr for the important position of United States Attorney General.

Sincerely,



Esta Gordon Epstein
National Chair



Jonathan A. Greenblatt
CEO and National Director



Association of State Criminal
Investigative Agencies

January 10, 2019

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Support for the nomination of William Barr to be Attorney General of the United States

Dear Chairman Graham and Ranking Member Feinstein,

I write on behalf of the Association of State Criminal Investigative Agencies (ASCIA) in support of the President's nomination of William Barr to be Attorney General of the United States. ASCIA is a professional association consisting of the senior executives of 48 statewide criminal investigative agencies in the United States, including independent bureaus within states and state police agencies with both criminal and other enforcement responsibilities.

General Barr would come to the job with unparalleled experience and knowledge of the role of Attorney General. Having previously served at the helm of the Justice Department, he is uniquely qualified to manage the challenges the department faces.

We believe he understands the importance of working in partnership with law enforcement at all levels - including state and local agencies. During his earlier government service he played a key role in implementing innovative DOJ initiatives that addressed the spiking crime rates at that time. He demonstrated strong support for law enforcement partnerships.

If General Barr is confirmed, ASCIA looks forward to working closely with him to address today's law enforcement challenges relating to the ongoing drug crisis, forensic science, digital evidence, criminal intelligence and information sharing. We urge support for his confirmation.

Sincerely,

Mark Keel
President, ASCIA
Chief, South Carolina Law Enforcement Division

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Nomination of William Barr for U.S. Attorney General

January 10, 2019

The Center for American Progress (CAP) is writing to express our strong opposition to the nomination of William Barr for U.S. Attorney General. William Barr's confirmation to this position will mean a continuation of Trump's unprecedented assault on civil rights and civil liberties. Barr has long supported tough-on-crime policies that are in opposition to criminal justice reform. He also opposes immigrant, LGBTQ, and reproductive rights. Given his extreme record, it is unlikely that Barr will uphold civil rights protections of all Americans as the Attorney General.

Equally as troubling, prior to his nomination, Barr sought to delegitimize the Mueller investigation, suggested the Department of Justice should investigate baseless conspiracy theories against Trump's political opponent, and even talked with Trump about being his defense attorney. Given Trump's stated desire to have an attorney general who will shield him from liability for his actions and his illegal installation of a crony as acting attorney general, it is of the utmost important that the Attorney General be someone who can operate with independence, particularly when our national security and the rule of law are at stake. It is clear that Barr cannot be that person. His nomination must be opposed to safeguard civil rights and the integrity of the Department of Justice and our democracy.

Democratic Integrity. Special Counsel Robert Mueller's obstruction of justice inquiry into President Trump, who has [made it clear](#) he wants an Attorney General willing to protect him, is critical to assessing the depth of foreign intervention in the 2016 Presidential Election and must be protected. The person overseeing it must be beyond reproach, especially given that Deputy Attorney General Rod Rosenstein has signaled his intention to leave the Department of Justice within the next month. Unfortunately, the evidence suggests that, if confirmed, Barr would instead act as Trump's hatchet man to try and undermine the investigation.

- In the summer of 2018, Barr took the inexplicable step of [authoring](#) an unsolicited memo to Trump White House lawyers and Department of Justice officials criticizing the Mueller investigation
- Barr first auditioned to be Trump's defense attorney, having at least [one meeting](#) with him on the topic.
- Barr has a history of [supporting presidential efforts to undermine investigations](#). And he suggested the Department of Justice should investigate [wild conspiracy theories](#) against Trump's former political opponent, Hillary Clinton.

- Barr must promise to recuse himself from any involvement in the Mueller investigation and grant Mueller maximum independence, just as Acting Attorney General Robert Bork did after President Nixon's Saturday Night Massacre.

Criminal Justice. Today lawmakers and experts across the ideological spectrum increasingly agree with evidence indicating that mass incarceration does not markedly improve public safety, and that the criminal justice system must be reformed to reduce unfair racial disparities. Yet, Barr is ideologically committed to a punitive criminal justice system, and his viewpoints have not caught up to the public's opinion or evidence. Barr cannot be trusted to continue this country's momentum toward criminal justice reform.

- During his stint as Deputy Attorney General from 1990 to 1991 and Attorney General from 1991 to 1993, Barr pushed policies like the Crime Control Act of 1990 that escalated the war on drugs and mass incarceration.
- In 1992, he wrote the introduction to a Department of Justice report titled *The Case for More Incarceration*, arguing the U.S. was "incarcerating too few criminals" even as the U.S. led the world in incarceration rates.
- In the same year, in an interview on racial disparities in the criminal justice system, Barr claimed that "our [criminal justice] system is fair and does not treat people differently." He went on to defend sentencing disparities for crack offenders versus cocaine offenders.
- Barr opposed the Sentencing Reform and Corrections Act of 2015 which includes provisions similar to those in the recently-passed FIRST STEP Act, and he enthusiastically supported his would-be predecessor's regressive criminal justice policies including the instruction to federal prosecutors to pursue the highest sentences possible for all crimes.

Immigration. Barr's record on immigration indicates he will not uphold the basic due process protections of immigrants and asylum seekers. His background suggests that he would uphold this Administration's dark vision and animus for immigrants. If confirmed, Barr would once again have the power to help determine our nation's immigration policies.

- As Attorney General under President George H.W. Bush, Barr contributed to the criminalization of immigrants by expanding punitive immigration enforcement and detention.
- Barr emphatically supported President George H.W. Bush's illegal program of detaining some 12,000 Haitian refugees at Guantanamo Bay and denying them access to attorneys. Under Barr's direction, approximately 300 of the Haitian asylum seekers were kept in a separate camp because they had HIV and were denied basic human rights protections. Ultimately, a federal judge struck down Barr's actions and ruled the Haitian refugees had the right to legal representation and access to treatment in the U.S.
- Barr is poised to continue his predecessor's legacy of hostility and cruelty towards immigrants, refugees, and communities of color.

Civil Rights. Barr's troubling public record on civil rights expands beyond criminal justice and immigration, painting a picture of someone who is hostile or indifferent to the rights of

vulnerable Americans. Barr's views are out of the mainstream and would only continue the Trump Department of Justice's record of hostility toward LGBTQ people and women.

- In 1991, Barr revealed his opposition to women's reproductive rights, making the unconstitutional claim that the right to privacy does not extend to the right to access abortion and that *Roe v. Wade* should be overturned.
- In a 1992 letter to the Senate, Barr opposed the Freedom of Choice Act (FOCA), legislation that would enshrine *Roe v. Wade* into law. The letter stated that he would advise then-President George H.W. Bush to veto the legislation if Congress approved it.
- In a recent op-ed, Barr praised former Attorney General Sessions for issuing a "religious liberty" memo that facilitated discrimination against LGBTQ people.

Economic Matters. From financial system abuses to tax evasion to antitrust enforcement and more, the Department of Justice plays a vital role in enforcing laws that hold the most powerful economic interests accountable under the rule of law. Unfortunately, William Barr has a track record in opposition to consumer protection, antitrust enforcement, and corporate accountability structures. Although some of it may have occurred consistent with his work responsibilities, his record still raises red flags regarding his priorities and potential conflicts of interest.

- Barr opposed net neutrality as an important component to a free and open internet and also filed a brief in opposition to the structure of the Public Company Accounting Oversight Board, which was put in place after the Enron and Worldcom accounting scandals to combat accounting fraud and corporate malfeasance.
- Barr has supported large and controversial mergers and acquisitions, including when he served on the board of Time Warner as they sought to merge with AT&T in 2017 — an effort that the Justice Department moved to block.
- At a time when the Trump Administration's poor record on antitrust and competition, concerns about political interference and even corruption, and its deregulatory approaches to financial regulation and accountability, worker rights and tax enforcement all weigh heavily, Barr signals the wrong direction for what should be the Attorney General's priorities on economic policy and justice.

Barr's record demonstrates he is unfit to operate as this country's chief law enforcement officer. The American people deserve an independent Attorney General who will carry out the duties entrusted to the Department of Justice of protecting the civil rights of all Americans. CAP urges all members of the U.S. Senate Judiciary Committee to consider these concerns and oppose the nomination of William Barr for U.S. Attorney General.



January 14, 2019

The Honorable Lindsey Graham, Chairman
Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking
Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary:

On behalf of the Center for Reproductive Rights, we write to express our serious concerns regarding the nomination of William Barr to serve as Attorney General of the United States. The American people need an Attorney General who will respect the fundamental constitutional rights of equal protection, liberty, and privacy, including the right to access contraception and safe, legal abortion. Based on his record, we question his ability to do so and urge the committee to scrutinize Mr. Barr's history of hostility towards the personal liberty rights guaranteed by the U.S. Constitution.

The Center for Reproductive Rights uses the power of law to advance reproductive rights as fundamental human rights around the world. For over 25 years, our game-changing litigation and advocacy work—combined with our unparalleled expertise in the use of constitutional, international, and comparative human rights law—has transformed how reproductive rights are understood by courts, governments, and human rights bodies. We litigate extensively in federal and state courts to ensure reproductive health services are available across the country. Since our founding, we have been involved in every major Supreme Court case on abortion rights. In 2016, we won the landmark Supreme Court case, *Whole Woman's Health v. Hellerstedt*,¹ the most significant ruling on abortion in more than two decades.

As the nation's top law enforcement officer and head of the Department of Justice, the Attorney General is responsible for safeguarding our civil and constitutional rights, including the right to abortion. The Attorney General must demonstrate to the American people that they are loyal first and foremost to the faithful execution and enforcement of the law. They must possess a sound understanding of constitutional law and the principle of stare decisis, must respect and hold sacred the role of the courts, and must be prepared to serve as a check on federal officials whose policy actions endanger women's reproductive freedom.

We are greatly disturbed by Mr. Barr's blatant hostility to *Roe v. Wade*² and by his efforts to undermine the constitutional rights protected therein, demonstrated by his record as the former Attorney General, as well as in his personal speeches and writings. At his first confirmation hearing for Attorney General in 1991, Mr. Barr was asked whether he had a view on the right to

privacy and the right of a woman to choose to terminate her pregnancy; he responded “I do not believe the right to privacy extends to abortion...I believe *Roe v. Wade* should be overruled.”³ Similarly, when the Supreme Court reaffirmed the constitutional right to abortion in the 1992 decision *Planned Parenthood v. Casey*,⁴ Mr. Barr told CNN that the decision was “a step in the right direction because it does allow the states greater latitude in placing reasonable restrictions on abortion. But it doesn't go far enough in my view.” Mr. Barr further stated that he believed *Roe v. Wade* “does not have any constitutional underpinnings.”⁵

Further, as Attorney General for President George H.W. Bush, Mr. Barr used his position to not only vocally call for the overturning of *Roe v. Wade*, but also to oppose Congressional legislation codifying reproductive rights, writing letters to Congress expressing strong opposition to a proposed bill to establish a federal right to abortion.⁶ He also wrote a letter to the American Bar Association on behalf of the Bush Administration discouraging the organization from formally supporting the constitutional right to abortion.⁷ After leaving the Department of Justice, Mr. Barr remained active in efforts to undermine women's health, including by joining other former DOJ officials in filing amicus briefs opposing the Affordable Care Act⁸ and supporting efforts to hinder women's access to affordable contraception.⁹

For over four decades, women have relied on the Supreme Court's decisions repeatedly reaffirming that the Constitution affords robust protections for access to abortion and contraception, along with the underlying principles of liberty, dignity, equality, and bodily integrity the right reflects. These rights have helped women equally participate in the social and economic life of the nation, and as a result, the strong framework of legal precedent protecting these fundamental constitutional values is of critical importance to women. Moreover, *Roe* is the foundation for a broad swath of constitutional law that protects our right to make decisions about marriage, procreation, contraception, family relationships, child-rearing and education, and more.¹⁰ It is essential that the Attorney General possess a deep commitment to defending these core constitutional values and substantive fundamental rights, regardless of their personal beliefs or those of the President. Mr. Barr's record raises significant concerns about his ability to fulfill this responsibility. Accordingly, we have grave concerns about how he will execute his responsibilities if confirmed a second time to this crucial position.

At his upcoming hearing before your Committee, we urge you to thoroughly question Mr. Barr about his record and current understanding and interpretation of abortion jurisprudence, about his commitment to the rule of law and respect for precedent, and about his analysis of substantive due process rights to bodily autonomy. Mr. Barr's past explicit opposition to the constitutional right to abortion, combined with President Trump's campaign promise to overturn *Roe v. Wade*,¹¹ only amplify the importance of scrutinizing Mr. Barr's ability to impartially dispense his responsibilities. Mr. Barr must commit to rigorously uphold all constitutional rights, including protections for abortion. We strongly encourage you to press Mr. Barr on these matters.

If you have any questions or would like any additional information, please contact Sara Outterson, Senior Federal Legislative Counsel at soutterson@reprorights.org or 302-927-6980.

Sincerely,
Center for Reproductive Rights

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- ¹ *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).
- ² *Roe v. Wade*, 410 U.S. 113 (1973).
- ³ Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr, C-SPAN (November 13, 1991), <https://www.c-span.org/video/?c4765758/barr-ro>.
- ⁴ *Planned Parenthood Se. Pa. v. Casey*, 505 U.S. 833 (1992).
- ⁵ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992).
- ⁶ Letter to Congressman Henry Hyde, pgs. 1957-1959 (Mar. 2, 1992), *available at* [https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(c\).pdf](https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(c).pdf); Letter for the Chairman, Committee on Labor and Human Resources, U.S. Senate, pgs. 11-15 (July 1, 1992), *available at* <https://www.justice.gov/olc/file/476961/download>.
- ⁷ *Endorsement Puts ABA in Thick of Abortion Fray*, ASSOCIATED PRESS (Aug. 12, 1992), <https://www.deseretnews.com/article/241844/ENDORSEMENT-PUTS-ABA-IN-THICK-OF-ABORTION-FRAY.html>.
- ⁸ Brief for Former United States Attorneys General William Barr, Edwin Meese, III, and Dick Thornburgh et al. as Amici Curiae Supporting Appellees, *Commonwealth of Virginia v. Sebelius*, 728 F. Supp. 2d 768 (E.D. Va. 2010).
- ⁹ Brief for Former Justice Department Officials, as Amici Curiae Supporting Appellees, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).
- ¹⁰ CENTER FOR REPRODUCTIVE RIGHTS, *Roe and Intersectional Liberty Doctrine* (2018), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Liberty-Roe-Timeline-spread-for-web.pdf>.
- ¹¹ Mark Berman, *Trump promised judges who would overturn Roe v. Wade*, WASH. POST (Mar. 21, 2017), https://www.washingtonpost.com/politics/2017/live-updates/trump-white-house/neil-gorsuch-confirmation-hearings-updates-and-analysis-on-the-supreme-court-nominee/trump-promised-judges-who-would-overturn-roe-v-wade/?utm_term=.755638cbe7d7.


CONSTITUTIONAL
ACCOUNTABILITY CENTER

January 10, 2019

The Honorable Lindsey Graham
 U.S. Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

The Honorable Dianne Feinstein
 U.S. Senate Judiciary Committee
 152 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein,

The Constitutional Accountability Center is dedicated to fulfilling the progressive promise of our Constitution's text, history, and values. We work in our courts, through our government, and with legal scholars to preserve the rights and freedoms of all Americans and to protect our judiciary from politics and special interests. As the Department of Justice (DOJ) is the chief enforcer of federal laws, including the Constitution, we plan to examine carefully the record of President Trump's nominee to the post of U.S. Attorney General, William Barr. However, from what has already come to light regarding Mr. Barr's record, **we write now to express concern about his confirmation.**

DOJ's mission is not only to "enforce the law and defend the interests of the United States," but also "to ensure fair and impartial administration of justice for all Americans." In order to carry out this critical mission, it is clear that the U.S. Attorney General—the head of DOJ—must possess: a deep commitment to the principles of liberty, equality, and fairness at the Constitution's core; a history of respecting substantive fundamental rights; and a demonstrated willingness to respect the whole Constitution and its values, whatever his or her own policy preferences, or those of the President.

Unfortunately, over the past two years, under Attorney General Jeff Sessions, DOJ's mission suffered. Attorney General Sessions wielded the great power of his cabinet position to roll back civil and human rights and to defer when President Trump instituted constitutionally problematic policies. As CAC made clear on January 6, 2017 when we wrote to you opposing the confirmation of then-Senator Sessions, "[h]is extreme views, at times defying the fundamental protections written in the text and underscored by the history of the Constitution, demonstrate an unwillingness to respect the rights of all persons as guaranteed by our national charter and run counter to the important mission of the Department of Justice." The low bar set by the record of former Attorney General Jeff Sessions (a record that Mr. Barr has praised publicly) must not be the standard by which this Committee and the Senate reviews Mr. Barr's nomination.

The country needs an Attorney General with a history of promoting fundamental constitutional principles that ensure liberty and equality for all Americans, along with the independence to prevent and curb abuses of power by the government.

We write to you because we are concerned Mr. Barr will not be the Attorney General the country needs. He has a troubling civil rights record, particularly on LGBTQ rights, reproductive freedom, criminal justice, and immigration

Constitutional Accountability Center

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policy. Furthermore, he has demonstrated a bias in the independent investigation into Russian interference in the 2016 election that calls into question his ability to be a check on the President who nominated him. We ask that you take seriously your constitutionally assigned advice-and-consent role by questioning him thoroughly on these issues during his confirmation hearing later this month.

The American people deserve an Attorney General who is committed to the rule of law and the constitutional values that make us free—liberty, equality, and fairness. With these values under threat, it is critical that our country has a Justice Department that is independent and impartial so that it may carry out its mission “to ensure fair and impartial administration of justice” for everyone.

If you have any questions or would like any additional information, please contact Kristine Kippins, Constitutional Accountability Center’s Director of Policy, at kristine@theusconstitution.org or (202) 296-6889 x313.

Respectfully,



Praveen Fernandes
Vice President of Public Engagement



Kristine A. Kippins
Director of Policy

cc: Senate Judiciary Committee members

The Honorable Lindsey Graham
 Chairman
 Committee on the Judiciary
 United States Senate
 290 Russell Senate Office Building
 Washington, DC 20510

The Honorable Dianne Feinstein
 Ranking Member
 Committee on the Judiciary
 United States Senate
 331 Hart Senate Office Building
 Washington, DC 20510

Dear Senators Graham and Feinstein:

We write as constitutional law scholars who specialize in separation of powers. The Attorney General is the most important official in the executive branch for interpreting both the scope of presidential power and the authority of Congress to hold presidents accountable. As the President's chief legal adviser outside the tight political orbit of the White House, it is the Attorney General who is chiefly responsible within the executive branch for the conscientious interpretation of separation-of-powers and checks-and-balances principles, including their application to conflicts with Congress. From this perspective we are profoundly troubled that, in both his public and private roles, Attorney General nominee William P. Barr has staked out extreme positions about both the scope of the president's unilateral powers and the limitations on Congress's authorities with regard to executive accountability. Mr. Barr's extreme views are evident from his recent writings as well as his work in the George H.W. Bush Administration as Attorney General and as head of the Office of Legal Counsel (OLC), the Justice Department's key division in elaborating the executive branch's positions on constitutional doctrine.

As head of OLC and as Attorney General, William Barr promoted an extreme form of what scholars call the "unitary executive theory" – a constitutional theory that the Supreme Court has repeatedly rejected. Adherents of this version of the unitary executive theory believe that the Constitution grants the President complete policy control over all discretion that Congress vests in the executive branch to implement federal law and, additionally, implicitly guarantees presidents the power to fire at will any federal functionary who is an officer of the United States.

Barr's extreme views on the unitary executive theory were perhaps most evident in the June 8, 2018 memorandum he wrote to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel entitled "Mueller's 'Obstruction' Theory". In that memo Barr wrote:

The Constitution itself places no limit on the President's authority to act on matters which concern him or his own conduct. On the contrary, the Constitution's grant of law enforcement power to the President is plenary. Constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He alone is the Executive branch.¹

¹ June 8, 2018 memorandum to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel entitled, "Mueller's 'Obstruction' Theory," at unnumbered page 10.

As a starting point, this is a bizarre statement for a constitutional textualist given that Article II explicitly anticipates that the executive branch will comprise “Departments” that Congress will create and to which Congress will assign “duties.” Lest there be any doubt, however, that Mr. Barr believes his theory applies to criminal prosecution, he adds: “[T]he full measure of law enforcement authority is placed [by the Constitution] in the President’s hands, and no limit is placed on the kinds of cases subject to his control and supervision.”² It is unclear why, and under what circumstances, Mr. Barr felt compelled to write this memo. What is clear is that it stakes out an extreme view on executive power beyond Congress’ administrative control and oversight responsibility.

It is not only, however, on questions of administrative control that Mr. Barr’s positions outrun existing separation of powers law. He has also championed extreme positions on Congress’s entitlement to subpoena information from the executive branch. This is most evident in a July 27, 1989 OLC memorandum he prepared for the Bush Administration’s “General Counsels’ Consultative Group,” entitled “Congressional Requests for Confidential Executive Branch Information.”³ The 1989 OLC memo effectively creates a presumption against cooperation with congressional oversight. It repeats a Reagan Administration position that “the interest of Congress in obtaining information for oversight purposes is . . . considerably weaker than its interest when specific legislative proposals are in question.”⁴ Indeed, the memo contends that “the congressional oversight interest will support a demand for predecisional, deliberative documents in the possession of the Executive Branch only in the most unusual circumstances.”⁵

These propositions represent a profoundly one-sided over-reading of the cases on which they purport to rely. The case on which the memo relies to establish Congress’s alleged duty to point to a specific legislative decision that cannot be made without access to the materials it demands is *Senate Select Committee on Presidential Campaign Activities v. Nixon*.⁶ That decision of the D.C. Circuit rejected a Senate committee demand for the Nixon tapes, in large part because the material under subpoena was already in the possession of the House Judiciary Committee. The text immediately following the sentence excerpted in the OLC memo states that the court’s most fundamental concern about the Senate subpoena was not a failure to name a specific legislative decision that would be illuminated by the tapes. Its concern was enforcing unnecessarily a subpoena for tapes already in the possession of another House of Congress:

More importantly, perhaps, insofar as such ambiguities [in existing transcripts] relate to the President’s own actions, there is no indication that the findings of the House

<https://int.nyt.com/data/documenthelper/549-june-2018-barr-memo-to-doj-mue/b4c05e39318dd2d136b3/optimized/full.pdf>.

² *Id.*

³ https://www.justice.gov/sites/default/files/olc/opinions/1989/06/31/op-olc-v013-p0153_0.pdf.

⁴ Congressional Requests for Confidential Executive Branch Information, 13 Op. O.L.C. 153, 160 (1989).

⁵ *Id.* at 160.

⁶ 498 F.2d 725 (D.C. Cir. 1974).

Committee on the Judiciary and, eventually, the House of Representatives itself, are so likely to be inconclusive or long in coming that the Select Committee needs immediate access of its own.⁷

A final area of separation of powers law that might well concern the Senate in their advice and consent role is the Constitution's allocation of responsibilities regarding U.S. foreign policy. Article II explicitly assigns to the President a variety of incontestably important foreign affairs roles, most notably, those of receiving ambassadors and negotiating treaties. From these, both Congress and the judiciary have inferred that the President enjoys certain implicit powers, as well, such as the power of recognition and of serving as the authoritative communicator of U.S. foreign policy to other nations. Mr. Barr, however, has gone beyond recognition of these explicit powers to write: "It has long been recognized that the President, both personally and through his subordinates in the executive branch, *determines* and articulates the Nation's foreign policy."⁸

To be fair, Mr. Barr's claim that the President "determines" foreign policy is built on a long-held myth advanced by the Department of Justice, which is built on a vast over-reading of dicta in *United States v. Curtiss-Wright Export Corp.*⁹ The Supreme Court however in *Zivotofsky ex rel. Zivotofsky v. Kerry* recently and emphatically rejected *Curtiss-Wright* as recognizing a broad, undifferentiated, exclusive presidential power to determine foreign policy.¹⁰ We are not aware of whether Mr. Barr has commented on the Court's decision in *Zivotofsky*. However, given his prior extreme statements and the differences over foreign policy likely to emerge between the President and Congress it is especially important to explore Mr. Barr's current views on these issues.

We know that you take your constitutional advise-and-consent role very seriously. As constitutional law scholars who specialize in separation of powers we would be deeply troubled by any nominee who exhibited Mr. Barr's overbroad views on executive powers. Indeed, in our view Mr. Barr's diminished view of the constitutional role that Congress is entitled and expected to play in its oversight capacity threatens the rule of law. It is our belief that in performing your constitutional advise-and-consent role you should ask Mr. Barr to clarify his views on the unitary executive theory and related separation of powers concerns. In this connection, we believe that a review of the relevant records during his tenure in the Department of Justice as well as the outside advice he has provided to the Trump Administration is imperative.

⁷ Id. at 733.

⁸ Memorandum Opinion for the General Counsels' Consultative Group re: Common Legislative Encroachments on Executive Branch Authority, 13 Op. O.L.C. 248, 256 (1989) (emphasis added), <https://www.justice.gov/file/24286/download> (hereafter, the "Encroachment Memo").

⁹ 299 U.S. 304 (1936).

¹⁰ *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2079 (2015).

Sincerely,

Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law, University of California Berkeley Law

Aziz Z. Huq, Frank and Bernice J. Greenberg Professor of Law and Mark Claster Mamolen Teaching Scholar, University of Chicago Law School

Neil J. Kinkopf, Professor of Law, Georgia State University College of Law

Heidi Kitrosser, Robins, Kaplan, Miller & Ciresi Professor of Law, University of Minnesota Law School

Jon D. Michaels, Professor of Law, UCLA Law

Victoria Nourse, Professor of Law, Georgetown University Law Center

Peter M. Shane, Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz College of Law

Jed Handelsman Shugerman, Professor of Law, Fordham University School of Law

***All signatories represent their views as individuals and do not sign on behalf of any law school or organization.*

January 17, 2019

Dear Senator,



The Drug Policy Alliance urges you to oppose the nomination of William P. Barr for United States Attorney General. The nominee comes before the Committee with a long track record of championing extreme views on drugs and sentencing that should be disqualifying for this position.

During his tenure as Attorney General under George H.W. Bush, Barr pushed for an expansion of the war on drugs and traversed the country pressing state officials to construct more prisons and incarcerate more drug offenders.ⁱ Barr is at least partly responsible for the overreliance on incarceration and punitive approaches to drugs that define US drug policy. In the years that have followed, Barr has been unequivocal in his view that draconian drug sentencing laws, brutal law enforcement crackdowns and an escalation of the war on drugs would reduce crime.

When it became clear in the mid-1990s that the crack-powder sentencing disparity was perpetuating gross racial disparities in the criminal justice system, Barr defended the policy arguing in a 1997 co-written op-ed that the 100-to-1 sentencing disparity between crack cocaine and powder cocaine was “not excessive,” and that crack cocaine sentencing laws were, in fact, not “100 times more severe than those for powder cocaine” stating that the 100-to-1 disparity was “a widely cited figure that is based on a misunderstanding of the statute.”ⁱⁱ

Acting on extensive data from the United States Sentencing Commission demonstrating the deleterious effects of the cocaine disparity, as well as horrific cases of individuals serving decades-long sentences for personal quantities of crack cocaine, Congress enacted the Fair Sentencing Act in 2010. Barr has been unmoved on drug sentencing reform despite this change in policy. In 2014, Barr signed a letter to Congress opposing legislation that would reduce mandatory minimum sentences for drugs.ⁱⁱⁱ The following year, Barr signed onto another letter opposing a modest sentencing reform bill – the Sentencing Reform and Corrections Act – in which he claimed that “our system of justice is not broken.”^{iv}

Just last month Congress passed, and President Trump signed, the First Step Act which applied this sentencing reform retroactively. Much of this legislation will have to be implemented by the Attorney General. In his written testimony and during questioning before this Committee, Barr pledged to implement the First Step Act.^v Yet, it is hard to believe that Barr has changed his mind on criminal justice reform, and there is no guarantee that Barr will uphold his pledge to support modest congressional reforms like the First Step Act if confirmed. In fact, Barr indicated in his written testimony that, despite passage of the First Step Act, he intends to stay the course set by former Attorney General Sessions to “keep up the pressure on chronic, violent criminals. We cannot allow the progress we have made to be reversed.”^{vi}

During his time as Attorney General, and the years that followed, Barr has characterized drug addiction as a moral flaw deserving of punishment, arguing for instance in 1996 that “drug addicts” are “blameworthy” for the “decomposition of our cities” and that police should have

discretion to “target” them.^{vii} Barr’s views on drugs are especially important given the overdose crisis this country now faces. The consensus politically has been that we need a public health approach to the overdose crisis, yet Barr is someone who has the same mindset as Sessions, and is likely to pursue the same failed drug war strategies of locking up drug users and pushing for tough sentences that do nothing to reduce overdose deaths and serve only to increase the prison population, usually through the incarceration of people of color. Indeed, William Barr’s daughter – Mary Daly – is currently the point person on opioid prosecutions at DOJ and has stressed the importance of “aggressive enforcement” when it comes to the overdose crisis.^{viii}

The power of the Attorney General is vast, and largely unchecked. The Committee should therefore be especially concerned about comments that Barr made in a 2001 interview where he expressed views that the war on drugs should be handled by the military and treated as a national security issue. Barr also suggested that the U.S. should engage in the extrajudicial killings of drug traffickers, stating that “Using the military in drugs was always under discussion. I personally was of the view it was a national security problem. I personally likened it to terrorism. I believe you can use law enforcement to some extent, particularly in the U.S., but the best thing to do is not to extradite Pablo Escobar and bring him to the United States and try him. That’s not the most effective way of destroying that organization.”^{ix}

In the same interview, Barr stated that “there are only two end games: You either lock them up or you shoot them, one or the other” when dealing with people involved in drug trafficking organizations like the Medellin cartel.^x Barr’s advocacy here for extrajudicial killings is deeply troubling, especially given that Trump has already called for the death penalty for people who sell fentanyl. It should be noted that Barr again expressed his view in testimony before this Committee that the war on drugs is “not just a law enforcement problem; it’s a national security problem.”^{xi}

In 2017, we urged this Committee to oppose the nomination of Jeff Sessions given his very troubling record in opposition to drug sentencing reform and extreme views on drugs and policing. Sessions went on to then publicly oppose this Committee’s efforts to take proactive steps toward winding down mass incarceration and reforming draconian drug sentencing laws. We see similar dire warning signs in William Barr’s record that he is likely to oppose efforts by this Committee and by Congress to enact further reform.

It has been nearly five decades since President Nixon declared a war on drugs and more than three decades since Congress enacted the 100-to-1 cocaine sentencing disparity. We know the destruction that these failed policies have wrought on our communities and our nation as a whole. We therefore cannot afford to confirm William Barr knowing he will seek to continue an escalation of failed drug policies begun by his predecessor Sessions. We strongly urge this Committee to oppose the confirmation of William Barr to serve as Attorney General.

Sincerely,

Michael Collins
Director, Office of National Affairs
Drug Policy Alliance

ⁱ See for example: The Case for More Incarceration, 1992, Appendix 12(b), p. 182; and Appendix 12(d), pgs. 281, 613, 1109, 1182 and 1208

ⁱⁱ Should Congress Refuse to Shorten Sentences for Crack? *Deseret News*, Oct. 4, 1997, see Appendix 12(a), p. 114

ⁱⁱⁱ Re: Federal Criminal Sentencing Reform, 2014, see Appendix 12(c), p. 91

^{iv} Re: Sentencing Reform and Corrections Act of 2015, S. 2123, December 10, 2015, see Appendix 12(c), p. 85

^v Written Testimony of William P. Barr, United States Senate, Committee on the Judiciary, Hearing on the Nomination of the Honorable William Pelham Barr to be Attorney General of the United States, January 15, 2019, p. 3; See Transcript, Senate Judiciary Committee Hearing on the Nomination of William P. Barr to Be Attorney General of the United States, January 15, 2019

^{vi} Written Testimony of William P. Barr, United States Senate, Committee on the Judiciary, Hearing on the Nomination of the Honorable William Pelham Barr to be Attorney General of the United States, January 15, 2019, p. 3

^{vii} A Practical Solution to Crime in Our Communities, 1996, see Appendix 12(a), p. 210

^{viii} National Public Radio, "Federal Prosecutor Takes On New Case As DOJ Point Person For Opioid Crisis," Ryan Lucas, April 9, 2018, accessed via the Internet: <https://www.npr.org/2018/04/09/599854675/federal-prosecutor-takes-on-new-case-as-doj-point-person-for-opioid-crisis>

^{ix} University of Virginia, Miller Center, Presidential Oral Histories, George H. W. Bush Presidency, William P. Barr Oral History, Assistant Attorney General; Deputy Attorney General; Attorney General, April 5, 2001, accessed via the Internet: <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

^x University of Virginia, Miller Center, Presidential Oral Histories, George H. W. Bush Presidency, William P. Barr Oral History, Assistant Attorney General; Deputy Attorney General; Attorney General, April 5, 2001, accessed via the Internet: <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

^{xi} See Transcript, Senate Judiciary Committee Hearing on the Nomination of William P. Barr to Be Attorney General of the United States, January 15, 2019



January 10, 2019

The Honorable Lindsay Graham, Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Diane Feinstein, Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Earthjustice Concerns with the Attorney General Nomination of William Barr

Dear Chairman Graham and Ranking Member Feinstein:

Earthjustice writes today to express serious concerns about the nomination of William Barr to serve as Attorney General of the United States.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice ("DOJ"), the Attorney General is responsible for safeguarding our civil and constitutional rights, including our right to live free from toxic air and polluted waters. That is a core and enduring mission of the Justice Department, and the nation needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality.

This matters across every aspect of American society, including for addressing the environmental and human health impacts of pollution, impacts that disproportionately burden low-income communities and communities of color. Moreover, the Attorney General must operate with integrity and independence in service to the people, not the president or certain big money special interests. Based on his record, Earthjustice has grave misgivings about Mr. Barr's commitment to fully upholding and enforcing the law, and exercising the independence that the office of Attorney General demands.

For the past two years, the Justice Department was led by an Attorney General intent on restricting civil and human rights at every turn.¹ From rollbacks in environmental enforcement, voting rights enforcement and LGBTQ rights, to attacks on access to justice and extreme immigration policies, Attorney General Jeff Sessions used his office to carry out the extreme, anti-civil rights and anti-environmental agenda he had advanced for decades in the U.S. Senate. This brand of leadership puts people's lives, health, and wellbeing in peril, exacerbates inequities, and increases burdens for already vulnerable communities.

In a recent op-ed, Mr. Barr called Mr. Sessions "an outstanding attorney general" and offered praise for his policies, many of which undermined civil rights.² This is a telling indication that Mr. Barr would continue the deeply disturbing anti-civil rights policies and priorities of the past two years, policies that disproportionately burden vulnerable communities (including communities affected by environmental degradation and pollution). We will continue to review Mr. Barr's record, but what has been uncovered thus far bears this out.

In addition to his troubling positions on environmental enforcement, his views on issues like criminal justice reform, LGBTQ equality, immigrant rights, and reproductive freedom suggest a philosophical motivation that is hostile to the fierce defense of the rights and wellbeing of historically marginalized communities and people in need.

¹ <https://civilrights.org/trump-rollbacks/>.

² https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.



With regard to environmental enforcement, DOJ under AG Sessions saw a 90% reduction in corporate penalties during the first year of the Trump Administration, from \$51.5 billion to a mere \$4.9 billion.³ This inexcusable lack of enforcement of corporate wrongdoing (much of it causing serious environmental harm) will encourage unlawful behavior and further tip the scales against environmental justice. We are deeply concerned that Mr. Barr's public praise for AG Sessions' policies mean he cannot be relied upon to protect our air, water and climate. Mr. Barr should detail for the Committee whether he agrees with this or whether he would reverse this startling abdication to corporate malfeasance under AG Sessions. America needs and deserves an Attorney General who will take into account the health and safety of all communities.

Mr. Barr should be asked to publicly reject the ill-conceived 2017 "Sessions Memo" 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 (SEPs) included in DOJ settlements with polluters have proved to be valuable mechanisms to accomplish environmental justice in these communities. Mr. Barr must commit to reversing the Sessions' ban on these protections.

With regard to other matters that bear on Mr. Barr's views of equity and justice, and his treatment of vulnerable and historically marginalized communities, in the George H.W. Bush administration, Mr. Barr's draconian approach to law enforcement fostered a system of mass incarceration that disproportionately harmed communities of color across America.⁵ He endorsed a 1992 Justice Department report entitled "The Case for More Incarceration."⁶ More recently, he has been a vocal supporter of harsh mandatory minimum sentences,⁷ and he has alleged, inaccurately, that the Obama administration's pro-reform policies "undermined police morale ... causing officers to shy away from proactive policing out of fear or prosecution."⁸ These views are especially troubling at a time when there is overwhelming support from individuals across the political spectrum to reform the justice system.

Mr. Barr has expressed similarly disturbing views with regard to LGBTQ equality. In a 1995 law review article, he argued for a return to "traditional morality" based on "natural law," and he criticized a Washington, D.C. law that prohibited Georgetown University from discriminating against LGBTQ student groups whose conduct he called "immoral."⁹ Mr. Barr has also advocated against interpreting federal laws to include gender identity,¹⁰ a position at odds with the holdings of many federal courts.

Mr. Barr has also expressed a willingness to tolerate or even embrace discriminatory policies with regard to immigration. For example, he expressed support for President Trump's discriminatory Muslim ban, calling it "squarely within both the president's constitutional authority and his explicit statutory immigration powers."¹¹ Multiple federal courts rejected that position and struck down this version of the

³ Public Citizen 2018 report at 13 (see <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>).

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

⁵ <https://slate.com/news-and-politics/2018/12/william-barr-jeff-sessions-new-attorney-general.html>.

⁶ <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

⁷ <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.

⁸ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

⁹ <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2355&context=tcl>.

¹⁰ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

¹¹ https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.6db0727dd0d0.



ban as unconstitutional. And in 1992, Barr advocated for the inhumane policy of prohibiting HIV-positive immigrants approved for political asylum from entering the United States.¹²

Mr. Barr's willingness to independently and dispassionately uphold the law – to exercise judgment uninfected by politics – is also in doubt. In this regard, Mr. Barr has been a vocal political supporter of President Trump and critic of the Mueller investigation, suggesting that the FBI should be investigating Hillary Clinton, and defending President Trump's disturbing decisions to fire Acting Attorney General Sally Yates and FBI Director James Comey. And the *Washington Post* has noted the hypocrisy of Mr. Barr's criticism of some of Mueller prosecutors who have made a handful of political contributions to Democratic candidates, while Mr. Barr himself has made over \$500,000 to Republican candidates.¹³

The weight of this evidence suggest that Mr. Barr would continue the recent trend within the Department of Justice of abdicating its duties to enforce the laws that protect human health and the environment, and undermining civil rights and other legal protections for the most vulnerable people in America. These are so often the people who already bear the greatest burdens, and people with whom Earthjustice works in partnership to address inequity, pollution impacts, environmental burdens, and to protect and defend the right to access the justice system.

Conclusion

Precisely because of the serious threats to our democracy posed by concerns about Mr. Barr's independence, we must be especially vigilant about the implications for his service as Attorney General on federal civil rights and environmental enforcement. Defending these rights must remain a top priority for members of the Senate Judiciary Committee when Mr. Barr comes before them for his confirmation hearing in coming days. Mr. Barr bears the burden of demonstrating he will not continue the environmental lawlessness and civil rights rollbacks we have seen during this administration. In addition, senators must secure assurances that Mr. Barr will adhere to the highest standards of ethics and independence – for example, by recusing himself from the Russia investigation in light of his past comments.

The Justice Department and the nation need an Attorney General who will make a dramatic course correction and begin to enforce our federal civil and environmental rights laws with vigor and independence. William Barr is unlikely to do so. The American public deserve equal access to justice and equitable treatment under the law, and the Senate Judiciary Committee should demand no less of the next Attorney General.

Sincerely,

Abigail Dillen
President
Earthjustice

¹² http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house.

¹³ https://www.washingtonpost.com/investigations/trump-has-blasted-muellers-team-for-political-donations-but-attorney-general-nominee-william-barr-has-given-more-than-500000/2018/12/11/dce5974a-fcb0-11e8-862a-b6a6f3ce8199_story.html?utm_term=.e3d73531cf84

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January 14, 2019

The Honorable Lindsey Graham, Chairman
 The Honorable Dianne Feinstein, Ranking Member
 U.S. Senate Committee on the Judiciary
 Dirksen Senate Office Building 224
 Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

We write to you regarding the nomination of William Barr to become the next Attorney General of the United States.¹ Although EPIC takes no position for or against the nominee, this hearing provides a critical opportunity to explore the nominee's views on privacy and to set out priorities for the Department of Justice in 2019.

The Electronic Privacy Information Center (EPIC) was established in 1994 to focus public attention on emerging privacy and civil liberties issues.² Over the years, EPIC has pursued a wide range of matters with Attorneys General of both Democratic and Republican administrations and we have frequently submitted statements to this Committee.³

Americans are rightly concerned about the scope of government surveillance, the impact of new technologies, and the protection of Constitutional freedoms.⁴ The Department of Justice has an important role to play in updating policies to reflect changing technologies and legal precedent. And the Attorney General of the United States must safeguard the public in a manner consistent with the rule of law and our Constitutional heritage. Mr. Barr's previous Congressional testimony raises substantial concerns that this nominee is out of step with the views of the American people and the Court.

¹ *Nomination of the Honorable William Pelham Barr to be Attorney General of the U.S.*, U.S. Senate Comm. on the Judiciary (Jan. 15, 2019), <https://www.judiciary.senate.gov/meetings/nomination-of-the-honorable-william-pelham-barr-to-be-attorney-general-of-the-united-states>.

² EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

³ *See, e.g.*, EPIC v. FBI, 865 F. Supp. 1 (D.D.C. 1994) (concerning FBI director wiretapping surveys); EPIC v. DOD, 241 F. Supp. 2d 5 (D.D.C. 2003) (concerning the Total Information Awareness program); EPIC v. FBI, 72 F. Supp. 3d 338 (D.D.C. 2014) (concerning the agency's "Next Generation Identification" program); The Future of Drones in America: Law Enforcement and Privacy Considerations: Hearing Before the S. Comm. on the Judiciary, 113th Cong. 7–8 (2013) (statement of Amie Stepanovich, EPIC); Letter from EPIC to the S. Comm. on Judiciary (Sept. 9, 2005), <https://www.epic.org/privacy/justices/roberts/0905letter.pdf> (concerning the nomination of Roberts, J., to the Supreme Court).

⁴ Abigail Geiger, *How Americans Have Viewed Government Surveillance and Privacy Since Snowden Leaks*, Pew Research Center (June 4, 2018), <http://www.pewresearch.org/fact-tank/2018/06/04/how-americans-have-viewed-government-surveillance-and-privacy-since-snowden-leaks/>.

EPIC Statement
 Senate Judiciary Committee

1 Nomination of William Barr as Attorney General
 January 14, 2019

Privacy is a Fundamental Right.

The Senate Judiciary Committee should pursue questions with the nominee about these issues, particularly whether Mr. Barr still believes that Americans have no Fourth Amendment rights in records held by third-parties.

Barry has Supported the Warrantless Surveillance of the American People

Mr. Barr has consistently supported warrantless surveillance of the American people, which is contrary to our Constitutional heritage and the plain text of the Fourth Amendment. In 1996 testimony, Barr said:

[T]his country would be well-served if there was more coordination of technology in the law enforcement area under the Attorney General, and the application of intelligence kinds of technology into law enforcement applications. We have a lot of technology that's emerging. It would be tremendous for law enforcement -- ways of identifying people, ways of following people.⁵

And in 2003, Barr told the House Intelligence Committee that FISA was "too restrictive," specifically:

Another area under FISA that remains too restrictive relates to the government's ability to obtain third-party business records. [...] The law is clear that a person has no Fourth Amendment rights in these records left in the hands of third parties. Having willingly entered into transactions with other people, one loses any legitimate expectation of privacy in the records that reflect those transactions. Thus, the government is free to obtain such records from third parties without any showing of probable cause; it is enough that the records are relevant to an investigation.⁶

The Supreme Court made clear in *Carpenter* that there are limits to the third-party doctrine.⁷ ***The Committee should ask Mr. Barr whether he still believes that individuals have no Fourth Amendment right in records held by third parties.***

Furthermore, after 9-11 the National Security Agency (NSA) began the mass collection of phone, email, and Internet records of Americans.⁸ This program, code-named "Stellar Wind," operated in secret, authorized broad scale warrantless surveillance of Americans and was overturned by the passage of the Freedom Act.⁹ Hearings by this Committee made clear that the program failed to achieve its stated goals.¹⁰ Stellar Wind had its roots in the first-ever bulk-collection program,

⁵ Hearing Before the Comm'n on the Roles and Capabilities of the U.S. Intelligence Community (1996) (statement of William Barr), <https://fas.org/irp/commission/testbarr.htm>.

⁶ Hearing Before the House Select Comm. on Intelligence, 108th Cong. 10 (2003) (statement of William Barr), https://fas.org/irp/congress/2003_hr/103003barr.pdf.

⁷ *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

⁸ James Risen & Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES (Dec. 16, 2005), <https://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html>.

⁹ Pub. L. 114-23, 129 Stat. 268 (June 2, 2015).

¹⁰ *Strengthening Privacy Rights and National Security: Oversight of FISA Surveillance Programs*, 113th Cong. (2013), S. Comm. Judiciary, <https://www.judiciary.senate.gov/meetings/time-change-and-location-change-strengthening-privacy-rights-and-national-security-oversight-of-fisa-surveillance-programs>; *Continued Oversight of the Foreign Intelligence Surveillance Act*, 113th Cong. (2013), S. Comm. Judiciary,

approved by the nominee during his previous tenure as the Attorney General.¹¹ The program, carried out by the Drug Enforcement Agency, tracked billions of Americans' phone calls without ever obtaining a warrant or informing the public.

Through Stellar Wind, the NSA used secret court orders to collect Americans' private information from telephone service providers. During the formative years of the program, the nominee served as the general counsel and executive vice president of Verizon, one of the largest mobile providers at the time. Reports indicate that Verizon participated in the program, exposing millions of Americans to warrantless surveillance by the U.S. government.¹²

After information surveillance programs came to light, it was Barr who led the telecommunications industry's lobbying charge for immunity from lawsuits related to their assistance in the programs.¹³ This raises troubling concerns about his willingness to comply with the requirements of the Fourth Amendment and ensure adequate oversight for the extraordinary surveillance powers of the federal government.

DOJ Should Work With Congress to Update Federal Wiretap Law After Carpenter

In *Carpenter v. United States*, the Supreme Court overturned the Fourth Amendment exception that permitted warrantless searches of records held by third parties.¹⁴ The Court held that the Fourth Amendment protects cell phone location data and found that the government must generally obtain a warrant before seeking to obtain such data from a private party.¹⁵ There is an opportunity for a broad statute setting concerning access to personal data, similar to the federal wiretap act of 1968 that followed after the decisions in *Katz v. United States*¹⁶ and *Berger v. New York*.¹⁷

DOJ and Congress should work together to update the statutory framework for protection of personal data held by third parties following the Supreme Court's decision in *Carpenter v. United States*.¹⁸ The framework should:

<https://www.judiciary.senate.gov/meetings/continued-oversight-of-the-foreign-intelligence-surveillance-act-the-surveillance-transparency-act-of-2013>, 113th Cong. (2013), S. Comm. Judiciary, Subcomm. Privacy, Tech, and the Law, <https://www.judiciary.senate.gov/meetings/the-surveillance-transparency-act-of-2013>.

¹¹ Brad Heath, *U.S. Secretly Tracked Billions of Calls for Decades*, USA TODAY (Apr. 7, 2015),

<https://www.usatoday.com/story/news/2015/04/07/idea-bulk-telephone-surveillance-operation/70808616>.

¹² James Bamford, *The NSA Is Building the Country's Biggest Spy Center*, WIRED (Mar. 15, 2012),

<https://www.wired.com/2012/03/ff-nsadatacenter/>.

¹³ Mark Hosenball, *Terror Watch: A Secret Lobbying Campaign*, Newsweek (Sept. 19, 2007),

<https://www.newsweek.com/terror-watch-secret-lobbying-campaign-99841>.

¹⁴ *Carpenter*, *supra* note 7.

¹⁵ *Id.* at 2217.

¹⁶ *Katz v. United States*, 389 U.S. 347, 361 (1967).

¹⁷ *Berger v. New York*, 388 U.S. 41 (1967).

¹⁸ See Marc Rotenberg, *Carpenter Fails to Cabin Katz as Miller Grinds to a Halt: Digital Privacy and the Roberts Court*, American Constitution Society Supreme Court Review (December 4, 2018), <https://www.acslaw.org/analysis/acs-supreme-court-review/carpenter-fails-to-cabin-katz-as-miller-grinds-to-a-halt-digital-privacy-and-the-roberts-court/>; Alan Butler, *Supreme Court puts us on a pro-privacy path for the cyber age*, The Hill (June 29, 2018), <http://thehill.com/opinion/judiciary/394808-supreme-court-puts-us-on-a-pro-privacy-path-for-the-cyber-age>.

- Establish an across-the-board warrant requirement for compelled disclosure of all categories of personal data held by third parties, subject only to narrow exceptions defined in the statute;
- Impose particularity requirements and provide for judicial oversight of searches conducted on seized hard drives and other data repositories;
- Limit retention periods for seized personal data and establish deletion obligations;
- Provide for actual notice of warrants to data subjects and limit the use of gag orders on service providers;
- Expanded “wiretap report”-style transparency regime to all surveillance orders and ensure adequate oversight.

DOJ Should Improve Reporting on Surveillance Orders

For over twenty years, EPIC has reviewed the annual reports produced by the Administrative Office of the US Courts on the use of federal wiretap authority as well as the letter provided each year by the Attorney General to the Congress regarding the use of the FISA authority.¹⁹ EPIC routinely posts these reports when they are made available and notes any significant changes or developments.²⁰

The annual report prepared by the Administrative Office of the U.S. Courts provides a basis to evaluate the effectiveness of wiretap authority, to measure the cost, and even to determine the percentage of communications captured that were relevant to an investigation. These reporting requirements ensure that law enforcement resources are appropriately and efficiently used while safeguarding important constitutional privacy interests.

By way of contrast, the Attorney General’s annual FISA report provides virtually no meaningful information about the use of FISA authority other than the applications made by the government to the Foreign Intelligence Surveillance Court.²¹ There is no information about cost, purposes, effectiveness, or even the number of non-incriminating communications of US persons that are collected by the government. Similarly, The Department of Justice has never released to the public any comprehensive reports concerning the collection and use of cell site location information. In 2017, EPIC submitted two Freedom of Information Act requests to DOJ seeking the release of reports on the collect and use of cell site location information.²² EPIC has since sued DOJ for failure

¹⁹ See, e.g., Administrative Office of the US Courts, *Wiretap Report 2015*, <http://www.uscourts.gov/statistics-reports/wiretap-report-2015>; Letter from Assistant Attorney General Peter Kadzik to Charles Grassley, Chairman, U.S. Senate Committee on the Judiciary, et al., Apr. 28, 2016, <https://fas.org/irp/agency/doj/fisa/2015rept.pdf>.

²⁰ See *Title III Wiretap Orders: 1968-2015*, EPIC, http://epic.org/privacy/wiretap/stats/wiretap_stats.html; *Foreign Intelligence Surveillance Act*, EPIC, <http://epic.org/privacy/terrorism/fisa/>; *Foreign Intelligence Surveillance Court (FISC)*, EPIC, <https://epic.org/privacy/terrorism/fisa/fisc.html>.

²¹ It is clear from the Attorney General’s annual reports that FISC applications are routinely approved with very rare exceptions. See *Amnesty Int’l USA v. Clapper*, 638 F.3d 118, 140 (2d Cir. 2011) (“Empirical evidence supports this expectation: in 2008, the government sought 2,082 surveillance orders, and the FISC approved 2,081 of them.”). Of the Government’s 1,499 requests to the FISC for surveillance authority in 2015, none were denied in whole or in part. See 2011 FISA Annual Report to Congress, *supra*, note 3.

²² EPIC, *EPIC v. DOJ (CSLI Section 2703(d) Orders)*, <https://epic.org/foia/doj/location-data/>.

to respond to our FOIA requests.²³ There is little to no information available to Congress or the public about how these authorities are used and what impact that has on the privacy of individuals.

The use of aggregate statistical reports has provided much needed public accountability of federal wiretap practices. These reports allow Congress and interested groups to evaluate the effectiveness of Government programs and to ensure that important civil rights are protected. Such reports do not reveal sensitive information about particular investigations, but rather provide aggregate data about the Government's surveillance activities. That is the approach that should be followed now for FISA and CSLI, particularly after the Supreme Court's decision in *Carpenter*.

The nominee should be asked whether he believes DOJ should publicly report statistics on FISA and CSLI orders.

DOJ's Obligation to Protect Consumers

Does DOJ have a duty to advocate for the enforcement of federal law and the protection of American consumers? American consumers have faced a constant barrage of privacy invasions and data breaches over the last five years. Facebook granted unauthorized access to sensitive profile information and photographs. Equifax lost control of social security numbers and put millions of Americans at risk, and other companies are collecting, selling, and disclosing consumers' location data without their knowledge. There is a clear need for greater privacy protection in America.

DOJ recently took the unprecedented step of filing a brief in the Supreme Court against the interests of consumers and against the enforcement of federal law. The case, *Frank v. Gaos*,²⁴ arises out of a complaint filed on behalf of Google users who allege that the company disclosed their private search data to third parties in violation of federal law. The parties agreed to settle the case without any substantial change in Google's business practices, and the Court originally granted Certiorari to resolve whether that settlement was "fair, reasonable, and adequate."²⁵ The United States filed a motion to intervene in the case, which the Court granted. But the Court subsequently requested additional briefing from the parties and the United States concerning "whether any named plaintiff has standing such that the federal courts have Article III jurisdiction over this dispute." In the past, the Government has intervened to argue that consumers who allege that their rights under federal law have been violated have standing to sue.²⁶ But DOJ broke that trend in *Gaos*, and filed two separate briefs arguing that consumers do not have standing to sue for violations of their federal privacy rights.

Mr. Barr should be asked what the proper role of the DOJ is in such circumstances: is it to encourage the protection of consumers and enforcement of federal law, or to discourage such enforcement and instead promote the interests of companies who have been sued for violating privacy rights?

Implementation of the CLOUD Act

²³ *EPIC v. DOJ*, No. 18-1814 (D.D.C. Aug. 1, 2018).

²⁴ *In re Google Referrer Header Litig.*, 869 F.3d 737 (9th Cir. 2017), cert. granted sub nom, *Frank v. Gaos*, 138 S. Ct. 1697 (2018).

²⁵ See *EPIC, Frank v. Gaos* (2018), <https://epic.org/amicus/class-action/gaos/>.

²⁶ See Brief for the United States as Amicus Curiae, *Spokeo v. Robins*, 136 S. Ct. 1540 (2016) (13-1339).

Last year, Congress passed the CLOUD Act,²⁷ which clarifies when U.S. law enforcement may demand data stored overseas by American companies, and sets procedures for when foreign powers may request data stored in the United States. Under the CLOUD Act, the U.S. government may enter into executive agreements that allow foreign governments to directly access data held by American service providers.²⁸ Once enacted, the agreements allow foreign governments to bypass review or approval U.S. government and demand data directly from U.S. companies without oversight.

The Senate and the next Attorney General must therefore ensure that any agreements made under the CLOUD Act scrupulously protect Americans' rights. This responsibility is clearly defined by the Act itself. Before approving foreign access to American data, the Departments of Justice and State must certify to the Senate that the foreign government provides "robust" privacy and civil liberties safeguards and minimizes data collection and retention.²⁹

The Senate is given the opportunity to review any proposed agreements and the findings of the executive departments. If it does not object, the agreement goes into effect after 180 days. The Senate must take seriously its obligation to review proposed agreements. It should ensure that well-established international protections—such as notice to data subjects—are written into agreements. It should press the next Attorney General to require agreements to provide safeguards and meaningful recourse for individuals who are wrongly targeted. It should further ensure that criteria used to determine eligibility for executive agreements under the CLOUD Act are subject to public review.

The Senate should also ensure that data-sharing provisions in the CLOUD Act will not be abused to skirt existing U.S. law. The CLOUD Act permits foreign governments to share information with other countries, including the United States. The Senate must ensure that U.S. law enforcement and intelligence agencies do not simply end-run U.S. law by requesting information on U.S. persons from foreign governments certified under the CLOUD Act.

We appreciate your consideration of EPIC's views, and we would welcome the opportunity to provide additional information to the Committee. We ask that this statement be entered in the hearing record.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Alan Butler

Alan Butler
EPIC Senior Counsel

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ Jeff Gary

Jeff Gary
EPIC Legislative Fellow

²⁷ Consolidated Appropriations Act, 2018, PL 115-141, Division V.

²⁸ *Id.* at § 105.

²⁹ *Id.* at § 105(a).

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January 3, 2019

The Honorable Lindsey Graham
 Chairman
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20002

Dear Chairman Graham:

I am writing you today as President of the Federal Law Enforcement Officers Association (FLEOA) to endorse William Pelham Barr to be confirmed as the next Attorney General of the United States. FLEOA represents more than 27,000 federal agents and officers in 65 federal agencies. Many of our members are in the Department of Justice. In addition, most of our members are in frequent contact with Department of Justice attorneys for advice and prosecution of defendants.

It is a rare occasion that a nominee for this extremely important position, both for law enforcement and for this country, has previously been confirmed as the Attorney General. As you know, William Barr distinguished himself as the Assistant Attorney General, the Deputy Attorney General, and the Attorney General in the George H.W. Bush administration. Throughout his tenure, he worked closely with the Federal Bureau of Investigation, prioritized anti-crime initiatives, and oversaw several high profile special investigations.

FLEOA fully supports the confirmation of William Barr to be our next Attorney General. Please feel free to contact me at (414) 234-0459 if there is anything that I or our organization can do to further support Mr. Barr's confirmation.

Sincerely,

Nathan R. Catura
 National President
 Federal Law Enforcement Officers Association

RAÚL M. GRIJALVA
3rd District, Arizona

COMMITTEE ON NATURAL RESOURCES
RANKING MEMBER

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CONGRESSIONAL PROGRESSIVE CAUCUS
Co-CHAIR

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January 14, 2019

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The Honorable Lindsey Graham
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The Honorable Dianne Feinstein
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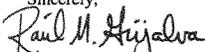
Dear Chairman Graham & Ranking Member Feinstein,

I write to you to express my concerns regarding the upcoming hearing regarding the nomination of the Honorable William Pelham Barr to be Attorney General of the United States. This hearing comes at a time of great political turmoil in our political system. Recent media reports have raised serious questions about the integrity of this administration and its relations with Russia that reinforce the need for the Mueller probe on Russian interference in the 2016 election to continue.

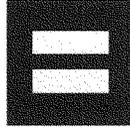
Given the extraordinary authority he would possess as Attorney General, I am gravely concerned that William Barr is being considered for this nomination when he would wield such broad oversight of the probe—especially in light of his very public opposition to it. Just last month, he sent a memo to the Department of Justice criticizing Special Counsel Robert Mueller's investigation into Russian election interference, and I have serious concerns that he will suppress Robert Mueller's final report from ever reaching Congress and the American people.

As you prepare for this important hearing, I respectfully request that you ask the Honorable William Pelham Barr that if confirmed as Attorney General of the United States, he will agree to release Special Counsel Robert Mueller's full report to the public in the interest of national security and the integrity of our democracy. It is critical that the American people have the opportunity to review the content in the Special Counsel's report and ascertain the actions of this president and his administration.

Thank you in advance for your prompt attention to this question.

Sincerely,

Raúl M. Grijalva
Member of Congress





HUMAN
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January 11, 2019

The Honorable Charles Grassley
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

On behalf of the Human Rights Campaign (HRC), America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, and our more than three million members and supporters nationwide, I write to express our serious concern regarding the nomination of William Barr to serve as Attorney General of the United States. The Attorney General, as the nation's top law enforcement officer and leader of the U.S. Department of Justice, is responsible for protecting the civil and constitutional rights of all Americans. Barr's public record indicates deeply disturbing views towards LGBTQ people and people living with HIV that are out of step with the values of the American people.

Mr. Barr has a troubling record of hostility towards nondiscrimination protections for LGBTQ people and people living with HIV. He has been a vocal supporter of former Attorney General Jeff Sessions' memo sanctioning religious-based discrimination,¹ as well as the Justice Department's interpretation excluding transgender people from coverage under Title VII and Title IX sex discrimination provisions. Barr has previously advocated against interpreting federal laws to include gender identity² – a position that disregards the holdings of over forty federal courts in the last twenty years.³ He has also argued that prohibiting sexual orientation

¹ Memorandum from the Office of the Att'y Gen to all Executive Dep'ts and Agencies (Oct. 6, 2017) (on file with the Dep't of Justice).

² Dear Colleague Letter from the Dep't of Justice and the Dep't of Education (Feb. 22, 2017) (on file with the Dep't of Justice); Memorandum from the Office of the Att'y General to United States Attorneys Heads of Department Components (October 4, 2017) (on file with the Dep't of Justice).

³ William P. Barr, Edwin Meese III & Michael B. Mukasey, *We Are Former Attorneys General. We Salute Jeff Sessions*. (November 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.23d4ed5564cd.

discrimination “seeks to ratify, or put on an equal plane, conduct that previously was considered immoral,” and “dissolves any form of moral consensus in society.”⁴ These statements and his acceptance of this interpretation reflects a willingness to ignore meaningful case law and a reticence to employ mainstream legal theories that run counter to his personal beliefs. This raises serious concerns as to whether as Attorney General Barr would investigate complaints of discrimination in a manner faithful to binding precedent, particularly in jurisdictions where this case law is binding.

Barr has also made personal statements promoting a draconian approach to the federal government’s role in responding to the HIV/AIDS epidemic, including the adoption of proven methods of prevention and access to treatment. Barr blamed AIDS and other sexually transmitted infections on “sexual licentiousness,” calling them “the costs associated with personal misconduct.”⁵ He openly disputed public health efforts to inform the American people about the transmission and prevention of HIV and AIDS, opposing public health interventions, such as the distribution of condoms, because “by removing the costs of [sexual] misconduct, the government serves to perpetuate it.”⁶

These scientifically unsupported and damaging comments from a public servant foster stigma and discrimination against people living with HIV. Even more troubling, however, is the influence these beliefs had on Barr’s policy positions and official duties. Specifically, Barr played a key role in stopping a proposed HHS rule that would have removed HIV as a disease of “public health significance” and would have had the effect of allowing HIV+ people to immigrate to the U.S.⁷ He also supported the indefinite detention of a group of HIV+ Haitian refugees at Guantanamo Bay and recommended they be returned to Haiti, even though they had already demonstrated credible fear of the consequences should they return.⁸

We are deeply concerned that Barr lacks both the commitment to equal justice under the law, and faithfulness to the law regardless of political ideology that are essential for our nation’s top attorney. In a time of great division, we need an Attorney General who will promote equality for all Americans by vigorously enforcing the federal civil rights laws that so critically protect those

⁴ William P. Barr, *Legal Issues in A New Political Order*, 36 *Cath. Law.* 1 (1995) at 8.

⁵ William P. Barr Senate Judiciary Questionnaire Attachment 12(d); Remarks of William P. Barr, Attorney General of the United States to the Knights of Columbus, New York, New York (p. 677) (Aug. 5, 1992) (“The state—which no longer sees itself as a moral institution, but as a secular one—takes on the role as the alleviator of bad consequences. The state is called upon to remove the inconvenience and costs of misconduct. So the reaction to HIV and illegitimacy is not sexual responsibility but handing out condoms.”)

⁶ *Id.* at 7.

⁷ Medical Examination of Aliens, 56 Fed. Reg. 2484 (proposed January 23, 1991) (to be codified at 42 C.F.R. pt. 34); Presidential Oral Histories, William P. Barr Oral History Transcript, (Apr. 5, 2001), UVA Miller Center Interview, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

⁸ Michael Ratner, *How We Closed the Guantanamo HIV Camp: The Intersection of Politics and Litigation*, 187 *Harv. Human Rights Jour.* 11, 218 (1998), <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Ratner%20How%20we%20Closed%20Guantanamo%20camp.pdf>. (“A high-level attorney in the Bush administration told us that Attorney General Barr believed that everyone who was HIV-positive should be returned to Haiti.”)

most vulnerable to discrimination. We urge you to conduct a thorough hearing and provide an opportunity for Barr to respond to these concerns on record.

Thank you for your consideration. If you have any questions or need more information, please contact me at david.stacy@hrc.org.

Sincerely,

A handwritten signature in cursive script that reads "David Stacy".

David Stacy
Government Affairs Director

350 Fifth Avenue, 34th Floor
 New York, NY 10118-3299
 Tel: 212-290-4700
 Fax: 212-736-1300; 917-591-3452

January 14, 2019

The Honorable Lindsey Graham
 Chairman, US Senate Judiciary Committee
 Russell Senate Office Building
 290 Constitution Ave NE
 Washington, DC 20510

The Honorable Dianne Feinstein
 Vice Chairman, US Senate Judiciary Committee
 331 Hart Building
 Washington, DC 20510



HRW.org

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Re: Nomination of William Barr to be Attorney General

Dear Chairman Graham and Vice Chairman Feinstein:

I write on behalf of Human Rights Watch to express our serious concerns about the nomination of William Barr to be the next Attorney General of the United States. The Attorney General plays an essential role in enforcing the laws of the United States, protecting civil rights and other human rights, and working to ensure fairness in the justice system. Though Barr was US Attorney General from 1991 to 1993, the policies that he supported led to mass incarceration due to unnecessary criminalization; laws requiring grossly disproportionate sentencing; and enormous racial disparities that persist in the criminal system. His public writings and comments since provide no indication he has reversed support for any of these positions, or that he would work to ameliorate the harmful impact of those policies. Further, he has indicated support for policies that would weaken protections against rights abuses for many Americans in other contexts.

When Barr was Attorney General, he wrote the introduction for a Justice Department white paper, "The Case for More Incarceration," which argued that the US was not incarcerating too many people but "too few," and claims of racial bias in the criminal system were wrong.¹ He also argued in an interview that the US criminal system was overall "fair and does not treat people differently."²

According to the latest figures available, the US has the highest rate of incarceration in the world at 655 per 100,000, with a total of 2.2 million people behind bars.³ As of 2016, black people were about 13 percent of the population but close to 40 percent of those in state prisons, where the vast majority of prisoners are held, and were incarcerated in those prisons at more than five

¹ "The Case for More Incarceration," US Department of Justice, 1992, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf> (accessed January 13, 2019).

² Ronald J. Ostrow, "William Barr: A 'Caretaker' Attorney General Proves Agenda-Setting Conservative," *Los Angeles Times*, June 21, 1992, http://articles.latimes.com/1992-06-21/opinion/ea-1236_1_attorney-general/ (accessed January 13, 2019).

³ Drew Kinn, "5 facts behind America's high incarceration rate," CNN, July 10, 2018, <https://www.cnn.com/2018/07/10/infographic/incarceration-facts-5/index.html> (accessed January 13, 2019); see also, "Highest to Lowest - Prison Population Rate," *World Prison Brief*, http://www.prisonstudies.org/highest-to-lowest/prison-population-rate?field_region_taxonomy_tid=All (accessed January 13, 2019), citing a variety of statistics; see World Prison Brief Data United States of America, *World Prison Brief*, <http://www.prisonstudies.org/country/united-states-america> (accessed January 13, 2019).

times the rate of white people.⁴ Today there is widespread recognition that the US criminal system contains deeply entrenched bias and that it disproportionately impacts the poor and people of color. There is bipartisan support for criminal legal system reform. But in 2015 Barr urged senators to vote against one of these bipartisan proposals, the Sentencing Reform and Corrections Act,⁵ which would have required people already sentenced under old, unfair laws to have a chance to benefit from new sentence reductions.⁶

After then-Attorney General Jeff Sessions was forced to resign last year, Barr co-authored a *Washington Post* opinion piece commending Sessions for having done an “outstanding” job that is hard to read as anything other than a ringing endorsement of Sessions’ regressive policies.⁷ Sessions implemented numerous criminal policies that undermine police accountability⁸ and increased harsh sentencing,⁹ and make it much easier for police to seize property people under unjust asset forfeiture rules.¹⁰

As Attorney General, Barr strongly promoted¹¹ the cruel and abusive policy of detaining thousands of Haitians who had fled their country by boat, roughly 300 of whom were HIV positive, at Guantanamo Bay in Cuba and denying them access to lawyers—a policy that a US District Court ultimately ended.¹² His recent opinion piece praising Sessions called his record 38 percent increase in illegal re-entry prosecutions “impressive.” As Human Rights Watch research has shown, these skyrocketing prosecutions result in people with no or minor criminal records spending time in federal prisons when those who do not require a court to consider their asylum claims or strong ties to the United States should be simply deported.¹³ Barr also defended¹⁴ the constitutionality of President Donald Trump’s first ban on people travelling to the US from several Muslim-majority countries.

Barr also has shown a history of hostility towards the rights of lesbian, gay, bisexual and transgender (LGBT) people, signaling he might support the continuance of Sessions’ anti-LGBT policy stances. In his *Washington Post* piece, he praised Sessions’ move to rescind guidance¹⁵

⁴ The Sentencing Project, “The Color of Justice, Racial and Ethnic Disparities in State Prisons,” June 2016, <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (accessed January 13, 2019), pp. 3-4.

⁵ Letter from 40 former senior law enforcement officials opposing the Sentencing Reform and Corrections Act of 2015, December 16, 2015, <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf> (accessed January 14, 2019).

⁶ Jasmine L. Tyler, “A Glimmer of Hope for US Criminal Justice Reform,” Human Rights Watch, October 5, 2017, <https://www.hrw.org/news/2017/10/05/glimmer-hope-us-criminal-justice-reform>.

⁷ William P. Barr, Edwin Meese III and Michael B. Mukasey, “We are former attorneys general. We salute Jeff Sessions,” *Washington Post*, November 7, 2018, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f51-a55347f48762_story.html?utm_term=.b5ec40ceb626 (accessed January 10, 2019).

⁸ Sari Horwitz, “In one of his final actions as attorney general, Sessions moves to restrict police reform agreements,” *Washington Post*, November 9, 2018, https://www.washingtonpost.com/world/national-security/in-one-of-his-final-actions-as-attorney-general-sessions-moves-to-restrict-police-reform-agreements/2018/11/09/76a64e5c-e437-11e8-8f51-a55347f48762_story.html?utm_term=.039b113ab825 (accessed January 13, 2019).

⁹ Sari Horwitz and Matt Zapotosky, “Sessions issues sweeping new criminal charging policy,” *Washington Post*, May 12, 2017, https://www.washingtonpost.com/world/national-security/sessions-issues-sweeping-new-criminal-charging-policy/2017/05/11/4752bd42-3697-11e7-b373-418f6849a004_story.html?utm_term=.fd5545e8b4bf (accessed January 13, 2019).

¹⁰ “Criminal Justice Coalition Submits Comments on Policing,” Human Rights Watch, December 20, 2018, https://www.hrw.org/news/2018/12/20/criminal-justice-coalition-submits-comments-policing#_ftncf299.

¹¹ “William P. Barr Oral History, Assistant Attorney General, Deputy Attorney General, Attorney General, Miller Center Transcript, April 5, 2001, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

¹² Michael Garcia Bochenek, “Guantanamo’s Other Sordid Legacy,” *The Hill*, January 18, 2016, <https://www.cbsnews.com/news/william-barr-attorney-general-nominee-asylum-seekers-haiti-hiv-positive-patients-guantanamo-bay-2018-12-10/> (accessed January 13, 2019).

¹³ “US: Prosecuting Migrants is Hurting Families,” Human Rights Watch news release, May 22, 2013, <https://www.hrw.org/news/2013/05/22/us-prosecuting-migrants-hurting-families>.

¹⁴ William Barr, “Former attorney general: Trump was right to fire Sally Yates,” *Washington Post*, February 1, 2017, https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.912d68da9121 (accessed January 14, 2019).

¹⁵ “US Justice Department Reverses Position on Transgender Discrimination,” Human Rights Watch news release, October 5, 2017, <https://www.hrw.org/news/2017/10/05/us-justice-department-reverses-position-transgender-discrimination>.

protecting transgender Americans,¹⁶ and has lamented the emergence of legal norms that prevent the government from taking steps to “restrain sexual immorality” and “reflect traditional moral norms.”¹⁷

On women’s rights, Barr has repeatedly called for *Roe v. Wade* to be overturned, including in his 1991 confirmation hearing,¹⁸ during which he told the Senate Judiciary Committee: “I do not believe the right to privacy extends to abortion. ... I believe *Roe v. Wade* should be overturned,” and later noted the Justice Department would “call for the overturning of *Roe v. Wade* in future litigation.” Further, Barr joined an *amicus* brief in the *Zubik v. Burwell* case, which advocated against the birth control coverage benefit in the Affordable Care Act, a benefit the Justice Department is currently not defending in court despite some employers’ refusing to comply.¹⁹

Barr has expressed views highly critical of Special Counsel Robert Mueller’s investigation into Russian interference in the 2016 US election and possible collusion with the Trump presidential campaign. Last year Barr wrote a memo and sent it to the Justice Department strongly criticizing one of the Special Counsel’s main lines of inquiry, whether Trump had committed obstruction of justice.²⁰ Trump’s repeated attempts to undermine this investigation and the independence of the Special Prosecutor threatens the rule of law. His selection of Barr for Attorney General raises concern that he will be expected to block or rein in the Special Prosecutor’s work.

During Barr’s confirmation hearing, US Senators should scrutinize his record and question him to determine whether his views on key issues have changed in a meaningful way. They should also demand commitments from him on how he would protect and enforce important civil and other human rights protections, and guarantee the independence of the Mueller investigation.

Sincerely,



Nicole Austin-Hillery
Executive Director, US Program
Human Rights Watch

¹⁶ William P. Barr, Edwin Meese III and Michael B. Mukasey, “We are former attorneys general. We salute Jeff Sessions,” *Washington Post*, November 7, 2018, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-does/2018/11/07/527e5830-e2ef-11e8-8f5f-a55347f48762_story.html?utm_term=.b5ee40ceb626 (accessed January 13, 2019).

¹⁷ William P. Barr, “Legal Issues in a New Political Order,” *The Catholic Lawyer*, Vol. 36, No. 1, 1995, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tel> (accessed January 13, 2019).

¹⁸ “Barr Confirmation Hearing: Day 2,” *C-SPAN*, November 13, 1991, <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2&start=1717> (accessed January 13, 2019).

¹⁹ Brief of Amicus Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, & 15-191), 2016 U.S. S. Ct. Briefs LEXIS 147 <https://www.scotusblog.com/wp-content/uploads/2016/01/Former-Justice-Department-Officials-LSP-Amicus.pdf> (accessed January 14, 2019).

²⁰ Devlin Barrett, “Attorney general nominee wrote memo criticizing Mueller obstruction probe,” *Washington Post*, December 20, 2019, https://www.washingtonpost.com/world/national-security/attorney-general-nominee-wrote-memo-criticizing-mueller-obstruction-probe/2018/12/20/72a01304-044b-11e9-b5df-5d3874f1ac36_story.html?utm_term=.f3c7f9594e4e (accessed January 14, 2019).



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January 14, 2019

The Honorable Lindsey Graham
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of William P. Barr to be the next Attorney General of the United States.

Mr. Barr's prior service as U.S. Attorney General in the Administration of George H.W. Bush, clearly demonstrated that he has the necessary qualifications and experience to effectively lead the U.S. Department of Justice. In addition, throughout Mr. Barr's long and successful career in public service he has repeatedly demonstrated his commitment to the rule of law and that he has a unique understanding of the challenges and the complexities law enforcement agencies face daily in safeguarding the citizens they were sworn to protect.

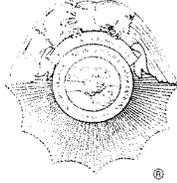
The IACP interacted with Mr. Barr during the Bush Administration on several criminal justice related issues, and we appreciated his ability to always listen to all sides of an issue to ensure a careful, thorough understanding. The IACP recently had the opportunity to speak with Mr. Barr again after his nomination to gain a better understanding of the law enforcement and criminal justice priorities that he would hope to accomplish as the next Attorney General. During this conversation Mr. Barr acknowledged the importance of community-police relations, law enforcement's role, and the need for accountability. This conversation clearly demonstrated Mr. Barr's qualifications, and his commitment and dedication to successfully fostering and enhancing crucial partnerships across the criminal justice spectrum.

On behalf of the more than 30,000 members of the IACP, thank you both for your continued leadership and for quickly holding a confirmation hearing. The IACP urges the Judiciary Committee and the members of the United States Senate to confirm Mr. Barr's nomination in a timely fashion.

Sincerely,

Paul M. Cell
IACP President

President Chief Paul M. Cell Montclair State University, NJ Police Department	Third Vice President Chief Dwight E. Hennigart Vail, CO, Police Department	Vice President at Large Chief Wade Carpenter Park City, UT, Police Department	General Chair Division of State Associations of Chiefs of Police Chief Thomas Gebbia Newark, NJ, Police Department	Parliamentarian James McLaughlin, II General Counsel/Executive Director, Texas Police Chiefs Association
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January 2, 2019

The Honorable Charles E. Grassley
Chairman, Judiciary Committee
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Diane Feinstein
Ranking Member, Judiciary Committee
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Grassley and Feinstein:

On behalf of the more than 100,000 members of the International Union of Police Associations, AFL-CIO, I am proud to offer our support of Mr. William P. Barr as this nation's next Attorney General.

Mr. Barr has served honorably in this position from 1991-93. During that time he proved himself a real leader in combating violent crime, from his handling of the Talladega Prison Riot and hostage taking, to his war on gang violence that has victimized entire communities.

While his prior nomination was without a lot of controversy, we both fear and expect that these hearings will become a parochial sideshow reflecting today's political realities.

While we will miss the unwavering support and leadership of General Sessions; we wholeheartedly support Mr. Barr's nomination and look forward to his confirmation.

Very Respectfully,

Sam A. Cabral
International President



Statement for the Record by Kids in Need of Defense (KIND

**“Nomination of the Honorable William Pelham Barr
to be Attorney General of the United States”**

Senate Judiciary Committee

January 16, 2019

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with 585 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has received more than 17,000 child referrals since we opened our doors in 2009, and trained over 30,000 pro bono attorneys. KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala and Honduras, we place children with our local nongovernmental organization partners, which provide vital social services, including family reunification, school enrollment, skills training, and counseling. KIND also engages in broader work in the region to address root causes of child migration, such as sexual- and gender-based violence. Additionally, KIND advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico.

The majority of KIND’s clients are fleeing grave violence and threats to their lives and come to the United States seeking protection. For KIND clients, removal hearings have very high stakes, including potential return to harm or death in their countries of origin. Young age, lack of familiarity with immigration law and courts, limited English proficiency, and past trauma create additional and often insurmountable barriers to obtaining life-saving humanitarian protection.

Procedural and substantive protections for unaccompanied children, including those provided in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), are critical to ensuring children’s claims for humanitarian protection are fully and fairly considered. To this end, KIND believes that any nominee for Attorney General of the United States must firmly

commit to preserving due process protections for unaccompanied children that have been developed through bipartisan collaboration over the past 30 years.¹

KIND is deeply concerned, however, that recent policy decisions by the Department of Justice are having the opposite effect and drastically restrict the ability of unaccompanied children to have their cases fairly and efficiently adjudicated. These policies have dramatically changed not only the procedures for processing unaccompanied children's cases but also the substantive protections available to these children. As a consequence, they risk the return of thousands of children to danger, harm, or death.

KIND describes here several policies that are currently frustrating access to justice for unaccompanied children and creating systemic inefficiencies in the judicial system. We urge the Committee to request assurances from any Attorney General nominee that these policies will be promptly reevaluated and that any future policies advanced during the nominee's tenure will reflect due regard for the needs of the most vulnerable in our immigration system.

I. Attacks on Due Process in Immigration Court Proceedings

A. Eroding child-sensitive practices in immigration courts

Recognizing the unique vulnerabilities of children alone in our immigration system, for a decade the Department of Justice has maintained guidelines directing the use of child-friendly practices, such as child-sensitive questioning techniques, to improve the ability of children to attend and meaningfully participate in immigration proceedings that may determine their safety and futures. In December 2017, however, the Executive Office for Immigration Review (EOIR) issued a memorandum titled "Guidelines for Immigration Court Cases Involving Juveniles" replacing and fundamentally altering this critical guidance.²

The revised guidelines, while referencing the potentially complicated and sensitive nature of children's cases, undermine judges' discretion to consider children's best interests in creating child-appropriate courtroom environments and instead advance a decidedly suspicious tone toward claims by unaccompanied children. Despite instructing judges to impartially consider the cases of all who are before them, the guidelines direct judges to "be vigilant in adjudicating cases of a purported UAC," and state that there is "an incentive to misrepresent accompaniment status or age in order to attempt to qualify for the benefits associated with UAC status."³

The guidelines also dilute measures designed to address the unique developmental needs of children, including by removing language related to the use of telephone conferences and

¹ See, e.g., Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (enacted Nov. 25, 2002); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (2008).

² Memorandum from MaryBeth Keller, Chief Immigration Judge, EOIR, Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children, Dec. 20, 2017, <https://www.justice.gov/eoir/file/oppm17-03/download>.

³ *Id.* at 7-8.

narrowing children's opportunities to gain familiarity with hearing environments before they are required to deliver painful and difficult testimony in support of their legal claims. These changes run counter to the Trafficking Victims Protection Reauthorization Act (TVPRA), which was enacted in recognition of a "special obligation to ensure that these children are treated humanely and fairly."⁴ Indeed, the modified guidelines heighten the risk that children will have to present their claims in an intimidating or even hostile court setting, which could lead to their cases being inadequately considered and return to the dangers from which they fled in their countries of origin, despite their eligibility for legal protection.

B. Re-determining the status of and protections available to unaccompanied children

Federal law defines an "unaccompanied alien child" as a child under the age of 18 who has no lawful immigration status and for whom there is no parent or legal guardian in the United States, or no parent or legal guardian available to provide care and custody.⁵ Determinations regarding whether a child meets this statutory definition are made by Customs and Border Protection officers at the time of a child's apprehension. Historically, EOIR has deferred to DHS' initial determinations. Yet in September 2017, EOIR's General Counsel issued a memorandum to EOIR's Acting Director advising that immigration judges are not legally bound by such determinations and may reevaluate for themselves whether a child meets the statutory definition of an "unaccompanied alien child."⁶ Attorney General Sessions articulated a similar expansion of EOIR's role in unaccompanied children's cases in his review of the BIA's decision in *Matter of M-A-C-O-*, in which he held that immigration judges have initial jurisdiction over the asylum cases of unaccompanied children who turned 18 before filing their asylum applications.⁷

In addition to creating confusion for children, attorneys, and adjudicators, re-determinations of a child's unaccompanied status expose children to more adversarial and less child-appropriate processes, and contravene the specific intent of Congress to ensure particularly vulnerable children can meaningfully access humanitarian protections that ensure they are not returned to harm.

The Homeland Security Act of 2002 (HSA) and TVPRA afford several procedural protections for unaccompanied children, including the right to have their asylum cases first heard in a non-adversarial setting before a trained asylum officer,⁸ and exemption from the one-year filing deadline that generally applies to asylum applications.⁹ These protections, like DHS' initial determination of who meets the definition of an "unaccompanied alien child," have been interpreted to attach for the duration of a child's immigration proceedings, as children are still

⁴ 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008).

⁵ 6 U.S.C. 279(g)(2).

⁶ Memorandum from Jean King, General Counsel of Executive Office for Immigration Review, to James R. McHenry III, Acting Director of EOIR, Legal Opinion re: EOIR's Authority to Interpret the Term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA (Sept. 19, 2017), <https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf>.

⁷ 27 I&N Dec. 477 (BIA 2018).

⁸ 8 U.S.C. 1158(b)(3)(C); INA 208(b)(3)(C).

⁹ INA 208(a)(2)(E).

required to attend and participate in their own complex immigration cases even after they turn 18 or are reunified with a parent.

The EOIR memo and Attorney General's decision in *Matter of M-A-C-O* upend this understanding and inject additional instability and uncertainty into a process already fraught with challenges for child survivors of violence, abuse, and other trauma. Such redeterminations not only jeopardize the fair adjudication of children's cases, but also compound the administrative demands on an already overburdened system. Applications for legal relief may be duplicated or transferred between different departments and agencies as redeterminations occur, creating additional paperwork and unnecessary delays. These results undermine, not enhance, the efficiency of our immigration courts and the faithful administration of our immigration laws.

C. Metrics and Quotas for Immigration Judges

In March 2018, the Department of Justice announced new metrics for immigration judges¹⁰ that risk the hurried and incomplete consideration of legal cases with life-or-death implications for unaccompanied children. The new metrics, which took effect October 1, 2018, factor the number of cases an immigration judge completes in a fiscal year into the judges' annual performance review. For a "satisfactory" rating, a judge must complete 700 cases annually, or about 3 cases each day.

By linking individual judges' job evaluations to the rapid completion of cases, the performance metrics act as a disincentive to scheduling accommodations that may be critical to unaccompanied children's cases for legal protection. Forms of relief such as Special Immigrant Juvenile Status (SIJ) require children to appear before U.S. Citizenship and Immigration Services and state family courts. These proceedings, which occur in different fora and according to schedules beyond the control of unaccompanied children or EOIR, are imperative to accessing SIJ and other forms of humanitarian protection. If immigration judges decline to delay or postpone proceedings before EOIR to allow for the completion of these collateral proceedings, children may be denied protection, despite their eligibility.

By discouraging necessary delays of proceedings, the quotas will also frustrate the ability of children to secure legal counsel. As a result, judges will be required to devote additional time to explaining court procedures and facilitating children's participation and preparation—roles frequently performed by attorneys. Contrary to EOIR's assertions that the metrics will improve court efficiency, the metrics will likely have the opposite result. Further, case completion quotas may deter immigration judges from volunteering to administer juvenile dockets out of fear that it may affect their ability to meet the performance review standards.

¹⁰ Memorandum from EOIR Director to All of Judges, Immigration Judge Performance Metrics (March 30, 2018), available at http://www.abajournal.com/images/main_images/from_Aso_Press_-_03-30-2018_McHenry_-_IJ_Performance_Metrics_.pdf. Earlier that year, EOIR also announced performance goals for immigration courts. See Memorandum from James R. McHenry III, Director, EOIR, Case Priorities and Immigration Court Performance Measures, Jan. 17, 2018, <https://www.justice.gov/eoir/page/file/1026721/download>.

D. Attorney General's Decisions Restricting Administrative Closure and Continuances

In 2018, then-Attorney General Sessions issued several opinions reviewing decisions by the Board of Immigration Appeals (the Board). The Attorney General's opinions in two such cases-- *Matter of Castro-Tum* and *Matter of L-A-B-R*—hinder the ability of judges to manage their dockets to ensure the fairness of the proceedings before them, with particular consequences for unaccompanied children.

In *Matter of Castro-Tum*, Attorney General Sessions ruled that immigration judges and the Board do not have general authority to administratively close cases and instead have such authority only when “a previous regulation or settlement agreement has expressly conferred it.”¹¹ In *Matter of L-A-B-R*-, the Attorney General similarly restricted judges' use of continuances, allowing the use of that docket management tool “only for good cause shown.”¹² He stated that requests to delay proceedings to pursue collateral legal relief before other courts or agencies require a multi-factor analysis focused “on the likelihood that the collateral relief will be granted and will materially affect the outcome of the removal proceedings.”¹³

In practice, these decisions will require immigration judges to disregard children's eligibility for relief in other fora or to pre-judge the outcome of such proceedings, effectively usurping the jurisdiction of other courts and agencies on matters for which the immigration judge may have little or no expertise. In so doing, judges will not only deprive children of an opportunity to have their claims for relief fully and fairly considered, but will also violate express provisions of the TVPRA prescribing specific substantive and procedural protections for unaccompanied children, among them potential eligibility for Special Immigrant Juvenile Status¹⁴ and the opportunity to have their asylum claims first considered by USCIS.¹⁵

Upon entering our immigration system, most unaccompanied children do not have an attorney to assist them. Without an understanding of complex immigration laws and procedures, such children may not know how to demonstrate that they qualify for various forms of legal protection affording relief from deportation. Docket management tools such as continuances and administrative closure enable judges to temporarily postpone hearings to afford children an opportunity to secure legal counsel who can assist in evaluating and preparing their cases. This flexibility is paramount for child survivors of violence, abuse, and neglect, who frequently require additional time to establish trust in professionals with whom they are working such that they can share the painful and traumatic experiences giving rise to their eligibility for legal protection. Access to counsel has a pronounced impact on the ability of children to obtain relief for which they qualify. Only 1 in 10 children who are unrepresented successfully obtain legal relief. Children with an attorney are five times more likely to receive protection.

¹¹ 27 I&N Dec. 271, 283 (A.G. 2018).

¹² 27 I&N Dec. 405 (A.G. 2018).

¹³ *Id.* at 406.

¹⁴ INA 101(a)(27)(J), as modified by the TVPRA.

¹⁵ 8 U.S.C. 1158(b)(3); INA208(b)(3).

Attorney General Sessions' decisions overlook the needs and realities of unaccompanied children in a system created for adults and deprive children of fair access to legal protection, despite their eligibility and desperate need for it. The active use of the Attorney General's authority to certify decisions for review—a power intended to ensure the fair administration and interpretation of our immigration laws—is being used instead to undermine basic protections for the most vulnerable.

E. Curtailing due process in asylum cases

1. Matter of E-F-H-L-

In *Matter of E-F-H-L-*, a case certified for review by then-Attorney General Sessions, the Attorney General vacated the Board's prior ruling finding that individuals applying for asylum are entitled to an evidentiary merits hearing on their application.¹⁶ The Attorney General's decision, issued years after that Board precedent, may result in immigration judges summarily rejecting asylum cases based on written applications alone, without oral testimony from the applicant.

In tandem with other policy measures drastically restricting access to asylum, this decision will impede due process in cases with the highest of stakes. Many applicants for asylum do not have attorneys to assist them in navigating complex immigration laws and must prepare their applications on their own, frequently in a language with which they have only limited familiarity. Consequently, their applications may insufficiently reflect the extent of the persecution they fear or experienced. Evidentiary hearings in immigration court allow asylum seekers to explain the facts and circumstances giving rise to their claims and to clarify any misunderstandings or confusion before the judge renders a decision.

II. Policies Restricting Access to Asylum and Other Humanitarian Protection

While the Administration has sought to roll back numerous protections for unaccompanied children and others seeking humanitarian relief it has devoted particular attention to the procedures and standards related to asylum. This longstanding form of protection, which is enshrined in both U.S. and international law, ensures that those with a well-founded fear of persecution based on one of several enumerated grounds will not be returned to harm or danger in their country of origin.¹⁷ Through both administrative rulemaking and the certification of decisions by the Attorney General, the Department of Justice has sought to narrow access to this lifesaving measure, among the most critical of our nation's moral and humanitarian obligations.

¹⁶ *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1040936/download>.

¹⁷ See generally 1967 Protocol Relating to the Status of Refugees (to the 1951 Convention Relating to the Status of Refugees); INA section 208.

A. Matter of A-B-

In March 2018, Attorney General Sessions certified to himself *Matter of A-B-*, a case in which the BIA had overturned an immigration judge's denial of asylum on the basis of severe domestic violence by the applicant's ex-husband. In his referral, the Attorney General invited the parties and others to submit briefs regarding "whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable 'particular social group' for purposes of an application for asylum or withholding of removal."¹⁸

The Attorney General's certification suggested some uncertainty regarding what is in fact well-settled precedent providing that asylum claims can be based on persecution by non-governmental actors when a government is unwilling or unable to protect its citizens from such persecution.¹⁹ Three months later, the Attorney General issued his opinion in the case and held that [g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.²⁰ The opinion set forth heightened requirements for asylum applicants in such cases, noted that few such cases would satisfy the "credible fear standard" in expedited removal, and overturned a critical precedent recognizing domestic violence as a basis for asylum.²¹

The Attorney General's opposition toward claims by victims of domestic and gang violence reflects the Administration's stated interest in reducing the number of asylum applications and deterring future migration. Yet these harsh policies fail to take into account the widespread and severe sexual- and gender-based violence and gang violence that is driving children to flee their homes and countries in search of safety. Indeed, these policies would condemn children to return to such conditions, at grave risk to their lives. Children like Yasmin, Nia, and Debra.²²

- In El Salvador, Yasmin was only 13 years old when she was kidnapped by a local MS-13 gang leader. On the day she was taken, the gang leader permitted her to make what she thought would be her last phone call to her mother so she could say her good-byes – a phone call that she later learned had caused her mother to suffer a stroke. For the next year, Yasmin would be raped every night by the gang leader, who had claimed her to be "his woman." Although the gang leader was arrested and taken into police custody, he escaped and showed up 2 years later to "claim" Yasmin and to take her back to rape and treat as his property. Yasmin fled to the United States to find safety and, with the assistance of her attorney, won her asylum case.
- In Mexico, Nia was only 15 years old when she met her boyfriend, Jaime. Jaime took advantage of her young age and forced Nia to drop out of school and to move in with him and his family. Jaime then began to rape Nia and would beat her almost every single time

¹⁸ *Matter of A-B*, 27 I&N Dec. 316, 317 (A.G. 2018).

¹⁹ *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

²⁰ *Matter of A-B*, at 320.

²¹ *See Matter of A-R-C-G*, 26 I&N Dec. 388 (BIA 2014).

²² The clients' names have been changed to protect their confidentiality and identities.

after raping her. Jaime's family would, at times, participate in beating her and would withhold food and money from Nia. A month after Nia started living with Jaime, she found out she was pregnant with Debra. When Jaime found out about the pregnancy, he began starving Nia and threatening to kill her. After finally managing to escape Jaime, Nia fled with one-month old Debra to the United States, where an attorney assisted them in their asylum cases.

In December 2018, a federal court permanently enjoined implementation of the Attorney General's decision in *Matter of A-B* and related policy guidance, holding that the opinion and related policies were contrary to the Refugee Act, the Immigration and Nationality Act, and the Administrative Procedure Act.²³ The Court ordered the government to return plaintiffs deported under the decision so that they can receive new credible fear interviews consistent with the law.²⁴

Although the Attorney General's harmful decision was recently enjoined by a federal judge, the Administration's efforts to restrict asylum continue apace and continue to endanger the lives of thousands. In December 2018, Acting Attorney General Matthew Whitaker also certified for his review an asylum case and requested briefing on whether and under what circumstances an asylum seeker can establish persecution on the basis of membership in a family unit.²⁵ Family membership has long been recognized as a cognizable social group under U.S. asylum law for purposes of establishing eligibility for asylum.

B. DOJ's Interim Final Rule Barring Asylum Eligibility

In November 2018, DHS and DOJ issued an interim final rule, to take effect immediately, barring individuals who enter the United States outside a designated port of entry from eligibility for asylum.²⁶ While officials initially stated that unaccompanied children were not subject to the rule, later USCIS guidance stated that unaccompanied children would be processed according to the HSA and TVPRA, but "would per the terms of this proclamation and the [interim final rule] be barred from asylum eligibility."²⁷

By denying asylum based solely on how an individual enters the United States the rule violates the INA, which provides that "[a]ny alien who is physically present in the United States or who

²³ *Grace v. Whitaker*, No. 18-cv-01853 (EGS), Memorandum Opinion (D.D.C. Dec. 19, 2018), at 56, available at <https://www.aclu.org/legal-document/grace-v-whitaker-opinion>.

²⁴ *Id.* at 4.

²⁵ *Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1116866/download>.

²⁶ USCIS, DHS, EOIR, DOJ, "Interim Final Rule on Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims" (EOIR Docket No. 18-0501), 83 Fed. Reg. 55936 (Nov. 9, 2018).

²⁷ Director Francis Cissna, USCIS, Procedural Guidance for Implementing Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims (Nov. 9, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-11-09-PM-602-0166-Procedural_Guidance_for_Implementing_Regulatory_Changes_Created_by_Interim_Final_Rule.pdf.

arrives in the United States (*whether or not at a designated port of arrival . . .*), irrespective of such alien's status, may apply for asylum. . . ."²⁸ This provision is of vital importance because asylum seekers fleeing for their lives—and unaccompanied children in particular—often have little control over where or how they enter the country. The rule is also fundamentally at odds with the TVPRA, which sets forth several protections intended to explicitly address, *not* exacerbate, these children's unique vulnerability in our immigration system.

It defies logic and basic principles of statutory interpretation that Congress would specify several procedural protections for unaccompanied children, including the opportunity to have their asylum claims first heard by USCIS²⁹ and their exemption from the one-year filing deadline and safe third country bar,³⁰ yet permit the Attorney General to wholly eliminate these children's eligibility for asylum based on how they entered the U.S.

Like several other policies of the Administration, DOJ and DHS' interim final rule has been enjoined, with a federal court having preliminarily concluded that the legal challenge to the rule is likely to succeed.³¹ Despite this pause, the policy nevertheless injects continued skepticism toward the protection needs of those fleeing grave violence and suggests the Department of Justice's willingness to disregard established laws and protections for asylum seekers. Mindful of the Administration's prior encroachments in this area, the next Attorney General should underscore the need for judges to act impartially in all cases before them and to exercise special care to comply with laws pertaining to protection claims.

C. DOJ's Enforcement Policies and Impacts on Children

1. Zero Tolerance and Family Separation

In April 2018, then-Attorney General Sessions announced a "zero tolerance" policy under which all individuals arriving in between designated ports of entry, including families requesting asylum, would be prosecuted for illegal entry or reentry into the U.S.

This policy, which had been considered by the Administration as early as March 2017, targeted families fleeing for their lives and runs directly counter to U.S. asylum law and international law underscoring the right of individuals fearing persecution to seek humanitarian protection free of penalties or punishment for doing so. More than 2,600 families were torn apart under the policy, which drew widespread condemnation and outcry from the public and policymakers alike. These separations have had devastating consequences for the well-being of children and parents, and their cases for legal protection.

²⁸ 4 INA § 208(a)(1); 8 U.S.C. 1158(a)(1) (emphasis added).

²⁹ 8 U.S.C. 1158(b)(3)(C).

³⁰ INA 208(a)(2)(E).

³¹ See *East Bay Sanctuary v. Trump*, Order Granting Temporary Restraining Order to Show Cause re Preliminary Injunction, 18-cv-06810-JST (N.D. Cal. Nov. 19, 2018), <https://www.aclu.org/legal-document/east-bay-sanctuary-covenant-v-trump-tro-granted>; see also *O.A. v. Trump*, *O.A. v. Trump*, 1:18cv-02718-RDM (D.D.C.), Complaint for Declaratory and Injunctive Relief (Nov. 20, 2018), at 27-28, <https://www.humanrightsfirst.org/sites/default/files/oavtrump.pdf>.

Under the Administration's "zero tolerance" policy, parents were referred for criminal prosecution by DOJ and were detained in federal custody of the U.S. Marshals or DHS, while their children were re-designated as "unaccompanied" and placed in the custody of the Department of Health and Human Services' Office of Refugee Resettlement (ORR). Pediatricians and child welfare professionals have spoken out about the trauma that resulted from these separations and its impact on the developmental, mental, and emotional health of children.

KIND stepped in early in the family separation crisis and has assisted more than 300 children who were torn from their parents. KIND also provided support to separated parents, including assistance in preparing for credible fear interviews, reestablishing contact with separated children, and pursuing reunification. Through this work, KIND has learned first-hand how this policy and the Department of Justice's related efforts to restrict access to asylum and humanitarian relief are affecting children in desperate need of protection.

Family separations create grave challenges for children's access to humanitarian protection and the fair consideration of their legal cases. Many children seeking humanitarian protection, such as asylum, share claims with their parents, who frequently possess details and documentation that are essential to helping establish a child's eligibility for legal relief. Forced separations under the zero tolerance policy, including of pre-verbal infants and toddlers, left many children unable to describe the circumstances that drove their family's migration to the U.S. or without access to documentation and information needed to prove their eligibility for legal protection. Parents and children were detained in different facilities, potentially across the country, and hundreds of parents were deported without knowledge of where their child had been transferred or detained. For many children, the initial trauma of separation was exacerbated by detention of indefinite length with little to no contact with parents and other loved ones. Overcome by pain and uncertainty, some children dropped their claims for humanitarian protection and requested return to the countries from which they fled, despite the dangers that might befall them.

The Department of Justice's role in announcing and implementing the zero tolerance policy raises serious questions about the agency's enforcement priorities and the availability of due process in proceedings administered by the agency. The enforcement of our immigration laws need not and should not come at the expense of children's well-being.

Conclusion

The opportunity to tell one's story and to pursue protection from harm and persecution is a foundation of our immigration system. Recent policies of the Department of Justice, however, have undermined unaccompanied children's ability to access these basic procedural protections, with grave implications. We urge the Committee to consider the above policies, and the disposition of any nominees for Attorney General toward them, to ensure the integrity of our immigration courts and our nation's commitment to extending protection to those whose lives are in peril.



January 14, 2019

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: National, State and Local LGBT Organizations Oppose Confirmation of William Barr

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of Lambda Legal and the 32 undersigned national, state and local organizations serving the lesbian, gay, bisexual and transgender (LGBT) community and individuals living with HIV, we write to oppose the nomination of William Barr to serve as Attorney General at the U.S. Department of Justice (“Justice Department” or “DOJ”). Given the intense polarization of our national politics at present, respected and principled leadership is needed urgently to ensure public confidence in the Justice Department and to protect the civil rights of our most vulnerable populations. However, as discussed below, Mr. Barr instead has an established track record of impeding and resisting civil rights. This is a counterproductive selection for this office at this time.

Before discussing Mr. Barr’s record, it is important to consider the backdrop of his nomination. The Department of Justice has worked relentlessly over the past two years to roll back LGBT and HIV nondiscrimination protections—in the courts and through agency action. While the entire list of the attacks is too lengthy to itemize in this letter, a few notable examples are listed below.

Nondiscrimination Protections:

- One of the first moves directed by former Attorney General Jeff Sessions was for DOJ, along with the Department of Education, to rescind guidance to school officials about their obligations to transgender and gender non-conforming students under Title IX.¹
- DOJ withdrew its defense of the nondiscrimination regulations implementing the Affordable Care Act (ACA) that prohibited discrimination in health care against transgender patients.²

¹ U.S. Department of Justice Civil Rights Division and U.S. Department of Education Office of Civil Rights “Dear Colleague Letter” (Feb. 22, 2017), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>.

² *Franciscan All. Inc., v. Price*, No. 7:16-cv-0010 (N.D. Tex.), Def. Mot. For Vol. Remand and Stay (May 2, 2017); *Franciscan All. Inc., v. Burwell*, 227 F. Supp. 3d 660 (N.D. Tex. 2016) (preliminary injunction prohibiting the enforcement of regulation’s prohibition of discrimination on the basis of gender identity and termination of pregnancy).



- DOJ later abdicated its responsibility to defend a challenge to constitutionality of the ACA's individual mandate, resulting in a ruling striking down the entire statute, including protections for those with preexisting conditions like HIV.³
- At Sessions' direction, DOJ has reversed its position that Title VII's protections against sex discrimination prohibit discrimination against individuals who are transgender,⁴ and has urged federal courts to adopt an interpretation of Title VII that would deny protection to LGBT workers.⁵

Weaponizing Religious Liberty

- The First Amendment should shield every person's religious freedom. Unfortunately, the Department of Justice under Attorney General Sessions has used religious liberty as a sword rather than as a shield. Attorney General Sessions created a task force to implement the religious liberty guidance he issued last year.⁶ This memo has been credited by at least one agency issuing guidance likely to adversely impact LGBT people.⁷ It also led to the creation of an entirely new office within the Department of Health and Human Services to enforce religious exemption claims.⁸
- The creation of the task force follows the Justice Department's decision to side with legal efforts to hollow out LGBT protections from nondiscrimination law in *Masterpiece Cakeshop*.⁹ The guidance and task force are clearly part of an effort to accomplish what the Department did not accomplish in the Supreme Court – to create special federal protections for religious groups that choose to discriminate against LGBT people.¹⁰

³ Office of the Attorney General letter to Speaker Ryan regarding *Texas v. United States* (June 7, 2018), available at <https://www.justice.gov/file/1069806/download>.

⁴ Office of the Attorney General Memorandum to all United States Attorneys on the Revised Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Oct. 4, 2017), available at <https://www.justice.gov/ag/page/file/1006981/download>.

⁵ *Zarda v. Altitude Exp.*, No. 15-3775 (2nd Cir.), Brief for the United States as Amicus Curiae. (July 26, 2017), available at <https://www.washingtonblade.com/content/files/2017/07/Zarda-DOJ-brief.pdf>. [Add cite to DOJ brief in Harris Funeral Homes where they disavow EEOC's T7 position]

⁶ Attorney General Sessions Delivers Remarks at the Department of Justice Religious Liberty Summit (July 30, 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-religious-liberty-summit>

⁷ U.S. Department of Labor Office of Federal Contract Compliance Programs Directive 2018-03 (Aug. 10, 2018), available at https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_03.html

⁸ U.S. Health & Human Services, *HHS Announces New Conscience and Religious Freedom Division* (Jan. 18, 2018), available at <https://www.hhs.gov/about/news/2018/01/18/hhs-ocr-announces-new-conscience-and-religious-freedom-division.html>

⁹ Supreme Court of the United States, Oral argument transcript in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-11, (Dec. 5, 2017), available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/16-111_f314.pdf

¹⁰ Office of the Attorney General Memorandum For All Executive Departments And Agencies, *Federal Law Protections for Religious Liberty* (Oct. 6, 2017), available at <https://www.justice.gov/opa/press-release/file/1001891/download>.



Transgender Military Ban

- The Department of Justice also continues to target LGBT people and specifically transgender people in more direct ways. In particular, the Department has gone to extraordinary lengths to defend President Trump’s blatantly discriminatory effort to ban military service by transgender people, including seeking expedited review by the Supreme Court. The Department of Justice has also continued to vigorously defend the military’s outdated and scientifically unsupported restrictions on military service for people living with HIV.¹¹

These efforts targeting LGBT people are only one component of former Attorney General Sessions’s anti-civil rights campaign, which has included voter suppression,¹² separation of refugee children from their families,¹³ and other racist, xenophobic, and misogynistic policies. As set forth below, Mr. Barr’s own statements leave little doubt that he intends to continue this pattern of assault on civil rights generally, and will continue to undermine the rights of LGBT people and people living with HIV specifically. Mr. Barr has made plain that he does not believe that LGBT civil rights protections belong on the same plane as other civil rights protections—a position that he has not changed in the thirty years since he served as Attorney General in 1991. He also has embraced stigma rather than science regarding treatment of people living with HIV. For these reasons, he is unfit for the position of Attorney General.

Mr. Barr on LGBT nondiscrimination protections

Mr. Barr has asserted that LGBT people are not worthy of being treated as equal to others. While serving as Attorney General in the early 1990s, Mr. Barr gave a speech warning against laws that “put on the equal plane, conduct that was previously considered immoral.”¹⁴ Mr. Barr then criticized a nondiscrimination statute in the District of Columbia that required Georgetown University to treat an LGBT student group (whom Barr described as “homosexual activist[s]”) as it did other student groups, arguing that, “this kind of law dissolve[s] any kind of moral consensus in society.”¹⁵ Mr. Barr also expressed his disapproval of laws that prohibit landlords from discriminating against unmarried couples—with obvious legal implications for same-sex couples at the time.¹⁶

¹¹ See, Brief Defendants’ Reply Memorandum of Law in Support of Motion to Dismiss, *Harrison v. Mattis*, No. 1:18-CV-00641-LMB-IDD (Sept. 7, 2018), available at https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/harrison_va_20180907_reply-memo-of-law-in-support-of-motion-to-dismiss.pdf.

¹² Brief for the United States as Amicus Curiae Supporting Petition, *Husted v. A. Philip Randolph Institute*, No. 16-980 (Aug. 7, 2017), available at https://www.justice.gov/sites/default/files/briefs/2017/08/07/16-980_husted_v_randolph_institute_ac_merits.pdf.

¹³ See Aric Jenkins, *Jeff Sessions: Parents and Children Illegally Crossing the Border will be Separated* (May 7, 2018), available at <http://time.com/5268572/jeff-sessions-illegal-border-separated/>.

¹⁴ William Barr Senate Questionnaire Attachment 12(d), p.434, *Catholic League for Religious and Civil Right Dinner* (Oct. 6, 1992), available at [https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(d\).pdf](https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(d).pdf). Mr. Barr was sufficiently committed to publicizing his views that he turned this speech into a law review article. See, William P. Barr, *Legal Issues in A New Political Order*, 36 Cath. Law. 1 (1995).

¹⁵ See William P. Barr, *Legal Issues in A New Political Order*, 36 Cath. Law. 1 (1995) (discussing *Gay Rights Coalition v. Georgetown Univ.*, 536 A.2d 1 (D.C. Cir. 1987)).

¹⁶ In the same law review article, Mr. Barr used as another example laws proposed to treat a cohabitating couple exactly as one would treat a married couple, stating, “[T]his kind of law declares, in effect that people, either individually or collectively, may not make moral distinctions or say that certain conduct is good but another bad (discussing *Attorney General v. Desilets*, 636 N.E.2d (Mass. 1994); *Foreman v. Anchorage Equal Rights Comm’n*, 779 P.2d 1199 (Alaska 1989)).



Contrary to Mr. Barr's characterization, nondiscrimination laws are an important tool for ensuring that all people – including LGBT people – are treated equally under the law. Mr. Barr views such laws as aimed at interfering with an individual's moral beliefs, the D.C. Court of Appeals correctly explained that such laws “[do] not seek to compel uniformity in philosophical attitudes by force of law,” but rather only “require equal treatment.”¹⁷ In the same article, Mr. Barr bemoaned that the “homosexual movement” is treated with “such solicitude”¹⁸ despite being a small population, and warned that laws prohibiting discrimination based on sexual orientation would lead to attempts to override matters of conscience.¹⁹ These public statements were more than the expressions of a public figure's personal religious beliefs. Mr. Barr issued these statements while serving as the chief law enforcement officer of the United States. And he repeatedly urged State action to enforce those beliefs.²⁰

Mr. Barr also has made it clear that he supports limiting fundamental liberty rights guaranteed by the Constitution. During his 1991 Senate Judiciary Committee hearing, Mr. Barr frankly asserted that the constitutional right to privacy does not extend to abortion.²¹ This refusal to respect as settled law the right to make personal medical decisions regarding abortion should be disqualifying in its own right. We note that Mr. Barr's views, if extended to other fundamental personal freedoms, would result in dramatic limitations on individual liberty, including the right of LGBT people to enter into consensual adult intimate relationships, to marry, and to raise children.

Mr. Barr's approach to LGBT nondiscrimination protections in 2018

Some might argue that Mr. Barr's personal statements regarding LGBT people should be discounted or even excused because they were a product of a different era, but Mr. Barr's views concerning the legal equality of LGBT people seemingly have not changed. In an op-ed published just four weeks ago, Mr. Barr praised former Attorney General Jeff Sessions for his move to withdraw “...policies that expanded statutory protections based on gender identity that Congress had not provided in law.”²² This unprincipled conclusion ignores the overwhelming trend of circuit and district court authority holding (on various grounds) that discrimination based on sexual orientation or gender identity is discrimination based on sex.²³ In the same opinion piece, he praised DOJ's participation in cases seeking to create a

¹⁷ *Gay Rights Coal. Of Georgetown Univ. Law Ctr.*, 536 A.2d 1, 5 (D.C. 1987)

¹⁸ William P. Barr, *Legal Issues in A New Political Order*, 36 Cath. Law. 1 (1995).

¹⁹ *Id.* at 10.

²⁰ E.g., William Barr, *Legal Issues in a New Political Order* (“...we have to act collectively to deal with manifestations of these social problems.”); William P. Barr, Attorney General of the United States, Remarks at the Catholic League for Religious and Civil Rights Dinner, Park Hyatt Hotel, Washington, D.C., (Oct. 6, 1992) (“Society does this [‘set and communicate moral standards’]...through its formal laws—the application of natural law to the circumstances of the day.”).

²¹ Ronald J. Ostrow, *Barr Opposed to Roe vs. Wade Decision: Justice Dept.: The Attorney General-designate tells Senate panel right to privacy does not extend to obtaining an abortion* LOS ANGELES TIMES (Nov. 14, 1991), available at http://articles.latimes.com/1991-11-14/news/mn-1917_1_wade-decision.

²² William P. Barr, Edwin Meese III and Michael B. Mukasey, *We are former attorneys general. We salute Jeff Sessions*, WASHINGTON POST (Nov. 7, 2018), available at https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.7fe9f643950b.

²³ See, *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018); *Zarda v. Altitude Express*, 855 F.3d 76 (Apr. 18, 2017); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017); *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017); *Dodds v. U.S. Dept. of Education*, 945 F.3d 217 (6th Cir. 2016); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. City of Salem*,



legal right of business owners to have a religious license to discriminate against LGBT people. It is clear that Mr. Barr's ongoing animus toward LGBT people makes him unfit to serve as the country's top lawyer, charged to ensure that all Americans can receive equal justice under law.

Mr. Barr's response to the HIV Epidemic

Mr. Barr's response to the HIV crisis during his tenure as Attorney General in the 1990s should also cause grave concern about his ability to serve in this position of public trust. The role of Attorney General requires not only deep respect for the rule of law, but also a willingness to make decisions based on facts rather than convenient fictions. By contrast, Mr. Barr's response to the HIV crisis while serving as President George H.W. Bush's Attorney General reveals his willingness to ignore science and medicine in order to advance his moralistic and punitive view of the justice system, as well as his penchant for using federal policy to promote hostility and punishment targeting disfavored groups rather than to advance health and equity.

For example, Mr. Barr played a key role in thwarting a push to remove HIV from the list of communicable diseases prohibiting the travel or immigration to the United States of people living with HIV. In 1991, the U.S. Department of Health and Human Services ("HHS") proposed to remove HIV/AIDS from the list of communicable diseases posing public health risks that warranted exclusion of immigrants from the United States.²⁴ The rule clarified that HIV+ immigrants do not pose a significant risk to public health because HIV is not transmitted through casual contact, and that the risk of transmission in contexts in which an actual risk exists is not contingent upon the nationality of the person living with HIV.

Mr. Barr proudly led efforts within the Bush Administration to oppose this proposed rule change.²⁵ In an interview years later, Mr. Barr boasted about the fact he felt entitled to disregard the medical determination made by then-HHS Secretary Dr. Sullivan because, as the "top lawyer in the administration," he had the power to declare the rule illegal.²⁶ Beyond his assertion of raw power, Mr. Barr also attempted to justify his disregard for Dr. Sullivan's medical opinion by arguing it was completely impractical for an immigration examiner to make a sophisticated analysis of an immigrant's infection and health insurance coverage to determine whether that person might become a public charge

378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000).

²⁴ Medical Examinations of Aliens, Federal Register 56 FR 2486 (p. 68) (Jan. 23, 1991) available at <https://cdn.loc.gov/service/ll/fedreg/fr056/fr056015/fr056015.pdf> (concluding that after a "careful consideration of epidemiological principles and current medical knowledge leads us to believe that allowing HIV-infected aliens into this country will not impose a significant additional risk of HIV infection to the US population.").

²⁵ Robert Pear, *Health Dept. Loses in AIDS Rule Dispute*, New York Times (May 28, 1991), available at <https://www.nytimes.com/1991/05/28/us/health-dept-loses-in-aids-rule-dispute.html>.

²⁶ Presidential Oral Histories, William P. Barr Oral History Transcript, (Apr. 5, 2001), UVA Miller Center Interview <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general> ("... I'm not only in charge of immigration, but I'm a lawyer for the administration, and I have problems with this. How can you possibly say that HIV is not a disease of public health significance?" "Well, blah, blah, blah. He's the top doctor, he's the doctor of the administration, and this is his position, and that's it." "So I said, 'Okay, well I'm the top lawyer in the administration, and that's it that rule is illegal, so I'm not clearing it.'").



in five or 10 years.²⁷ But questions of public health risk and of health insurance coverage are two unrelated issues. And as to both, Mr. Barr was choosing to dismiss the studied conclusions of experts and to substitute his own biased opinions to justify a blanket travel and immigration ban against people living with HIV. It is clear that Mr. Barr saw himself as free to use any conceivable argument, no matter how off point or uninformed, to prevent the proposed rule lifting the ban from moving forward.

Mr. Barr also defended the indefinite detention of a group of HIV+ Haitian refugees who were placed in severely squalid conditions in what one federal court called an “HIV prison camp” at Guantanamo Bay.²⁸ The detainees were forced to sleep on cots and had to tie garbage bags around the sides of their tents in order to keep out the rain and were surrounded by razor wire. They were unable to move freely, were frequently subjected to punishment, and did not have access to adequate medical care.²⁹ One INS agent reportedly shrugged off the detainees’ need for medical care by telling media, “they’re going to die anyway, aren’t they?”³⁰ Rather than allowing the group to properly immigrate to the U.S. as asylees, Mr. Barr callously recommended instead that they be returned to Haiti—even though they had already legally demonstrated credible fear of the consequences should they return.³¹

Equally troubling are Mr. Barr’s personal statements in response to the epidemic. Rather than being guided by science and medicine, Mr. Barr vilified efforts to prevent the epidemic by distributing condoms, and instead touted policies focused on “sexual responsibility.”³² Mr. Barr urged that there be a cost to “misconduct” in order to stop the perpetuation of the disease.³³ Mr. Barr did not explicitly set forth the ways in which he believed the government could raise the “cost” of what he viewed as misconduct, but the attitude is both profoundly misguided and chilling.

* * *

Thirty years have passed since Mr. Barr last served as Attorney General, and there is nothing in his record to indicate that any of the views that he has expressed regarding LGBT people or people living

²⁷ Robert Pear, *Health Dept. Loses in AIDS Rule Dispute*, New York Times (May 28, 1991), available at <https://www.nytimes.com/1991/05/28/us/health-dept-loses-in-aids-rule-dispute.html>.

²⁸ *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028, 1037 (E.D.N.Y. 1993).

²⁹ *Id.*

³⁰ *Id.* at 1038 (INS Special assistant Duane “Duke” Austin reportedly shrugged off the failure to provide adequate medical care by telling the media that “they’re going to die anyway, aren’t they?”).

³¹ Michael Ratner, *How We Closed the Guantanamo HIV Camp: The Intersection of Politics and Litigation*, 187 *Harv. Human Rights Jour.* 11, 218 (1998), available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Ratner%20How%20we%20Closed%20Guantanamo%20camp.pdf>; (“A high-level attorney in the Bush administration told us that Attorney General Barr believed that everyone who was HIV-positive should be returned to Haiti.”)

³² William P. Barr Senate Judiciary Questionnaire Attachment 12(d): *Remarks of William P. Barr, Attorney General of the United States to the Knights of Columbus*, New York, New York, p. 677 (Aug. 5, 1992) (“The state is called upon to remove the inconvenience and costs of misconduct. So the reaction to HIV and illegitimacy is not sexual responsibility but handing out condoms”), available at [https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012\(d\).pdf](https://www.judiciary.senate.gov/imo/media/doc/William%20Barr%20Senate%20Questionnaire%20Attachment%2012(d).pdf).

³³ William P. Barr Senate Judiciary Questionnaire Attachment 12(d): *Remarks of William P. Barr, Attorney General of the United States to the Knights of Columbus*, p. 677 (Aug. 5, 1992) (“While we think we are resolving problems we are actually subsidizing them. And by lowering the cost of misconduct, the government perpetuates it.”)



with HIV have changed. As a result, it is only reasonable to conclude that Mr. Barr still believes he has an obligation to “take the battlefield and enter the struggle” to protect his moral worldview.³⁴ And this world view is one that will have devastating consequences not only for LGBT people and everyone living with HIV, but for many other communities who rely on the Department of Justice to defend civil rights and the rule of law.

At this precarious moment in our nation’s history, the Senate must take seriously its obligation to ensure that those nominated to lead federal agencies are worthy of the public trust that is placed in senior executive branch officials. Faced with the specific question of who will lead the Department of Justice, the Senate has an opportunity to send a clear message that our country still is a nation of laws, that civil rights enforcement is a key government function, and that the Department of Justice must pursue justice for each and every one of us. Based on his record, it is clear that Mr. Barr is simply not the right person for the job.

Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information. You can reach us through Sharon McGowan, Chief Strategy Officer and Legal Director for Lambda Legal, at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal
 AIDS United
 American Atheists
 Athlete Ally
 Basic Rights Oregon
 CenterLink: The Community of LGBT Centers
 Equality California
 Equality New Mexico
 Equality North Carolina
 Equality Ohio
 Equality Texas
 EqualityMaine
 FORGE, Inc.
 Garden State Equality
 GLMA: Health Professionals Advancing LGBTQ Equality
 In Our Own Voice: National Black Women's Reproductive Justice Agenda
 Los Angeles LGBT Center
 Mazzoni Center
 National Council of Jewish Women
 National Center for Lesbian Rights
 National Center for Transgender Equality
 National LGBTQ Task Force Action Fund
 One Colorado

³⁴ *Supra* note 6 at 10.



OutServe-SLDN
Positive Women's Network-USA
Reframe Health and Justice
Secular Coalition for America
Sexuality Information and Education Council of the United States (SIECUS)
South Carolina Equality
The National LGBT Bar Association
The Trevor Project
Transgender Legal Defense & Education Fund
Whitman-Walker Health

cc: United States Senate Judiciary Committee Members

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW 202.466.3311 voice
Suite 1100 202.466.3435 fax
Washington, DC www.civilrights.org
20036

December 20, 2018



**SERIOUS CONCERNS ABOUT THE NOMINATION OF WILLIAM BARR
TO BE ATTORNEY GENERAL OF THE UNITED STATES**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and the 74 organizations listed below, we write to express serious concerns about the nomination of William Barr to serve as Attorney General of the United States.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice, the Attorney General is responsible for safeguarding our civil and constitutional rights. That is a core and enduring mission of the Justice Department, and the nation needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality. The Attorney General must also operate with integrity and independence in service to the people, not the president.

For the past two years, the Justice Department has been led by an Attorney General intent on restricting civil and human rights at every turn.¹ From rollbacks in voting rights enforcement and LGBTQ rights to a reinvigoration of the "war on drugs" and extreme immigration policies, Attorney General Jeff Sessions used his office to carry out the extreme, anti-civil rights agenda he had advanced for decades in the U.S. Senate. This path of devastation has continued unabated in recent weeks under Acting Attorney General Matthew Whitaker, a hand-picked Trump White House loyalist whose very appointment may be unlawful.² The Justice Department and the nation need an Attorney General who will make a dramatic course correction and begin to enforce our federal civil rights laws with vigor and independence. William Barr is unlikely to do so.

In a recent op-ed, Mr. Barr called Mr. Sessions "an outstanding attorney general" and offered praise for his policies, many of which undermined civil rights.³ But Mr. Barr was completely silent about the one issue for which Mr. Sessions deserves actual praise: his decision to recuse himself from oversight of the investigation into Russia's interference in the 2016 election. This is a telling indication that Mr. Barr would continue the deeply disturbing anti-civil rights policies and priorities of the past two years. We will continue to review Mr. Barr's record, but what has been uncovered thus far bears this out. He holds troubling positions on criminal justice reform, LGBTQ equality, immigrant rights, and reproductive freedom.

¹ <https://civilrights.org/trump-rollbacks/>.

² <https://www.nytimes.com/2018/11/08/opinion/trump-attorney-general-sessions-unconstitutional.html>.

³ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.



Justice Reform: As Attorney General during the George H.W. Bush administration, Mr. Barr's draconian approach to law enforcement fostered a system of mass incarceration that disproportionately harmed communities of color across America.⁴ He endorsed a 1992 Justice Department report entitled "The Case for More Incarceration."⁵ More recently, he has been a vocal supporter of harsh mandatory minimum sentences,⁶ and he has alleged, inaccurately, that the Obama administration's pro-reform policies "undermined police morale, with the spreading 'Ferguson effect' causing officers to shy away from proactive policing out of fear or prosecution."⁷ These views are especially troubling at a time when there is overwhelming support from individuals across the political spectrum to reform the justice system.

LGBTQ Equality: Barr holds deeply disturbing views on LGBTQ equality. In a 1995 law review article, he argued for a return to "traditional morality" based on "natural law," and he criticized a Washington, D.C. law that prohibited Georgetown University from discriminating against LGBTQ student groups whose conduct he called "immoral."⁸ Mr. Barr has also advocated against interpreting federal laws to include gender identity,⁹ a position at odds with the holdings of many federal courts.

Immigrant Rights: Mr. Barr has defended controversial anti-immigrant positions. He expressed support for President Trump's discriminatory Muslim ban, calling it "squarely within both the president's constitutional authority and his explicit statutory immigration powers."¹⁰ Multiple federal courts rejected that position and struck down this version of the ban as unconstitutional. In 1992, Barr advocated for the inhumane policy of prohibiting HIV-positive immigrants approved for political asylum from entering the United States.¹¹

Reproductive Freedom: Barr has attacked women's reproductive freedom, championing policies that would deny contraceptive access and abortion services. At his 1991 Senate Judiciary Committee confirmation hearing to be Attorney General, Mr. Barr testified: "*Roe v. Wade* was wrongly decided and should be overruled."¹²

The media coverage surrounding the announcement of Mr. Barr's nomination has thus far focused on his criticism of the Mueller investigation, his troubling suggestion that the FBI should be investigating Hillary Clinton, and his defense of President Trump's disturbing decisions to fire Acting Attorney General Sally Yates and FBI Director James Comey. And the *Washington Post* has noted the hypocrisy

⁴ <https://slate.com/news-and-politics/2018/12/william-barr-jeff-sessions-new-attorney-general.html>.

⁵ <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

⁶ <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.

⁷ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

⁸ <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2355&context=tcl>.

⁹ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367.

¹⁰ https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.6db0727dd0d0.

¹¹ http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house.

¹² https://m.facebook.com/story.php?story_fbid=10155720791351813&id=18982436812.



of Mr. Barr's criticism of some Mueller prosecutors who have made a handful of political contributions to Democratic candidates, while Mr. Barr himself has made over \$500,000 to Republican candidates.¹³

Precisely because of the serious threats to our democracy posed by concerns about Mr. Barr's independence, we must be especially vigilant about the implications for his service as Attorney General on federal civil rights enforcement. Civil rights must remain a top priority for members of the Senate Judiciary Committee when Mr. Barr comes before them for his confirmation hearing in the new year. Mr. Barr bears the burden of demonstrating he will not continue the civil rights rollbacks we have seen during this administration. In addition, senators must secure assurances that Mr. Barr will recuse himself from the Russia investigation in light of his past comments, in order to prevent an appearance of impropriety.

At a time when the United States has a president who emboldens and enables forces of hate and division in the country; at a time when the Justice Department and the entire administration have embraced an anti-civil rights policy agenda; and when vulnerable communities across this nation are deeply terrified — of profiling, deportation, and even murder — people in America deserve better. They deserve an Attorney General who will promote racial equality, vigorously enforce our federal civil rights laws, and fight discriminatory barriers for the most vulnerable among us.

Sincerely,

The Leadership Conference on Civil and Human Rights
 A. Philip Randolph Institute
 American Civil Liberties Union
 American Federation of State, County, and Municipal Employees (AFSCME)
 Americans United for Separation of Church and State
 Asian Americans Advancing Justice – AAJC
 Asian Pacific American Labor Alliance, AFL-CIO
 Autistic Self Advocacy Network
 Autistic Women & Nonbinary Network
 Bend the Arc: Jewish Action
 Campaign for Youth Justice
 Catholics for Choice
 Center for American Progress
 Center for Biological Diversity
 Center for Law and Social Policy
 Center for Popular Democracy
 Clearinghouse on Women's Issues
 Coalition on Human Needs
 Community Catalyst
 CPACS

¹³ https://www.washingtonpost.com/investigations/trump-has-blasted-muellers-team-for-political-donations-but-attorney-general-nominee-william-barr-has-given-more-than-500000/2018/12/11/dce5974a-fcb0-11e8-862a-b6a6f3ce8199_story.html?utm_term=.e3d73531cf84.



CREDO
Demos
Drug Policy Alliance
Earthjustice
Equal Rights Advocates
Equality California
Equality Ohio
Harm Reduction Coalition
Hollaback!
Human Rights Campaign
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Jobs With Justice
Joint Action Committee
Kentucky Council of Churches
Lambda Legal
LatinoJustice PRLDEF
League of Conservation Voters
Muslim Advocates
NAACP
NAACP Legal Defense and Educational Fund, Inc.
NAACP of Tennessee
NARAL Pro-Choice America
National Abortion Federation
National Action Network
National Association of Human Rights Workers
National Association of Social Workers
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition of Anti-Violence Programs
National Council of Jewish Women
National Education Association
National Equality Action Team (NEAT)
National Health Law Program
National Immigration Law Center
National Institute for Reproductive Health
National Juvenile Justice Network
National Latina Institute for Reproductive Health
National Law Center on Homelessness & Poverty
National LGBTQ Task Force Action Fund
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
National Women's Health Network



Pennsylvania Immigration and Citizenship Coalition
People For the American Way
PFLAG National
Prison Policy Initiative
Religious Coalition for Reproductive Choice
Sant La Haitian Neighborhood Center
SEIU
Southeast Asia Resource Action Center
UnidosUS
United Church of Christ
Voting Rights Forward
World Without Genocide



MAJOR CITIES CHIEFS ASSOCIATION

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Baltimore Co.
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Orlando
Ottawa, Canada
Peel Region, Canada
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Pittsburgh
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Prince George's Co.
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Suffolk Co.
Tampa
Toronto, Canada
Tucson
Tulsa
Vancouver, Canada
Virginia Beach
Washington
Wichita
Winnipeg, Canada
York, Ontario

January 11, 2018

The Hon. Lindsey Graham
Chairman
Committee on the Judiciary
Washington, D.C. 20510

The Hon. Dianne Feinstein
Ranking Member
Committee on the Judiciary
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of the Major Chiefs Association, representing the largest metropolitan regions of our Nation, we are writing to support a swift confirmation for William Barr to be the next Attorney General of the United States.

Mr. Barr brings to the Department of Justice a distinguished record of service to our Nation and our justice system. His exemplary accomplishments as a prosecutor represent a broad range of cases that have repeatedly demonstrated his steadfast commitment to public safety.

As Attorney General in the George H.W. Bush Administration, William Barr developed and implemented programs to address violent crime in urban areas. As a leader and innovator, he implemented a thoughtful and balanced approach which addressed root causes of crime as well as targeting repeat offenders.

His reputation for integrity and high ethical standards bodes well for the times ahead, and our interview with Mr. Barr confirmed that he will be a strong and independent Attorney General.

We will count on him to support the top priorities of American policing. Creative new measures are needed to protect the public from the threat of drugs and violent crime. We look forward to a partnership that will strengthen the ties between our local agencies and the Department of Justice.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of William Barr quickly through the confirmation process.

Sincerely,

Art Acevedo
Chief of Police
Houston Police Department
President, Major Cities Chiefs Association

Major County Sheriffs of America

1450 Duke Street, Suite 207, Alexandria, Virginia 22314 • mcsheriffs.com

**President**

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Secretary

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Dane County Sheriff's Office
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(608) 284-6170
dmahoney@mcsheriffs.com

Past President

Sheriff Donny Youngblood
Kern County Sheriff's Office
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sheriff@KernSheriff.com

Executive Director

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General Counsel

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4301 Connecticut Avenue, NW, Suite 700
Washington, DC 20008
(202) 237-2000
joseph@sumnerill.net

January 10, 2019

Chairman Lindsey Graham
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein,

On behalf of the Major County Sheriffs of America (MCSA) we write to express our support for the nomination of William Barr as the next Attorney General of the United States. His service and knowledgeable experience within the field of criminal justice makes him a highly qualified candidate.

Expected to lead the U.S. Department of Justice on issues from tackling complex organized crime and cyber-threats, to sophisticated fraud and terrorism, the Attorney General of the United States requires not only a strong command of all justice concerns, but the ability to work cooperatively and closely with a broad community of law enforcement agencies and leaders across the country.

General Barr has been a strong advocate for law enforcement and has a successful track record from his tenure as the Attorney General, Deputy Attorney General and head of the Office of Legal Counsel. The General oversaw smart-on-crime initiatives that contributed to the decrease in violent crime in the early 90s and helped implement the Americans with Disabilities Act (ADA). General Barr is known for his thoughtful approach and we are confident he will be an honest broker and reliable partner for local law enforcement.

As an association of elected sheriffs representing our nation's largest counties with populations of 500,000 people or more, serving over 100 million Americans, we seek to be a positive source of ideas and solutions and General Barr has already made a direct effort to establish a candid and open relationship with the Major County Sheriffs of America.

The MCSA urges the Committee and members of the Senate to swiftly confirm General William Barr's nomination so we may collectively work to protect our communities and follow the rule of law.

Very Respectfully,

Grady Judd
Sheriff, Polk County Sheriff's Office
President, Major County Sheriffs of America

Michael J. Bouchard
Sheriff, Oakland County Sheriff's Office
Vice President – Government Affairs, Major County Sheriffs of America

959

Michael B. Mukasey
919 Third Avenue
New York, NY 10022

February 4, 2019

The Hon. Lindsey Graham
Chairman, Judiciary Committee
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Hon. Dianne Feinstein
Ranking Minority Member, Judiciary Committee
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein,

During my testimony to the Judiciary Committee on January 16, 2019, as part of the hearing on the nomination of William P. Barr to serve as Attorney General, Senator Sheldon Whitehouse said he had questions for me that concerned a joint investigation by the Justice Department's (DOJ) Office of the Inspector General (OIG) and its Office of Professional Responsibility (OPR), completed in 2008, relating to the firing of nine U.S. Attorneys in 2006. The senator suggested that as Attorney General I had failed to pursue that investigation properly. The transcript pages reflecting that testimony are attached as Exhibit 1.

The senator preceded his question with the promise that because "this goes back about 10 years, I will give you every chance to answer more fulsomely in written answers, questions for the record . . . if there is anything you do not recall now." He reiterated that he wanted to get my "recollection in a more fulsome way in a written fashion." (Tr. 89)

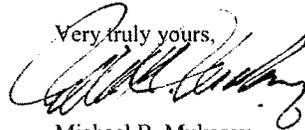
Despite that reiterated promise, and the willingness I expressed explicitly at the hearing to respond to further inquiry, the deadline for submitting questions for the record passed at 5pm on January 22, 2019, and I have been told that Senator Whitehouse submitted no written questions for me; hence this letter.

As part of my “more fulsome” response to the senator, I attach as Exhibit 2 a copy of a DOJ press release dated September 29, 2008, reflecting a statement by me that day that both belies the senator’s suggestion of a failure to pursue the investigation, and supports my partial recollection of the events, as described in my January 16 testimony (Exhibit 1), as to how the nine former U.S. Attorneys were treated. In particular, it reflects that I appointed a career prosecutor from outside Main Justice to follow the recommendation of OIG and OPR, to “conduct further investigation as needed, and ultimately to determine whether any punishable offense was committed” with respect to the firings. That career prosecutor was vested with all the powers of the U.S. Attorney for the District of Columbia, and ultimately determined that no charges were warranted. It reflects also my acknowledgment that the nine fired U.S. Attorneys had been treated unfairly.

If this had been the first time Senator Whitehouse had described this matter incorrectly on the public record, and been corrected, I might simply have written privately to him and asked that he withdraw his comments. But it wasn’t. On August 1, 2017, Senator Whitehouse submitted similarly distorted questions for the record to Brian Benczkowski, then a nominee to serve as Assistant Attorney General for the Criminal Division, and who had served as my Chief of Staff at the time of my response to the OIG-OPR report. As part of his answers to those questions, Mr. Benczkowski submitted my September 29, 2008, statement referred to above and attached as Exhibit 2 to this letter, and directly refuted the senator’s suggestion that I had failed to pursue the matter. The relevant pages from Senator Whitehouse’s written questions in August 2017, and Mr. Benczkowski’s answers, are attached as Exhibit 3.

I request that this letter and the attached exhibits be made part of the record of the hearing at which I testified.

Thank you for your consideration.

Very truly yours,

Michael B. Mukasey

Enclosures

cc: Members of the Judiciary Committee – w/enclosures

1 Methodist Church with the Faith and Politics Institute. It
2 was one of the most moving experiences of my life. It was
3 remarkable, and to meet with the survivors a few months
4 later here in Washington was impressive, and I am so glad
5 that you are keeping that tragedy alive in our hearts
6 because it should not be overlooked, and I appreciate it.

7 Rev. Risher. Thank you, sir, for your words. The
8 Emanuel Nine will be something that I will continue to talk
9 about their lives to let other people know that they did
10 not die in vain, and I thank you for your comments.

11 Senator Whitehouse. Do not ever stop.

12 Rev. Risher. Thank you.

13 Senator Whitehouse. Mr. Mukasey, I have some
14 questions for you, and I want to let you know right off the
15 bat that this goes back about 10 years, and so you will
16 have full -- I will give you every chance to answer more
17 fulsomely in written answers, questions for the record, so
18 that if there is anything that you do not recall now.

19 But the reason I wanted to ask you your questions is
20 because I view it, anyway, as a responsibility of the
21 attorney general to fearlessly go where the evidence and
22 the rule of law lead, and to allow, particularly in
23 investigative matters, to let the evidence and the law be
24 your guides. Now, given the circumstances that surround
25 the Department, the willingness of an attorney general to

1 be independent where evidence leads to the White House is
2 of, I think, particular moment.

3 And that takes me back to the investigation into the
4 removal of nine U.S. attorneys in 2006. That report was
5 concluded in 2008 on your watch as Attorney General. As
6 you will recall, it was a joint effort. Those do not
7 happen all that often in the Department, but this was a
8 joint effort between the Department of Justice Office of
9 Inspector General and the Department of Justice Office of
10 Professional Responsibility.

11 The investigation led both into White House files and
12 into Office of Legal Counsel files. As to the White House
13 files, the White House refused to cooperate and refused to
14 provide access to your OIG OPR investigators to close out
15 their investigation. The OLC refused to provide un-
16 redacted documents to members of their own department.

17 The report that was issued in 2008 indicated that the
18 investigation had been, and I quote it here, "hampered and
19 hindered" and left with "gaps" as a result of the failure
20 of the White House and OLC to provide the necessary
21 information to the investigators.

22 Judge Mukasey. That was the OIG report?

23 Senator Whitehouse. Yes, OIG/OPR. It was both of
24 them together, as you may recall.

25 So here is my concern. You were the Attorney General

1 at the time. You could have readily instructed OLC knock
2 it off, guys, provide these folks the documents. And while
3 you cannot instruct the White House what to do, when the
4 investigation leads to the White House gates and the White
5 House gates come down, to me it is the Attorney General's
6 responsibility at that point to walk down to the White
7 House and say one of two things is going to happen, we are
8 going to get cooperation in our investigation or we are
9 going to have a resignation, because the Department of
10 Justice needs to follow the law and the facts wherever,
11 including into the files of the Department.

12 As you know, there is no executive privilege issue as
13 between the Department of Justice and the White House.
14 That is a separation of powers issue, and it keeps things
15 from us but it does not limit documents within the
16 executive branch.

17 So I would like to get now your recollection in a more
18 fulsome way in a written fashion if you would like to
19 elaborate why it is that you felt that when the Department
20 of Justice had an ongoing investigative matter that led to
21 the gates of the White House it was okay for the White
22 House to say no, we are not cooperating, and for the
23 Department of Justice to stand down, because I think that
24 would be a lousy precedent for now.

25 Judge Mukasey. This goes to the qualifications of Mr.

1 Barr to serve as Attorney General, does it?

2 Senator Whitehouse. To the extent that there is a
3 concern about whether he would be willing to do that,
4 because we do not want a replay of this. And if he is
5 citing the Mukasey precedent, I want to know more about the
6 Mukasey precedent.

7 Judge Mukasey. I doubt that he is citing the Mukasey
8 precedent, number one.

9 Number two, my recollection of that, which is dim over
10 10 years --

11 Senator Whitehouse. Which is why you --

12 Judge Mukasey. Nonetheless, older people have a
13 better recollection of the distant past sometimes than they
14 do of the recent past, so I do remember it to some extent.

15 My recollection is that the investigation did not lead
16 to the gates of the White House. It involves the
17 circumstances under which nine U.S. attorneys were
18 terminated, and those people were offered the opportunity
19 to come back. They were also offered apologies by me, and
20 that is the way the matter ended. That is my recollection.

21 Senator Whitehouse. Okay. Well, I would ask you to
22 take a look at the question for the record that I will
23 propound to you because that is different than what the OIG
24 and OPR said at the time, because they felt that they were
25 hampered, hindered, and left with gaps in their

1 investigation, and it was White House files that were at
2 issue.

3 So my time is expired, but I hope we can settle this
4 question because I do think it creates a difficult
5 precedent in a world in which the Department of Justice may
6 now have to ask similarly tough questions that take it into
7 White House files.

8 Judge Mukasey. I seriously doubt that one
9 investigation and how it was handled creates a precedent in
10 any sense for another, but I will answer your question.

11 Senator Whitehouse. Thank you.

12 Chairman Graham. Senator Grassley?

13 Senator Grassley. First of all, for the Reverend, I
14 do not understand how people can have so much hate that
15 they do what they do. That is what comes to my mind all
16 the time when I hear stories like yours. I remember it
17 from the day it happened. Thank you for bringing it to our
18 attention.

19 Rev. Risher. Thank you, sir, for listening.

20 Senator Grassley. Mr. Canterbury, you have talked
21 some about the First Step Act. I want to go back to the
22 Fraternal Order of Police, who was very instrumental in
23 helping get it across the finish line. And obviously, as
24 the Chairman of the committee at that time, I thank you for
25 doing that. We appreciate your strong leadership.



Department of Justice

FOR IMMEDIATE RELEASE
Monday, September 29, 2008
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OPA
(202) 514-2007
TDD (202) 514-1888

**Statement by Attorney General Michael B. Mukasey on the Report of
an Investigation into the Removal of Nine U.S. Attorneys in 2006**

"I commend the hard work and collaboration of the Justice Department's Offices of Inspector General and Professional Responsibility on today's report concerning the removal of nine U.S. Attorneys in 2006.

"The Offices of the Inspector General and Professional Responsibility dispelled many of the most disturbing allegations made in the wake of the removals. However, the Report makes plain that, at a minimum, the process by which nine U.S. Attorneys were removed in 2006 was haphazard, arbitrary and unprofessional, and that the way in which the Justice Department handled those removals and the resulting public controversy was profoundly lacking. It is true, as the report acknowledges, that an Administration is entitled to remove presidential appointees, including U.S. Attorneys, for virtually any reason or no reason at all. But the leaders of the Department owed it to those who served the country in those capacities to treat their careers and reputations with appropriate care and dignity. And the leaders of the Department owed it to the American people they served to conduct the public's business in a deliberate and professional manner. The Department failed on both scores.

"Today's report is an important step toward acknowledging what happened, and holding the responsible officials to proper account. I hope the report provides a measure of relief to those U.S. Attorneys whose reputations were unfairly tainted by the removals and their aftermath. They did not deserve the treatment they received.

"The Report leaves some important questions unanswered and recommends that I appoint an attorney to assess the facts uncovered, to conduct further investigation as needed, and ultimately to determine whether any prosecutable offense was committed with regard to the removal of a U.S. Attorney or the testimony of any witness related to the U.S. Attorney removals. In the normal course, a report recommending further investigation would not be released until after the investigation and any resulting prosecution had been completed, for fear that disclosing publicly relevant facts and witness statements would hinder the investigation or prosecution. In this instance, the Offices of Inspector General and Professional Responsibility have made the judgment that the circumstances warrant a departure from this usual practice.

"The Justice Department has an obligation to the American people to pursue this case wherever the facts and the law require. This investigation would ordinarily be conducted under the supervision of either the United States Attorney for the District of Columbia or a Department component. However, the United States Attorney's Office for the District of Columbia has been recused from the matter, and I have determined that, given the nature of the matter, it would be best overseen by an attorney outside Main Justice.

#08-859: Statement by Attorney General Michael B. Mukasey on the Report of an Investi... Page 2 of 2

“Therefore, I have asked Nora Dannehy to exercise the authority of the United States Attorney for the District of Columbia for purposes of this matter. In that capacity, Ms. Dannehy will report to me through the Deputy Attorney General. Ms. Dannehy is a well-respected and experienced career prosecutor who has conducted or supervised a wide range of investigations and prosecutions during her lengthy career, and I am grateful to her for her willingness to serve in this capacity.

“This Report describes a disappointing episode in the history of the Department. What should not be lost in this are the efforts of the dedicated and hard-working employees of the Justice Department who are focused on what they do best, which is protecting our country and faithfully enforcing our laws.”

A biography of Acting U.S. Attorney Nora R. Dannehy may be viewed at
<http://www.usdoj.gov/usdo/cr/usattorney.htm>.

[Report of an Investigation into the Removal of Nine U.S. Attorneys in 2006](#)

###

08-859

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

QUESTIONS FROM SENATOR WHITEHOUSE

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

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

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

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

information with Attorney General Sessions?

Response: Yes.

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

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

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

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

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

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

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

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

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

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

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



January 9, 2018

The Honorable Lindsey Graham
Chair, United States Senate Committee on the Judiciary

The Honorable Dianne Feinstein
Ranking Member, United States Senate Committee on the Judiciary

Dear Chairman Graham and Ranking Member Feinstein,

On behalf of NARAL Pro-Choice America's two million member-activists, I write to express strong opposition to the nomination of William Barr to the post of United States Attorney General. Given his long record of hostility towards reproductive rights and access to basic health-care services, Barr has demonstrated that he is not fit to carry out the responsibilities of this position.

The Department of Justice (DOJ) is charged with enforcing the law and defending the interests of the United States, ensuring public safety, and ensuring fair and impartial administration of justice for all Americans.¹ This charge inherently includes protecting the fundamental right to abortion as guaranteed by the Fourteenth Amendment, as well as defending the safety of those Americans who provide and/or access abortion care. Put simply, William Barr's lengthy record leaves no doubt that he is incapable of faithfully administering the law as it relates to reproductive rights.

Barr has made no secret of his disdain for abortion rights and the legal precedents that have affirmed them. In his 1991 confirmation hearing before the Senate Judiciary Committee, Barr said outright that he "do[es] not believe the right to privacy extends to abortion" and that he "believe[s] *Roe v. Wade* should be overruled."² In an interview after the *Planned Parenthood v. Casey* decision came down, Barr affirmed his belief that *Roe* should be overturned and emphasized his prediction that it would eventually be overturned because "it does not have any constitutional underpinnings."³ In the same interview, Barr said that under his leadership, the Department of Justice would "continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation."⁴ There is no reason to believe he would do any different under this new, even more hostile administration.

While Barr was at its helm, the DOJ did far more to attack abortion rights than simply to call for *Roe's* demise. DOJ intervened in a federal case regarding protesters at abortion clinics, asking the court to stay an injunction that prohibited the extremist anti-choice group, Operation Rescue, from blocking access to clinics and physically harassing staff and patients.⁵ The federal judge overseeing the case wrote that he was "disgusted by this move by the United States."⁶ Barr also used his authority as attorney general to vehemently oppose the landmark Freedom of Choice Act (FOCA), a bill to codify the protections of *Roe v. Wade* into law. He wrote several letters to Congress critiquing the bill, asserting that it would implement "an unprecedented

regime of abortion on demand,” and highlighting that if it were passed, he would urge the President to veto it.⁷

While his actions as attorney general are striking, his activism in opposition to reproductive rights has not been limited to his professional capacity. In his personal writings as well as in several speeches, Barr has decried “a mounting assault on traditional values” that he blames on “thirty years of permissiveness, the sexual revolution, and the drug culture.”⁸ He has lamented that the results of this so-called “battering” of the family include “soaring illegitimacy rates,” “1.5 million abortions per year,” and the fact that “the number of Americans, including Catholics, who consider abortion a moral evil is steadily declining.”⁹ Barr also took it upon himself to warn the American Bar Association (ABA) against taking sides on the “divisive political issue” of abortion, noting that having a position in support of abortion rights might “endanger the ‘essential’ perception of the ABA as impartial and politically neutral.”¹⁰ It is ironic that Barr was so concerned with the perception of neutrality from the American Bar Association, but clearly had no similar concern when it came to his actions as attorney general.

All told, William Barr’s fundamental opposition to reproductive rights renders him unfit to fulfill the vastly important duties of the United States Attorney General. Rather than enhancing and protecting women’s access to basic health care, Barr’s record demonstrates that he is committed to executing an extreme agenda that would put women’s health at risk. These views are wholly out of step with the majority of Americans, the majority of whom support access to safe and legal abortion.

Someone so deeply biased against fundamental freedoms simply cannot successfully lead the Department of Justice. For that reason, I urge you to oppose William Barr for this office.

Sincerely,

NARAL Pro-Choice America

¹ The United States Department of Justice website at <https://www.justice.gov/about> (last visited January 8, 2019)

² *Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr*, C-SPAN (November 13, 1991), <https://www.c-span.org/video/?c4765758/barr-roe>

³ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992)

⁴ *Ibid.*

⁵ *Justice Dept. Joins Wichita Case, Backing Antiabortion Protestors*, WASHINGTON POST (Aug. 6, 1991), https://www.washingtonpost.com/archive/politics/1991/08/07/justice-dept-joins-wichita-case-backing-antiabortion-protestors/9f95ffab-0b6c-4142-bd31-76949c6f8a5d/?utm_term=.8ab64037d06f

⁶ *Ibid.*

⁷ *Letter from Attorney General William P. Barr to Senator Edward Kennedy*, OFFICE OF THE ATTORNEY GENERAL (July 1, 1992), 16 U.S. Op. Off. Legal Counsel 1 (O.L.C.), 1992 WL 479535; Sharon LaFraniere, *Barr Attacks Abortion-Rights Bill; Curb on State Restrictions Goes Beyond Roe*, Attorney General Says, THE WASHINGTON POST (March 4, 1992)

⁸ William P. Barr, *Legal Issues in a New Political Order*, 36 Cath. Law. 1 (1995); Remarks of William P. Barr, Catholic League for Religious and Civil Rights Dinner (Oct. 6, 1992)

⁹ *Ibid.*

¹⁰ Sandra Torry, *Lawyers’ Group Votes to Back Abortion Rights; Two-year Stance of Neutrality Abandoned*, THE WASHINGTON POST (Aug. 12, 1992)



National Alliance of Gang Investigators Associations

Post Office Box 574, Queen Creek, Arizona 85142 | 480-216-0214 | www.nagia.org cschoville@nagia.org

January 7, 2019

The Honorable Lindsay Graham
Chairman, Judiciary Committee
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Diane Feinstein
Ranking Member, Judiciary Committee
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Graham and Feinstein:

On behalf of the National Alliance of Gang Investigators Associations and the 25,000 members within law enforcement and corrections that we serve, we are proud to offer our support to Mr. William Barr as the nominee for the office of the United States Attorney General.

Mr. Barr has demonstrated his strong support of law enforcement throughout his professional career. Prior to his first appointment as the Attorney General and while serving as the United States Attorney General between 1991-1993, it was clear that Mr. Barr fought tirelessly against gangs and fought to protect our communities at a time in our nation's history that gangs were establishing criminal organizations in many of our major cities.

The gang crisis involving human smuggling, human sex trafficking, opioid abuse and continued growth of traditional criminal and prison gangs in our communities needs the leadership that can be provided by Mr. Barr.

NAGIA fully supports the nomination and we look forward to Mr. Barr's confirmation. NAGIA members look forward to continuing to work with the United States Department of Justice toward making our communities safer from the imminent threat posed by violent gangs.

Respectfully submitted,

C.P. Schoville, NAGIA President



January 16, 2019

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Nomination of William Barr for Attorney General

On behalf of the National Center for Transgender Equality, we write to oppose the nomination of William Barr to serve as Attorney General at the U.S. Department of Justice (“Justice Department” or “DOJ”). Founded in 2003, NCTE works to improve the lives of the nearly two million Americans who are transgender.

The Attorney General is the nation’s highest law enforcement office, charged with ensuring enforcement of the nation’s civil rights laws. The person holding this position should have an impeccable record demonstrating a strong and unwavering commitment to the principle enshrined on the Supreme Court building: “Equal justice under law.” That high standard is especially important given the Justice Department’s numerous attacks on civil rights, including for LGBTQ Americans, during the past two years, and the momentous, ongoing investigations concerning the President. Unfortunately, due to his record of actions, statements, and writings—both old and new—demeaning LGBTQ Americans and those living with HIV, and opposing basic civil rights protections, as well as indications he will not be impartial in ongoing investigations involving the President, nominee William Barr does not meet that high standard.

Mr. Barr’s consistent hostility to civil rights protections for LGBTQ Americans

Mr. Barr has asserted that LGBTQ Americans are not worthy of being treated as equal to others. While serving as Attorney General in the early 1990s, Mr. Barr gave a speech warning against laws that “put on the equal plane, conduct that was previously considered immoral.” Mr. Barr then criticized a nondiscrimination statute in the District of Columbia that required Georgetown University to treat an LGBT student group (whom Barr described as “homosexual activist[s]”) as it did other student groups,” arguing that, “this kind of law dissolve[s] any kind of moral consensus in society.” Mr. Barr also expressed his disapproval of laws that prohibit landlords from discriminating against unmarried couples—with obvious legal implications for same-sex couples at the time.

Mr. Barr also has made it clear that he supports limiting fundamental liberty rights guaranteed by the Constitution. During his 1991 Senate Judiciary hearing, Mr. Barr frankly asserted that the constitutional right to privacy does not extend to abortion. This refusal to respect as settled law the right to make personal medical decisions regarding abortion should be disqualifying in its own right. We note that Mr. Barr's views, if extended to other fundamental personal freedoms, would result in dramatic limitations on individual liberty, including the right of LGBT people to enter into consensual adult intimate relationships, to marry, and to raise children.

Mr. Barr's views on these issues apparently have not changed. In an op-ed published just weeks ago, Mr. Barr praised former Attorney General Jeff Sessions for his move to withdraw "...policies that expanded statutory protections based on gender identity that Congress had not provided in law." This aggressively unprincipled statement ignores the overwhelming trend of circuit and district court authority holding that discrimination based on gender identity is unlawful. In the same opinion piece, Mr. Barr praised a memo from former Attorney General Sessions that suggested preventing discrimination against LGBTQ Americans is not a compelling government interest. This longstanding and continuing hostility toward LGBTQ Americans makes him unfit to serve as the country's top lawyer, charged to ensure that all Americans can receive equal justice under law.

Mr. Barr's response to the HIV Epidemic

Mr. Barr's response to the HIV crisis during his tenure as Attorney General in the 1990s should also be disqualifying. The role of Attorney General requires not only deep respect for the rule of law, but also a willingness to make decisions based on facts rather than ideology. By contrast, Mr. Barr's response to the HIV crisis revealed his willingness to ignore science and medicine in order to advance his own biased and punitive attitude toward those affected by the epidemic.

For example, Mr. Barr played a key role in thwarting a push to remove HIV from the list of communicable diseases of "public health consequence." In 1991, the U.S. Department of Health and Human Services ("HHS") proposed to remove HIV/AIDS from the list of communicable diseases posing public health risks that warranted exclusion of immigrants from the United States. The rule clarified that persons living with HIV did not pose a significant risk to public health because HIV is not transmitted through casual contact, and that the risk of transmission in other contexts is not contingent upon the nationality of the person living with HIV.

Mr. Barr's Personal Statements about People Living with HIV

Equally troubling are Mr. Barr's personal statements in response to the epidemic. Rather than being guided by science and medicine, Mr. Barr vilified efforts to prevent the epidemic by distributing condoms, and instead touted policies focused on "sexual responsibility." Mr. Barr urged that there be a "cost" to what he termed "personal misconduct," and that government should not act to lower that "cost" through public health prevention efforts. This attitude is—and was at the time—misguided and chilling, showing a stunning lack of judgment and compassion.

Mr. Barr's extreme views on executive power and DOJ investigations

We are also deeply concerned that it appears Mr. Barr has been chosen for his extreme views on executive power and DOJ investigations—as evidenced in writings and personal statements both old and news. Particularly under the present extraordinary circumstances, any nominee for Attorney General espousing these views should be subject to the most rigorous skepticism and scrutiny.

976

* * *

For all of the above reasons, William Barr does not meet the high standard for confirmation as the next Attorney General.

Thank you for considering our views on this momentous nomination. Please do not hesitate to reach out if we can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Mara Keisling", with a stylized flourish extending to the right.

Mara Keisling
Executive Director

cc: United States Senate Judiciary Committee Members



**NATIONAL
CENTER ON
SEXUAL
EXPLOITATION**

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NCSEX IMPOSES THE SEAMLESS CONNECTION BETWEEN ALL FORMS OF SEXUAL EXPLOITATION.

January 9, 2019

The Honorable Dianne Feinstein
Ranking Member, Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, DC 20510

**RE: Confirmation Hearing of William Barr for Attorney General of
the United States; Assurance of Commitment to Combat Sexual
Exploitation**

Dear Senator Feinstein:

As the confirmation hearings for Mr. William Barr for the position of United States Attorney General approach, we write urging you to ensure Mr. Barr's commitment to rigorous enforcement of the nation's laws combating sexual exploitation and to the development of institutional policy directives which also advance this end.

These matters include:

1. Federal prosecution of Internet-based platforms (such as Skip the Games, Switter, Bedpage, and others) which promote prostitution and facilitate sex trafficking

For nearly a decade the U.S. Department of Justice (DOJ), while having the legal authority, failed to prosecute websites like Backpage.com—a "company" with a business model dedicated to the promotion of prostitution and facilitation of sex trafficking. DOJ's failure to take proactive steps against this entity and its principal agents allowed the problem of Internet-based commercial sexual exploitation to metastasize and for Backpage.com to become its global "industry" leader. While we are deeply gratified that last year DOJ arrested Backpage's principals and shut down its operations, these actions came years too late—especially for those whose sexual exploitation and even deaths were facilitated by its operations. Moreover, DOJ's historic inaction and the lawless Internet-environment that it engendered has given rise to copycat platforms, which likewise seek to profit from sexual exploitation. Many of these platforms still exist today and, in the vacuum created by Backpage's shutdown, are seeking to fill the void. Thus, before a clear heir to the Internet-based sexual exploitation market can emerge, we desire assurance that under Mr. Barr the U.S. Department of Justice will investigate and prosecute such entities posthaste.

Additionally, because sexual exploiters—be they the mega-pimps behind Internet-based platforms, sex traffickers, or sex buyers—adapt to law enforcement pressure, it is important for law enforcement agencies to anticipate shifts in criminal behavior and to respond adroitly. For this reason, should he be confirmed, we request confirmation that Mr. Barr will take steps within the Criminal Division aimed at anticipating and following technologies used by sexual exploiters. For instance, we are especially concerned that sexual exploiters are increasingly using social media platforms such as Instagram, Snapchat, and Facebook to recruit and purchase minors for commercial sex. DOJ's future law enforcement measures must include proactive measures aimed at increased understanding of the modalities of sexual exploitation, as well as collaboration with social media companies to eradicate criminal exploitation occurring on their platforms.

2. Vigorous enforcement of federal obscenity laws, 18 U.S.C. § 1460 to 18 U.S.C. § 1470

The government can curb the demand for child-on-child harmful sexual behavior, sexual violence, prostitution, and sex trafficking if the Attorney General enforces existing federal laws which prohibit distribution of hardcore pornography on the Internet, on cable/satellite TV, on hotel/motel TV, in retail shops, and by common carrier.

Converging evidence from peer-reviewed research finds that pornography consumption is associated with a broad array of adverse impacts, including:

- Less egalitarian and more hostile sexist attitudes of men towards women¹
- Increased acceptance of rape myths²
- Male sexual aggression against women (effects being more pronounced among men who are predisposed to sexual aggression, who consume pornography with higher frequency, or who use violent pornography)³
- Physical and verbal aggression among both male and female pornography consumers⁴
- Greater likelihood of adolescents sexually harassing a peer⁵
- Adolescents perpetrating coercive and forced sexual behavior (i.e. child-on-child harmful sexual behavior)⁶
- Physical and sexual victimization of adolescents⁷
- Illegal purchase of sex⁸

In an age in which law enforcement resources are particularly strained, strategies that yield far-reaching results are imperative. As an approach that has the potential to yield ripple effects across the full web of sexual abuse and exploitation issues, strong enforcement of obscenity laws holds great promise. Yet, for nearly a decade, the U.S. Department of Justice has completely abdicated its responsibility for enforcement of this body of law and the results have been devastating.

DOJ's willful failure to perform its duty has allowed a toxic torrent of hardcore material to thrive on cable television, in hotel guest rooms, and the Internet, and permeate virtually every corner of public life—including schools. One popular pornography tube site reports that in 2016 users in the U.S. and around the world watched nearly 4.6 billion hours of pornography on its site alone.⁹ Importantly, the pornography on this “mainstream” site

features such as themes such as teens, incest, sexual assault, sex trafficking and slavery, suffocation, bondage, and cartoons of pornography derived from popular children's shows and movies such as *My Little Pony* and *Zootopia*.

This bleak picture grows even more disturbing in view of a study of university students which found that 93% of boys and 62% of girls had seen Internet pornography during adolescence. The researchers reported that the degree of exposure to paraphilic and deviant sexual activity before age 18 was of "particular concern."¹⁰ Another sample has shown that among college males, nearly 49% first encountered pornography before age 13.¹¹ Younger age at first viewing is associated with recent mental health problems, younger age at first sexual contact,¹² as well as the future use of pornography exhibiting the sexual abuse of animals and children.¹³

In view of these considerations, **DOJ's current practice of only prosecuting cases of child sexual abuse images (i.e. child pornography) is wholly inadequate.** We wholeheartedly applaud the efforts of DOJ's Child Exploitation and Obscenity Section (CEOS) to identify and prosecute those who create, trade, and profit from the sexual abuse images of children. We know that theirs is dark and soul-sucking task. We ask that under new leadership at DOJ their resources, financial and otherwise, will be substantially increased to help them shoulder the immense burden of their task. However, it is imperative that the prosecutorial efforts at DOJ be broadened to include adult obscenity.

As the Supreme Court held in *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), there are several "... governmental interests that justify a prohibition on obscenity." As the court stated: "In particular, we hold that there are legitimate state interests at stake in stemming the tide of commercialized obscenity, even if it is feasible to enforce effective safeguards against exposure to juveniles and to passersby ... These include the interest of the public in the quality of life and total community environment, the tone of commerce ... and, possibly, the public safety itself (57-58)."

Accordingly, we request affirmation of Mr. Barr's commitment to upholding *all* federal obscenity related statutes—including those pertaining to adult obscenity.

3. Implementation of policy and law enforcement efforts aimed at combating demand for commercial sex

For the past two decades, efforts to fight sex trafficking have typically addressed two sides of the triangle of activity that comprises sex trafficking—*supply* (i.e., victims) and *distribution* (i.e., sex traffickers).¹⁴ The third side of this triangle, *demand* (i.e., male buyers of people in the prostitution marketplace)¹⁵ has received considerably less attention, despite calls to address demand dating to the mid-2000s.¹⁶ The irony of this situation can scarcely be overstated, since demand for prostitution is the fulcrum on which all sex trafficking rests. Failure to combat sex buyer demand guarantees the survival of sex trafficking and future generations of victims.

In recognition of this fact, the Abolish Human Trafficking Act of 2017 (passed by Congress in December 2018), amended 34 U.S.C. 20711 (b). Among the law's provisions, the Attorney

General is directed to create a national strategy to prevent human trafficking and *reduce demand* for human trafficking victims. This law also directs the Attorney General to issue guidance to all offices and components of DOJ emphasizing the following:

- An individual who knowingly solicits or patronizes a commercial sex act from a person who was a minor (consistent with section 1591(c) of title 18, United States Code) or was subject to force, fraud, or coercion is guilty of an offense under chapter 77 of title 18, United States Code, and is a party to a severe form of trafficking in persons, as that term is defined in section 103(9) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9))
- Clarifying that commercial sexual exploitation is a form of gender-based violence.

Further, National Security Presidential Directive 22 (2003) instructs federal agencies to strengthen collective efforts to combat trafficking in persons by recognizing that activities such as prostitution, pimping, pandering, and maintaining brothels contribute to the phenomenon of trafficking in persons, and formalizes the U.S. government's opposition to prostitution and related activities as inherently harmful and dehumanizing.

Accordingly, we seek assurance that Mr. Barr will actively pursue efforts to combat demand for commercial sex and uphold NSPD-22 (e.g., promptly issuing the guidance directed by the Abolish Act; providing technical and financial support to state and local law enforcement efforts aimed at prosecuting commercial sex buyers; issuing internal guidance delineating that DOJ does not endorse "sex work" or full decriminalization of prostitution) and ensure that DOJ anti-trafficking funding directives support such initiatives.

Closing

If confirmed Mr. Barr will have great power and opportunity to set U.S. law enforcement priorities. As outlined above, the matters presented here represent deep areas of concern that if purposefully addressed will do much to foster freedom from sexual exploitation in the U.S. and beyond. With this end in mind, we ask that you thoroughly question Mr. Barr on these topic areas and that your support of his nomination to the position of Attorney General be given only in response to Mr. Barr's pledge to vigorously address these matters.

Respectfully,



Patrick A. Trueman
 President & Chief Executive Officer
 Former Chief, Child Exploitation and Obscenity Section
 Criminal Division, U.S. Department of Justice

- ¹ Gert Martin Hald, Neil N. Malamuth, and Theis Lange, "Pornography and Sexist Attitudes among Heterosexuals," *Journal of Communication* 63 (2013): 638–660, doi: 10.1111/jcom.12037. Pertaining to "less progressive gender roles," see also Jane D. Brown and Kelly L. L'Engle, "X-rated: Sexual Attitudes and Behaviors Associated with U.S. Early Adolescents' Exposure to Sexually Explicit Media," *Communication Research* 36 (2009): 129–151, doi: 10.1177/0093650208326465.
- ² Elizabeth Oddone Paolucci, Mark Genuis, and Claudio Violato, "A Meta-Analysis of the Published Research on the Effects of Pornography," *The Changing Family and Child Development*, ed. Claudio Violato, Elizabeth Paolucci, and Mark Genuis (Aldershot, England: Ashgate Publishing, 2000), 48–59; Gert Martin Hald, Neil M. Malamuth, and Carlin Yuen, "Pornography and Attitudes Supporting Violence Against Women: Revisiting the Relationship in Nonexperimental Studies," *Aggressive Behavior* 36 (2010): 14–20; John D. Foubert, Matthew W. Brosi, and R. Sean Bannon, "Effects of Fraternity Men's Pornography Use on Bystander Intervention, Rape Myth Acceptance and Behavioral Intent to Commit Sexual Assault," *Sexual Addiction & Compulsivity: The Journal of Treatment & Prevention* 18, no. 4 (2011): 212–231, doi: 10.1177/15248380117717745.
- ³ Kara Anne E. Rodenhizer and Katie M. Edward, "The Impacts of Sexual Media Exposure on Adolescent and Emerging Adults' Dating and Sexual Violence Attitudes and Behaviors: A Critical Review of the Literature," *Trauma, Violence, & Abuse* (2017): 1–14, doi: 10.1177/1524838017717745; Neil Malamuth, Tamara Addison, and Mary Koss, "Pornography and Sexual Aggression: Are There Reliable Effects and Can We Understand Them?" *Annual Review of Sex Research* 11 (2000): 26–91; Neil M. Malamuth, Gert Martin Hald, and Mary Koss, "Pornography, Individual Differences in Risk and Men's Acceptance of Violence against Women in a Representative Sample," *Sex Roles* 66 (2012): 427–439, doi: 10.1007/311199-011-0082-6;
- ⁴ Paul J. Wright, Robert S. Tokunaga, and Ashley Kraus, "A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies," *Journal of Communication* 66, no. 1 (2016): 183–205.
- ⁵ Silvia Bonino, Silvia Ciairano, Emanuela Rabagliette, and Elena Cattelino, "Use of Pornography and Self-Reported Engagement in Sexual Violence among Adolescents," *European Journal of Developmental Psychology* 3, no. 3 (2006): 265–288; Carl Göran Svedin, Ingrid Åkerman, and Gisela Priebe, "Frequent Users of Pornography. A Population Based Epidemiological Study of Swedish Male Adolescents," *Journal of Adolescence* 34, no. 4 (2011): 779–788; Michele L. Ybarra and Richard E. Thompson, "Predicting the Emergence of Sexual Violence in Adolescence," *Prevention Science* (2017), doi: 10.1007/s11121-017-0810-4. ; Jochen Peter and Patti M. Valkenburg, "Adolescents and Pornography: A Review of 20 Years of Research," *The Journal of Sex Research* (2016): 1–23, doi: 10.1080/00224499.2016.1143441; Jane D. Brown and Kelly L. L'Engle, *ibid.*
- ⁶ Michael C. Seto and Martin L. Lalumiere, "What is So Special about Male Adolescent Sexual Offending? A Review and Test of Explanations through Meta-Analysis," *Psychological Bulletin* 136, no. 4 (2010): 526–575; Michele L. Ybarra and Kimberly Mitchell, "Prevalence Rates of Male and Female Sexual Violence Perpetrators in a National Sample of Adolescents," *JAMA Pediatrics* 167 no. 12 (2013): 1125–1134, doi:10.1001/jamapediatrics.2013.2629; Ybarra et al., "X-Rated Material and Perpetration of Sexually Aggressive Behavior among Children and Adolescents: Is There a Link?" *Aggressive Behavior* 37, (2011): 1–18.
- ⁷ Michele L. Ybarra and Kimberly Mitchell, "Exposure to Internet Pornography among Children and Adolescents: A National Survey," *CyberPsychology & Behavior* 8, no. 5 (2005): 473–486 (physical abuse included being hit, beaten, kicked, physically abused by any grown-up taking care of them, and sexual abuse); Peter and Valkenburg, *ibid.*
- ⁸ Paul J. Wright and Ashley K. Randall, "Internet Pornography Exposure and Risky Sexual Behavior among Adult Males in the United States," *Computers in Human Behavior* 28 (2012): 1410–1416. Carl Göran Svedin, Ingrid Åkerman, and Gisela Priebe, "Frequent Users of Pornography. A Population Based Epidemiological Study of Swedish Male Adolescents," *Journal of Adolescence* 34, no. 4 (2011): 779–788; Steven Stack, Ira Wasserman, and Roger Kern, "Adult Social Bonds and Use of Internet Pornography," *Social Science Quarterly* 85 (2004): 75–88; Martin A. Monto and Nick McRee, "A Comparison of the Male Customers of Female Street Prostitutes With National Samples of Men," *International Journal of Offender Therapy and Comparative Criminology* 49, no. 5 (2005): 505–529; Martin A. Monto, "Summary Report for National Institute of Justice Grant #97-IJ-CX-0033 'Focusing on the Clients of Street Prostitutes: A Creative Approach to Reducing Violence Against Women'" (October 30, 1999). See also: Rachel Durchslag and Samir Goswami, *Deconstructing the Demand for Prostitution: Preliminary Insights from Interviews with Chicago Men Who Purchase Sex*, (Chicago, IL: Chicago Alliance Against Sexual Exploitation, 2008 and Farley et al., "Comparing Sex Buyers with Men Who Don't Buy Sex: 'You Can Have a Good Time with the Servitude' vs. 'You're Supporting a System of

Degradation.” Paper presented at Psychologists for Social Responsibility Annual Meeting July 15, 2011, Boston, MA. San Francisco: Prostitution Research & Education (2011).

⁹ Pornhub, “Pornhub’s 2015 Year in Review,” (2015).

¹⁰ Chiara Sabina, Janis Wolak, and David Finkelhor, “The Nature and Dynamics of Internet Pornography Exposure for Youth,” *CyberPsychology & Behavior* 11, no. 6 (2008): 691–693.

¹¹ Chyng Sun, Ana Bridges, Jennifer Johnson, and Matt Ezzell, “Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations,” *Archives of Sexual Behavior* 45, no. 4 (May, 2016): 983–94.

¹² Lim, et al., *ibid.*

¹³ Kathryn C. Seigfried-Spellar and Marcus K. Rogers, “Does Deviant Pornography Use Follow a Guttman-like Progression,” *Computers in Human Behavior* 29 (2013): 1997–2003.

¹⁴ Laura J. Lederer, “Addressing Demand: Why and How Policymakers Should Utilize Law and Law Enforcement to Target Customers of Commercial Sexual Exploitation,” *Regent University Law Review* 23, no. 2 (2010): 297–310.

¹⁵ *Ibid.*

¹⁶ For instance, the Trafficking Victims Protection Act of 2005 contained provisions addressing demand for commercial sex acts in the U.S. and in connection to international sex tourism, as well as other demand-related provisions. Additionally, a few NGOs have emphasized combating demand (e.g. Global Centurion, Demand Abolition, the Coalition Against Trafficking in Women), but this is in stark contrast to the hundreds of groups that have emerged which are dedicated to providing victim services. See also Donna M. Hughes, “The Demand: Where Sex Trafficking Begins,” address at “A Call to Action: Joining the Fight against Trafficking in Persons, U.S. Embassy and the Holy See, Pontifical Gregorian University,” Rome, Italy (June 17, 2004).



Beatrice Kahn
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January 10, 2019

The Honorable Lindsey Graham
Committee on the Judiciary
United States Senate

The Honorable Dianne Feinstein
Senate Committee on the Judiciary
United States Senate

Dear Chairman Graham and Ranking Member Feinstein:

As CEO of the National Council of Jewish Women (NCJW), and on behalf of its 90,000 members and supporters, we call upon members of this committee and the entire United States Senate to reject the nomination of William Barr for the role of United States Attorney General. We strongly believe that former Attorney General Barr does not possess the ability to fairly oversee the Department of Justice and meet its obligations to protect constitutional rights and promote justice without prejudice.

As advocates inspired by Jewish values and guided by our faith, we understand the sanctity of religious freedom guaranteed by the First Amendment to the US Constitution. We know that religious freedom is meant to be a shield, not a sword, and that public servants must place the US Constitution above personal religious beliefs in order to preserve religious liberty for all.

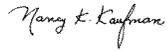
Barr, on the other hand, has used religious freedom as a not-so-subtle guise for discrimination. He praisedⁱ the Department of Justice's 2017 directive "to all executive departments containing guidance for protecting religious expression."ⁱⁱ The directive essentially gave federal government workers carte blanche to use their religious beliefs to discriminate against and deny service to other Americans. Barr has similarly advocated for religion-based "moral instruction" in public schools,ⁱⁱⁱ and on at least one occasion called for the imposition of "G-d's law" in America.^{iv} Barr described the Supreme Court's decision in *Lee v. Weisman*^v as a "disappointing setback" that would "press religion to the margins."^{vi} In reality, *Lee* – which established that clergy-led prayer at a public school graduation is a violation of the Establishment Clause – has actually served as the basis for many cases that safeguard religious freedom.^{vii}

By enshrining – or attempting to enshrine – any one religion, the government unconstitutionally infringes on the free exercise of religion. All nominees subject to Senate confirmation should follow the path of the late Justice William Brennan, Jr., who vowed to this Committee over fifty years ago that his faith would not interfere with upholding the laws of this nation. He said, "what shall control me is the oath that I took to support the Constitution and the laws of the United States...it is that oath and that alone which governs."^{viii} Unfortunately, Barr has not demonstrated that he would prioritize the hard-won constitutional protections of the First Amendment over his own personal beliefs while serving the American public.

In addition to his harmful views on religious liberty, Barr's hostile record towards immigration, criminal justice, LGBTQ equality, and reproductive rights disqualifies him to be our nation's chief legal officer. We cannot permit the personal ideology of our next United States Attorney General to prevent the Department of Justice from both fairly enforcing our laws and protecting our constitutional civil rights.

The Attorney General is one of the most powerful positions in the federal government; Barr's record demonstrates that he is unfit to serve in such capacity. He is a threat to our civil rights — especially for religious minorities, women, immigrants, refugees, LGBTQ individuals, and other marginalized communities. I urge you vote against Barr's confirmation as US Attorney General.

Sincerely,



Nancy K. Kaufman, CEO
National Council of Jewish Women

ⁱ "We are former attorneys general. We salute Jeff Sessions." *Washington Post*, November 7, 2018, <https://wapo.st/2FcNGu9>.

ⁱⁱ "Federal Law Protections for Religious Liberty;" Memorandum for All Executive Departments and Agencies, October 6, 2017, <https://www.justice.gov/opa/press-release/file/1001891/download>.

ⁱⁱⁱ "Remarks of Attorney General William P. Barr to the Governor's Conference on Juvenile Crime, Drugs and Gangs, April 1992, available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/04-01-1992.pdf>.

^{iv} "American Society Needs 'G-ds Law,' Says Attorney General," *CHURCH & STATE* 257 (Dec. 1992).
^v 505 U.S. 577 (1992).

^{vi} William P. Barr, *Legal Issues in a New Political Order*, 36 *THE CATHOLIC LAWYER* 1, 9 (1995).

^{vii} See, e.g., *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).

^{viii} *Nomination of William Joseph Brennan, Jr.: Hearings Before the Committee on the Judiciary, United States Senate, 85th Cong., 1st Sess.* 34 (1957).



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Lily Eskelsen Garcia
President

Rebecca S. Pringle
Vice President

Princess R. Moss
Secretary-Treasurer

John C. Stocks
Executive Director

January 11, 2019

Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our three million members and the 50 million students they serve, we strongly urge you to oppose confirming William Barr as Attorney General of the United States because he cannot be trusted to protect our students' civil rights or take action against the unprecedented threats to the rule of law posed by the Trump administration. Votes on this issue may be included in NEA's report card for the 116th Congress.

With the help of former Attorney General Jeff Sessions and Education Secretary Betsy DeVos, the Trump administration has sought to deprive our students of their civil rights by:

- Stripping federal protections for LGBTQ students, and transgender students in particular
- Using gun violence as an excuse to authorize school discipline discrimination on the basis of race
- Creating barriers to education with policies that terrify immigrant children and their families
- Proposing to gut protections for students who face sexual harassment and violence
- Spearheading a radical regulatory agenda, still ongoing, that makes policies and practices with a discriminatory effect legal — even though such policies and practices have been illegal since the Civil Rights Act of 1964

Mr. Barr would not stop or slow down this radical agenda; he would continue it. He praised stripping transgender students (and employees) of the statutory protections of federal anti-discrimination laws in an op-ed published in the Washington Post ("We Are Former Attorneys General. We Salute Jeff Sessions," Nov. 7, 2018). He supported guidance to federal agencies that is a blueprint for religion-based discrimination. Mr. Barr has also praised the administration's immigration policies, which include arresting students at their bus stops, preventing Dreamers from fully participating in their communities, and demonizing immigrants by claiming they constitute ongoing, violent threats. He characterized President Trump's original Muslim ban, strongly rejected by the courts, as "squarely within both the president's constitutional authority and his explicit statutory immigration powers" in an op-ed published in the Washington Post ("Trump Was Right to Fire Sally Yates," Feb. 1, 2017).

The attorney general's first obligation is to the Constitution and the rule of law — pillars of our democracy that are being tested as never before. Yet, in an unsolicited 19-page legal memorandum sent directly to Deputy Attorney General Rod Rosenstein and Assistant Attorney

General Steve Engel, Mr. Barr argued that Special Counsel Robert Mueller has no legal authority to interrogate the president about any alleged obstruction of justice — a stance at odds with the fundamental principle that no one is above the law.

Our students deserve an attorney general who protects them, not one who threatens, intimidates, and demonizes them and their families. Our nation deserves an attorney general who will be a defender of the rule of law. Mr. Barr fails both tests. We strongly urge you to oppose confirming him as Attorney General of the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Egan". The signature is written in a cursive, flowing style.

Marc Egan
Director of Government Relations
National Education Association



NATIONAL
FRATERNAL ORDER OF POLICE®

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

4 January 2019

The Honorable Lindsey O. Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne G. Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Feinstein,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for the nomination of William P. Barr to be the next Attorney General of the United States.

President Trump could not have selected a finer nominee to lead the U.S. Department of Justice. Not only has Mr. Barr served as U.S. Attorney General in the Administration of George H.W. Bush, he has a long history of public service and dedication to the rule of law. After clerking for a judge on the U.S. Court of Appeals for the District of Columbia and a short tenure in the Reagan White House, Mr. Barr joined the Bush (41) Administration as Assistant Attorney General for the Office of Legal Counsel in 1989. President Bush took note of his leadership, integrity and commitment to law enforcement and promoted him to Deputy Attorney General in 1990.

In 1991, Mr. Barr was named Acting Attorney General and successfully led the Federal law enforcement response to a hostage situation at the Talledega Federal prison. Nine hostages were taken by more than 100 Cuban inmates and, realizing they were in imminent danger, ordered the Hostage Rescue Team to assault the prison. The hostages were saved without any loss of life.

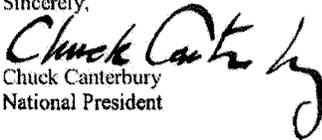
Following this incident, President Bush nominated him to be U.S. Attorney General. The Committee on the Judiciary reported his nomination unanimously and the Senate confirmed him as the 77th Attorney General on a voice vote. During his tenure as Attorney General, he was known for his anti-crime approach and his focus on violent crimes. The FOP shares his views and we are confident that Mr. Barr will, once again, be a stellar "top cop."

We believe the President has made an outstanding choice in Mr. William P. Barr to return to public service as the Attorney General of the United States. The FOP proudly offers our full, enthusiastic and unequivocal support for this nominee and we urge the Judiciary Committee to favorably report his nomination.

—BUILDING ON A PROUD TRADITION—

On behalf of the more than 345,000 members of the Fraternal Order of Police, thank you both for your continued leadership and for your consideration of our views on this critical nomination. If I can be of any additional help on this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,


Chuck Canterbury
National President



January 14, 2019

Chairman Lindsey Graham
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Dianne Feinstein
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Serious Concerns About the Nomination of William Barr to Serve as Attorney General of the United States

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Judiciary Committee,

On behalf of the National Juvenile Justice and Delinquency Prevention Coalition and the organizations listed below, we write to express our concerns with the nomination of William Barr to serve as Attorney General of the United States. The National Juvenile Justice and Delinquency Prevention Coalition (NJJJPC) is a collaborative array of more than two hundred national and state youth- and family- serving, social justice, law enforcement, corrections, and faith-based organizations, working to ensure healthy families, build strong communities and improve public safety by promoting fair and effective policies, practices, and programs for youth involved or at risk of becoming involved in the juvenile and criminal justice systems.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice (DOJ), the Attorney General is responsible for safeguarding our civil and constitutional rights, including those of children. That is a core and enduring mission of the Justice Department, and the nation needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality. The Attorney General must also operate with integrity and independence in service to the people, not the president.

For the past two years, we have seen a concerning pattern emerging from the Department of Justice, particularly when it comes to justice-involved youth. Recent announcements from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) will loosen compliance with the Juvenile Justice and Delinquency Prevention Act's (JJJPA) core requirements and relax oversight of compliance with the Act.¹ These changes, concerning under any circumstances, are

¹ Caren Harp, OJJDP is Simplifying Title II Work to Focus on DMC Reduction, Not Process, JUVENILE JUSTICE INFO. EXCHANGE (June 29, 2018), <https://jjiie.org/2018/06/29/ojjdp-is-simplifying-title-ii-work-to-focus-on-dmc-reduction-not-process/>; Press Release, Dept. of Justice, Office of Public Affairs, Attorney General Jeff Sessions Rescinds 24 Guidance Documents (July 3, 2018), available at <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-24-guidance-documents>.

particularly alarming in light of the recent JJDPa reauthorization bill that strengthens the statute's core protections, among other critical updates.² The Justice Department needs to be committed to its enforcement.

Under Attorney General Jeff Sessions, the DOJ Civil Rights Division's ability to enforce civil rights statutes has also been severely hampered by the decision to limit the scope of consent decrees, which are a key legal instrument of civil rights enforcement.³ Perhaps one of the most egregious examples came in 2018 when DOJ announced it would be ending its agreement to monitor the Juvenile Court of Memphis and Shelby County and the Shelby County Detention Center.⁴ In 2012, a federal investigation revealed that the Juvenile Court of Memphis and Shelby County (JCMSC) fails "to provide constitutionally required due process to children of all races," that they consistently "violate the substantive due process rights of detained youth by not providing them with reasonably safe conditions of confinement," and that they engage "in conduct that violates the constitutional guarantee of Equal Protection and federal laws prohibiting racial discrimination."⁵ Despite the fact that the JCMSC had not met all of the requirements of the consent decree, and over the objection of several elected officials, including Shelby County Mayor Lee Harris, DOJ decided to end its monitoring.⁶ These actions hurt children, particularly youth of color, who are disproportionately exposed to and harmed by the justice system for normal adolescent behavior.

The Justice Department and the nation need an Attorney General who will make a dramatic course correction and begin to enforce our federal civil rights laws with vigor and independence. William Barr is unlikely to do so. Mr. Barr has a troubling record on a number of civil rights issues, including juvenile justice. In a 1992 speech to the Governor's Conference on Juvenile Crime, Drugs and Gangs, Mr. Barr asserted that the punishments by juvenile courts are "too often light and ineffective," and that greater flexibility should be afforded to law enforcement to prosecute youth as adults.⁷ Since that time, there has been a dramatic and successful shift in how this country treats justice-involved youth. Research into adolescent brain development shows that youth are more likely than adults to be permanently traumatized by the harsh realities of the

² Press Release, Act 4 JJ Coalition, Congress Unanimously Passes Bipartisan Bill to Strengthen Federal Juvenile Justice Law (Dec. 13, 2018), available at <http://cfvj.org/news/cfvj-news-press-releases/item/congress-unanimously-passes-bipartisan-bill-to-strengthen-federal-juvenile-justice-law>.

³ Jeff Sessions, *Avoid Harmful Federal Intrusion*, USA TODAY (Apr. 17, 2017, 4:34 PM), <https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorials-debates/100579848/>; Memorandum from The Attorney General on Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Government Entities (Nov. 7, 2018), available at <https://www.justice.gov/opa/press-release/file/1109681/download>.

⁴ Katherine Burgess, *Department of Justice Ends Oversight of Shelby County Juvenile Court*, Commercial Appeal (Oct. 19, 2018, 10:14 AM), <https://www.commercialappeal.com/story/news/2018/10/19/departments-justice-closes-agreement-shelby-county-juvenile-court/1700088002/>.

⁵ Investigation of Shelby County Juvenile Court, U.S. Dept. of Justice, Civil Rights Division 1-2 (Apr. 26, 2012), available at https://www.justice.gov/sites/default/files/crt/legacy/2012/04/26/shelbycountyjuv_findingsrpt_4-26-12.pdf.

⁶ See Burgess, *supra* note 4 ("According to a county website, nearly half of the items under the equal protection category are in "partial compliance." Only 25 percent, or eight items in that category, were in "full compliance."").

⁷ Attorney General William Barr, Remarks to the Governor's Conference on Juvenile Crime, Drugs and Gangs 13, 19 (Apr. 1, 1992), available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/04-01-1992.pdf>.

adult system.⁸ Further, research has shown that youth are more likely to respond positively to rehabilitation available in the juvenile system.⁹ States have taken note of this research, and a majority of states have taken action to pass laws to reduce the number of youth prosecuted, tried, and incarcerated in the adult system. The JJDPa reauthorization also extends the jail removal core protection to youth charged as adults. Taking this approach, youth crime is at a 30-year low.¹⁰

Despite these facts, former Attorney General Sessions's actions were not in line with the latest research and data. Mr. Barr recently called Mr. Sessions "an outstanding attorney general" and offered praise for his policies, including the decision to rescind numerous pieces of guidance,¹¹ which is a telling indication that Mr. Barr would continue to chip away at the protections for our nation's most vulnerable populations.

Precisely because of the serious threats to our democracy posed by concerns about Mr. Barr's independence, we must be especially vigilant about the implications for his service as Attorney General on federal civil rights enforcement. Our nation's young people deserve better. They deserve an Attorney General who will promote racial equality, vigorously enforce our federal civil rights laws, and fight discriminatory barriers for the most vulnerable among us.

Sincerely,

Campaign for Youth Justice
 Children's Advocacy Institute
 Coalition for Juvenile Justice
 Justice Policy Institute
 NAACP
 National Crittenton
 National Juvenile Justice Network
 The W. Haywood Burns Institute

⁸ LET'S GET CHILDREN OUT OF ADULT COURTS, JAILS, AND PRISONS, CAMPAIGN FOR YOUTH JUSTICE (Feb. 12, 2018), available at http://www.campaignforyouthjustice.org/images/factsheets/BasicFacts_Final1.pdf.

⁹ *Id.*

¹⁰ John Gramlich, *5 Facts About Crime in the U.S.*, PEW RESEARCH CENTER (Jan. 3, 2019), <http://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/>.

¹¹ William P. Barr, Edwin Meese III & Michael B. Mukasey, *We are Former Attorneys General. We Salute Jeff Sessions*, WASH. POST (Nov. 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-815f-a55347f48762_story.html?utm_term=.e7779a769caf.



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January 14, 2019

Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Oppose the Confirmation of William Barr

Dear Chairman Grassley, Ranking Member Feinstein, and Members of the Committee:

The National LGBTQ Task Force Action Fund (Task Force) writes to oppose the nomination of William Barr to serve as Attorney General at the U.S. Department of Justice ("Justice Department" or "DOJ").

The National LGBTQ Task Force Action Fund is the oldest national lesbian, gay, bisexual, transgender, and queer ("LGBTQ") advocacy group. As a progressive social justice organization, the Task Force works to achieve full freedom, justice, and equity for LGBTQ people and our families in the areas of education, employment, healthcare, housing, criminal justice, immigration, and more.

The Department of Justice is tasked with ensuring fair and impartial administration of justice, but Barr's career has demonstrated that he will not fulfill his obligation to protect the civil rights of marginalized communities, including LGBTQ people, people of color, and people living in poverty.

Throughout his career, Barr has shown animus toward LGBTQ people and toward sexual orientation and gender identity nondiscrimination protections. While serving as Attorney General, Barr expressed disapproval of housing protections for unmarried couples, including unmarried same-sex couples. Barr also asserted that laws prohibiting discrimination based on sexual orientation would lead to attempts to "override" matters of conscience. More recently, Barr praised the DOJ's participation in cases seeking to create a legal right for business owners to have a religious license to discriminate against LGBTQ people. He also praised former Attorney General Sessions' reversals of gender identity nondiscrimination policies, which have had devastating impacts on transgender, nonbinary, and gender nonconforming people.

Enforcement of civil rights protections is critical to ensuring that LGBTQ people—especially people of color and transgender people—get and stay hired, secure housing, and can use spaces and services open to the public without

be you.



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discrimination. If confirmed, Barr's anti-LGBTQ hostility and preference for religious exemptions could make these protections meaningless.

Moreover, Barr's record indicates that he will fail to fully enforce healthcare laws vital to LGBTQ people, including the Affordable Care Act. Barr's treatment of people living with HIV as Attorney General shows that he will use federal policy to promote hostility and punishment targeting disfavored groups, rather than for advancing healthcare equity. Barr has also repeatedly expressed hostility toward reproductive rights and the Affordable Care Act. If confirmed, Barr will have a devastating health impact on LGBTQ people, people living with HIV, and people seeking reproductive health services.

Barr's history also demonstrates hostility toward immigrants and asylum laws. There are an estimated one million adult LGBTQ immigrants in the U.S., and LGBTQ people facing persecution, discrimination, or violence in their home countries may wish to seek asylum here. The administration has already made it increasingly difficult for immigrants to access vital services and for LGBTQ and others to seek and be granted asylum. Continued rollback of asylum and other immigration protections will continue to harm to LGBTQ immigrants.

Finally, Barr's record demonstrates that his oversight of the criminal justice system will disproportionately harm people of color. As Attorney General, Barr supported policies of the "War on Drugs" and mass incarceration that have had devastating and unfair consequences for communities of color. More recently, Barr opposed sentencing reform and diminished the experiences of Black communities with police brutality. If confirmed, Barr's positions will be especially detrimental to LGBTQ people of color and low-income LGBTQ people, who experience excessive police contact and arrests, and discrimination and abuse by law enforcement.

The Attorney General must ensure that the justice system functions in a nondiscriminatory manner and serves the people, rather than harming them. For these reasons, the Task Force asks that you oppose the confirmation of William Barr to be the Attorney General of the United States. If you have any questions, please contact [REDACTED].

Sincerely,

National LGBTQ Task Force Action Fund





**NATIONAL NARCOTIC OFFICERS' ASSOCIATIONS'
COALITION**

455 Massachusetts Avenue NW, Box 112, Washington, DC 20001

www.nnoac.com

January 11, 2019

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein,

I am writing on behalf of the National Narcotic Officers' Associations' Coalition (NNOAC), representing more than 50,000 law enforcement officers across America, in support of President Trump's nomination of William Barr to be Attorney General.

Mr. Barr is very well qualified to lead the Department of Justice and is committed to the law enforcement mission of that department. In particular, agencies like the DEA, FBI, ATF, and Marshals Service play a critical role in working alongside NNOAC's members around the country on a daily basis in support of drug law enforcement. The Office of Justice Programs (OJP) and Community Oriented Policing Services (COPS) Office are essential partners in providing grant funding like the Byrne Justice Assistance Grant (JAG) program, anti-meth and anti-heroin task force funding support, and support for the Regional Information Sharing Systems (RISS) program.

More than 70,000 Americans died last year as a result of drug overdoses. Those of us doing the difficult job of investigating drug distribution at the street level answer calls every day from friends, parents, and neighbors desperate to keep drugs away from their loved ones. Mr. Barr served as Attorney General in the early 1990s when drug overdoses and drug violence spiked. We recall that he was a good partner to state and local law enforcement officers, agents, and deputies on the front lines trying to save peoples' lives and address the threats from transnational organized crime groups.

We are confident that William Barr will be a good partner to the thousands of drug law enforcement officers working to keep innocent Americans safe. Because we know his strong record, we believe that Mr. Barr will make an excellent Attorney General and encourage his confirmation.

Thank you for your consideration.

Respectfully,

Bob Bushman
President
National Narcotic Officers' Associations' Coalition



**National
Urban League**

*Empowering Communities.
Changing Lives.*

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January 10, 2019

Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham, and Ranking Member Feinstein:

As President and CEO of the National Urban League, and on behalf of its 90 affiliates in 36 states and the District of Columbia, we call upon members of this committee and the entire Senate to reject the nomination of William Barr as the next Attorney General of the United States.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice, the Attorney General is responsible for safeguarding our civil and constitutional rights. That is a core and enduring mission of the Justice Department. Our nation desperately needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality. The Attorney General must also operate with integrity and independence in service to the people, not the president.

For the past two years, the Justice Department has been led by an Attorney General intent on restricting civil and human rights at every turn. From rollbacks in voting rights enforcement to a return to failed and harmful criminal justice policies, Attorney General Jeff Sessions used his office to carry out the extreme, anti-civil rights agenda he had advanced for decades in the U.S. Senate. Under Jeff Sessions, we also witnessed extreme anti-immigrant policies and rollbacks in LGBTQ rights.

The Justice Department and the nation need an Attorney General who will make a dramatic course correction and begin to enforce our federal civil rights laws with vigor and independence. Based on his alarming record, William Barr will not do so. Indeed, in a recent op-ed, Mr. Barr called Jeff Sessions "an outstanding attorney general" and offered praise for his policies, many of which undermined civil rights. This is a telling indication that Mr. Barr would continue the deeply disturbing anti-civil rights policies and priorities of the past two years.

Mr. Barr has a troubling record on a number of civil rights issues. Of special concern to the National Urban League and the constituents that we serve is his record on criminal justice. African Americans face racial bias at every stage of the justice process. Therefore, federal civil rights enforcement in our justice system is critical to families and communities of color. Studies have found that Blacks are more likely to be stopped by the police, detained pretrial, charged with more serious crimes, and sentenced more harshly than white people.ⁱⁱ In 2018, after years of arduous work, we saw enactment of bipartisan legislation that finally begins to reform our criminal justice system through the *First Step Act*, as well as long overdue reauthorization of the *Juvenile Justice and Delinquency Prevention Act of 1974* through the *Juvenile Justice Reform Act of 2018*. William Barr's record on criminal justice places these achievements at serious risk and gives us no assurance that these hard-fought reforms would be implemented:

- As Attorney General under George H.W. Bush, Barr pursued harsh criminal justice policies that furthered mass incarceration and the "war on drugs". More recently and alarmingly, he has been a supporter of mandatory minimum sentences and latitude for abusive police officers.
- In 1992, Barr published a book by the Department of Justice called "The Case for More Incarceration," which argued that the country was "incarcerating too few criminals."ⁱⁱⁱ
- After serving as attorney general, Barr led efforts in Virginia to abolish parole in the state, build more prisons, and increase prison sentences by as much as 700 percent.^{iv}

The Attorney General is one of the most important positions in the entire Federal government. The Justice Department has the responsibility to vigorously enforce some of our nation's most critical laws; to protect the rights and liberties of all Americans; and to serve as an essential independent check on the excesses of an Administration. The evidence is overwhelmingly clear that William Barr is unfit to serve as chief enforcer of our civil rights laws. We therefore strongly urge the Senate Judiciary Committee and the entire United States Senate to reject the nomination of William Barr as our next Attorney General.

Respectfully,



Marc H. Morial
President and CEO

Cc: Members of the Senate Judiciary Committee

ⁱSee, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f51-a55347f48762_story.html?utm_term=.6996b10fe367.

ⁱⁱ*An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*. By Elizabeth Hinton, Assistant Professor, Department of History and Department of African and African American Studies, Harvard University, LeShae Henderson, Special Assistant, Research, Vera Institute of Justice, and Cindy Reed, Senior Editor, Vera Institute of Justice, May 2018, Accessed at https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf

ⁱⁱⁱ See, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>

^{iv}"William Barr Is Out of Step on Criminal Justice Reform, Trump's nominee for attorney general would continue Jeff Sessions's hardline approach, his record suggests," by Tim Lau, Brennan Center for Justice, December 7, 2018.



January 22, 2019

VIA EMAIL

The Honorable Lindsey Graham
 Chair
 Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, D.C., 20510

Senator Dianne Feinstein
 Ranking Member
 Senate Committee on the Judiciary
 152 Dirksen Senate Office Building
 Washington, D.C., 20510

Re: *Nomination of William Barr to be Attorney General of the United States*

Dear Senators Graham and Feinstein:

On behalf of the National Women's Law Center (the "Center"), an organization that has advocated on behalf of women and girls for forty-five years, we write to express concerns about the confirmation of William Barr as Attorney General of the United States.

As the nation's chief law enforcement official, the Attorney General is responsible for enforcing federal laws, including laws of the utmost importance to women, such as Title VII, Title IX, the Freedom of Access to Clinic Entrances Act (FACE), the Violence Against Women Act (VAWA), as well as core constitutional protections, including the Equal Protection Clause and the right to privacy. Consequently, the Attorney General has a profound impact on the legal rights and very futures of women across this country.

Mr. Barr, during his prior tenure at the Department of Justice (DOJ) and since leaving his role, has shown his hostility to abortion access, health care, LGBTQ rights, immigrant rights, and civil rights. This record raises serious concerns that under his leadership, enforcement of key legal protections by DOJ would be ignored at best, but more likely, challenged and undermined.

At his 1991 Attorney General confirmation hearing, Mr. Barr explicitly said, "I do not believe the right to privacy extends to abortion" and stated that "*Roe v. Wade* was wrongly decided and should be overruled."¹ When the Supreme Court was considering the landmark case *Planned Parenthood v. Casey*, DOJ submitted an *amicus* brief echoing the beliefs Mr. Barr stated during his hearing.² The brief argued that "*Roe v. Wade* was wrongly decided and should be overruled." It also argued that "the State's interest in protecting fetal life throughout pregnancy, as a general matter, outweighs a woman's liberty interest in an abortion."³ After the decision, in which the Supreme Court rejected DOJ's arguments and reaffirmed a woman's constitutional right to abortion, Mr. Barr stated that the decision was "disappointing" and "I think that *Roe v. Wade* will ultimately be overturned. I think it'll fall on its own

¹ *Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr*, C-SPAN, Nov. 13, 1991, <https://www.c-span.org/video/?22675-1/barr-confirmation-hearing-day-2&start=1717>

² Brief for the United States as Amicus Curiae Supporting Respondents, *Planned Parenthood of Southeastern Pennsylvania et al. v. Casey*, 505 U.S. 833 (1992).

³ *Id.* at 8.

weight. It does not have any constitutional underpinnings.”⁴ Immediately after the *Casey* decision, when Members of Congress attempted to codify the legal protections of *Roe*, Mr. Barr wrote several letters opposing the proposed legislation, the Freedom of Choice Act (FOCA). In one of these letters, he made the false and misleading claim that FOCA would impose “an unprecedented regime of abortion on demand.”⁵ Recently, during his current confirmation hearing, Mr. Barr did not disavow his prior statements on *Roe* and he refused to say that, if confirmed as Attorney General, DOJ would defend *Roe*. Given his record, prior statements, and refusal to affirm *Roe*, we are deeply concerned that, if confirmed, Mr. Barr would not respect *Roe* and its progeny, and instead would use his position to undermine the long-standing legal precedent that protects a woman’s right to abortion.

Mr. Barr’s actions as a private citizen demonstrate his willingness to undermine the Affordable Care Act, including its provision requiring insurance plans to cover contraception. Mr. Barr joined *amicus* briefs in two cases in 2011 arguing that the ACA must be invalidated in its entirety.⁶ In 2016, Mr. Barr joined an *amicus* brief to the U.S. Supreme Court in *Zubik v. Burwell*, arguing in support of employers who were challenging the ACA’s contraceptive coverage requirement and the “accommodation” that allowed them to avoid compliance with it.⁷ DOJ is already taking the unprecedented steps of refusing to defend the ACA and the contraceptive coverage requirement in courts. During the hearing, Mr. Barr refused to pledge that DOJ would reverse that position and defend the ACA. There is therefore every indication Mr. Barr would continue DOJ’s practice of undermining protections that have been critical to the health and economic security of women in this country.

We are also concerned about comments Mr. Barr made at his hearing about Title IX rules that protect survivors of sexual assault. He claimed that the Title IX rules “essentially did away with due process” for those accused of assault, but did not recognize the existing barriers to reporting faced by survivors. His viewpoint is a dangerous one since the Trump Administration is currently proposing new rules to limit Title IX protections in the context of sexual harassment, including sexual assault. If confirmed, Mr. Barr would be in a position to further undermine these Title IX protections through court cases designed to limit schools’ responsibility for addressing sexual harassment.

Mr. Barr also has a troubling record and views around immigration. During his previous term as Attorney General, Mr. Barr oversaw the detention in Guantanamo Bay of hundreds of HIV-positive Haitian refugees as part of the Bush Administration’s ban on HIV-positive people from entering the United States. Although the HIV ban ultimately was upheld by the Supreme Court, the Clinton administration

⁴ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992)

⁵ Sharon LaFraniere, *Barr Attacks Abortion-Rights Bill; Curb on State Restrictions Goes Beyond Roe*, *Attorney General Says*, THE WASHINGTON POST, Mar. 4, 1992, <https://www.washingtonpost.com/archive/politics/1992/03/04/barr-attacks-abortion-rights-bill/2d29aae7-ad69-43c5-b1cf-4c5018139cef/>

⁶ Brief of Former U.S. Department of Justice Officials as Amici Curiae in Support of Respondents (Minimum Coverage Provision), *Fla. ex rel. Atty. Gen. v. U.S. Dep’t of Health & Human Servs.*, 648 F.3d 1235 (11th Cir. 2011), *aff’d in part, rev’d in part sub nom. Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)); Brief of Amici Curiae Former United States Attorneys General William Barr, Edwin Meese, III, and Dick Thornburgh, in Support of Appellees, *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253 (4th Cir. 2011).

⁷ Brief of Amicus Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) <http://www.scotusblog.com/wp-content/uploads/2016/01/Former-Justice-Department-Officials-LSP-Amicus.pdf>

later recognized that the ban was cruel and abandoned its enforcement.⁸ The HIV ban was used by the current Administration as a model for the Muslim ban. Mr. Barr, when questioned about whether he would implement this policy again at his current confirmation hearing, did not outright disavow the HIV ban, but instead said it would depend on the circumstances and that “it was right under the law.” This answer suggests that Mr. Barr would be supportive of the Administration’s hardline immigration policies. Additionally, his other answers to immigration questions at this hearing are equally troubling. For example, he confirmed his support for building a wall. He also perpetuated the myth of the criminal alien: “I think a lot of people are under the impression that sanctuary cities are there to protect the illegal aliens who are quietly living as productive members of society and paying their taxes... it isn’t. It is preventing the federal government from taking custody of criminal aliens.”

Mr. Barr has been vocal in supporting the harmful and legally suspect actions of the Trump Administration and DOJ under then-Attorney General Jeff Sessions. He defended the legality of Trump’s discriminatory Muslim Ban and Trump’s decision to fire then-Acting Attorney General Sally Yates who directed DOJ not to follow the ban.⁹ He lauded DOJ’s defense of employers who refused to provide contraceptive coverage to their employees.¹⁰ Mr. Barr also endorsed Session’s decision to revoke the Obama era directive that interpreted sex discrimination protections under the Civil Rights Act to include protection against discrimination on the basis of gender identity.¹¹ And when he was given the opportunity at his confirmation hearing to affirm employment discrimination protections for LGBTQ individuals, Mr. Barr instead said that he does not believe that Title VII should be interpreted to protect LGBTQ workers from discrimination based on their sexual orientation or gender identity.

Mr. Barr has hurt progress for women and girls in his prior role as Attorney General and there is every reason to believe that if he were to resume the role, he would again use the power of the office to push forward harmful legal theories and upend longstanding legal rights and protections. There is no cabinet position more important to the legal rights of women than that of the Attorney General.

For all the foregoing reasons, the National Women’s Law Center is seriously concerned about the confirmation of William Barr to be Attorney General of the United States. Please feel free to contact me, or Theresa Lau, Counsel at the Center, at (202) 588-5180 should you have any questions.

⁸ David Lauter and Marlene Cmons, “Clinton to Drop Travel Ban on HIV Patients,” LA TIMES, Feb. 5, 1993, http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house; Kate Smith, “A Stain on U.S. History,” CBS NEWS Dec. 10, 2018, <https://www.cbsnews.com/news/william-barr-attorney-general-nominee-asylum-seekers-haiti-hiv-positive-patients-guantanamo-bay-2018-12-10>

⁹ William Barr, “Former attorney general: Trump was right to fire Sally Yates,” WASHINGTON POST, Feb. 1, 2017, https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html?utm_term=.ce483dc9ebad

¹⁰ William P. Barr, Edwin Meese III, and Michael Mukasey, “We are former attorneys general. We salute Jeff Sessions,” WASHINGTON POST, Nov 7, 2018, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.194d1e6a7c88

¹¹ *Id.*

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Sincerely,

A handwritten signature in black ink that reads "Fatima Goss Graves". The signature is written in a cursive style with a large initial "F".

Fatima Goss Graves
President and CEO
National Women's Law Center

cc: Judiciary Committee

Senator Lindsey Graham, Chair
Senator Dianne Feinstein, Ranking Member
United States Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of William P. Barr for United States Attorney General

Dear Chairman Graham and Ranking Member Feinstein,

The undersigned nonpartisan organizations and individuals, comprised of taxpayer, scientific, labor, civil liberties, and law enforcement organizations dedicated to strengthening protections for whistleblowers in private and public sector, are deeply concerned with the recent nomination of William Barr for U.S. Attorney General based on his radical positions against legal protections for whistleblowers. We call on Congress to reject the confirmation of Mr. Barr's nomination based on his troubling position against the whistleblower provision of the False Claims Act, the nation's premier tool in combating government fraud.

Mr. Barr has demonstrated a deeply antagonistic stance towards whistleblowers. In a public transcribed interview given as part of the Presidential Oral History of the George H.W. Bush Presidency, General Barr referred to the *qui tam* provisions of the False Claims Act as an "abomination" that he wanted to "attack" and he cited a "Mexican standoff" with the then Solicitor General who supported the provisions. As you are aware, the *qui tam* provisions allow the government to leverage enforcement capabilities by empowering private individuals -- who meet the law's rigorous standing and pleading requirements -- to bring suit in the name of the government. Mr. Barr specifically called the law's highly successful *qui tam* whistleblower provision "an abomination."

A link to that interview is as follows: <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>

General Barr's remarks came in response to a question posed by UVA Law Professor, and former DOJ Assistant Attorney General (1977-1979), Dan Meador:

Meador

Within the Justice Department, were there any significant disagreements, say, between the Solicitor General and the Attorney General—either you or Thornburgh—about a position to be taken, not necessarily involving the White House, but internally within the Department?

Barr

Yes, there were significant disagreements sometimes between the SG's [Solicitor General] office and my office on a position. One of the big ones was the *qui tams* statute, which is basically a bounty hunter statute that lets private citizens sue in the name of the United States and get a bounty. I felt then, and feel now, that is an abomination and a violation of the appointments clause under the due powers of the President as well as the standing issue of the Supreme Court.

So I wanted to attack the *qui tam* statute, and the SG's office wanted to defend it. That was a big dispute.

Meador

How did it come out?

Barr

Mexican standoff, we didn't file at all. [laughter]

It appears that Mr. Barr's beliefs were long-standing and not a simple misunderstanding in the interview, as evidenced by memorandum he wrote during his tenure as Assistant Attorney General that argued the same erroneous position on the False Claims Act. Neither the memorandum itself nor the position taken in it was ever the official position of the Department of Justice; his views are an aberration that go against not only the Department of Justice but the courts and Congress as well.

Barr's hostility towards whistleblowers and his ignorance as to the effectiveness of the False Claims Act is especially shocking for a person who held the position of U.S. Attorney General. The legal position he advocated was unanimously repudiated by the U.S. Supreme Court in *Vermont Agency of Natural Resources v United States ex rel Stevens*, 529 US 765 (2000) in a decision written by former Justice Antonin Scalia. Disturbingly, Mr. Barr continued to oppose the *qui tam* provision after the Supreme Court's decision. Although Mr. Barr has testified in opposition to fraud in government contracting, he has never given testimony or written commitments directly contradicting his attacks on whistleblower protections.

In 1863, President Abraham Lincoln signed the original whistleblower provisions of the False Claims Act into law. President Lincoln understood that the United States is ruled by a government 'of the people, by the people and for the people.' In the years since, the False Claims Act, as well as other whistleblower protection and incentives laws, have proven to be extremely valuable for rooting out corruption, fraud, and other criminal activity. Yearly reports from the Department of Justice show that the False Claims Act has averaged approximately \$1.5 billion in recoveries each year as a result of litigation initiated by *qui tam* Plaintiffs and recovered nearly \$60 billion overall since the law was strengthened in 1986. In fiscal year 2018 alone they recovered over \$2.8 billion from False Claims Act cases.¹

Senator Grassley said, in reference to the whistleblower rewards program under the False Claims Act that he established through amendments, "It's only fair, because none of these proceeds would have been collected without the whistleblowers' help. The reward programs are not about what whistleblowers gain

¹ <https://www.justice.gov/opa/pr/justice-department-recovers-over-28-billion-false-claims-act-cases-fiscal-year-2018>

by blowing the whistle. They're about everything that whistleblowers stand to lose. The truth is that whistleblowers are so ostracized and reviled they suffer retaliation for speaking up."²

Insofar as Mr. Barr continues to stand by his opposition to the False Claims Act whistleblower provision, his statements are disqualifying for a nominee to the position of U.S. Attorney General and he should not be confirmed.

Thank you for your time and consideration.

Sincerely,

ACORN 8
Center for Media and Democracy
Citizens for Health
Defending Rights & Dissent
Dr. Sandra G. Nunn
FAA Whistleblower Alliance
Government Accountability Project
Government Information Watch
Katz, Marshall & Banks
Martin Edwin Andersen, Former National Defense
University Professor
National Immigration Project of the NLG
National Security Counselors
National Whistleblower Center
Project On Government Oversight
Public Citizen
The Multiracial Activist
Whistleblower Summit for Civil & Human Rights
Whistleblower Support Fund
Whistleblowers of America

CC:
Senate Judiciary Committee

² Heckman, Jory. "Grassley: Whistleblowers 'as Welcome as a Skunk at a Picnic' at Agencies. But What about the White House?" *Federal News Network*, Federal News Network, 2 Aug. 2018, [federalnewsnetwork.com/agency-oversight/2018/07/grassley-urges-trump-to-honor-whistleblowers-at-white-house/](https://www.federalnewsnetwork.com/agency-oversight/2018/07/grassley-urges-trump-to-honor-whistleblowers-at-white-house/).

1004



January 9, 2019

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our hundreds of thousands of members and activists throughout the United States, People For the American Way writes to express our opposition to the nomination of William Barr to be attorney general.

Perhaps no member of the executive branch has a greater role than the attorney general in ensuring justice, equality, and the rule of law, without which our democracy would perish and our civil rights would disappear. And few if any presidents have tested our nation's democratic norms more than the one who has nominated Barr.

President Trump has treated the federal government as a weapon to use against his political opponents. He has tried to sabotage the legal processes that are investigating possible collaboration with a foreign enemy's successful plot to get him elected. He has also distorted the law or ignored it altogether in order to strip millions of people of the rights set forth in our Constitution and in our civil rights statutes.

As a result of President Trump's widely recognized assaults on the rule of law, almost anyone he nominates for attorney general at this point in his presidency would automatically raise substantial concerns. Unfortunately, Barr's record does not assuage those concerns, but exacerbates them.

The Mueller Investigation

The president has made clear that his first attorney general nomination was based on the assumption that Jeff Sessions would protect him by interfering with the FBI's investigation into potential ties between the president's campaign and the Russian government. Trump admits that had he known Sessions would recuse himself, the president would never have selected him as attorney general.¹

If protecting Trump from that investigation was already a make-or-break criterion just a few weeks after the election, one can only imagine the importance Trump places on this two years later, with so much more now known about him, his family, and his company's apparent unlawful activities. William Barr's strident opposition to the Mueller investigation suggests that he may meet the president's illegitimate criterion.

Three days after Trump fired FBI Director James Comey in the spring of 2017, Barr wrote a scathing op-ed sharply attacking his former colleague and praising Trump for firing him.ⁱⁱ That

same spring, Trump met with Barr to discuss hiring him as his personal defense counsel in the investigation—one he would now oversee if confirmed.ⁱⁱⁱ Barr is reported to have turned the job down, choosing to have no apparent professional interest or role in the special counsel’s work.

Yet a year later, he sent—unsolicited—a detailed, 19-page legal memorandum directly to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel arguing that Mueller had no legal authority to “demand that the President submit to interrogation about alleged obstruction.” Claiming that he was “deeply concerned” about the lawfulness of the special counsel’s investigation, Barr urged the DOJ officials overseeing Mueller “not to veer into novel, unsettled or contested areas of the law; and not to indulge the fancies by overly-zealous prosecutors.”

And now Trump wants him to be attorney general. It would be impossible for Barr to supervise the special counsel’s work without at least a strong appearance of bias. The American people deserve integrity in the highest level of law enforcement, which cannot be present unless Barr were to recuse himself.

Moreover, Barr’s memo sets forth an overarching view of executive authority that is simply inconsistent with the rule of law. He believes that Trump cannot be questioned for firing Comey in a criminal obstruction probe because presidents always have the discretion to fire an FBI director:

[D]efining facially-lawful exercises of Executive discretion as potential crimes, based solely on subjective motive, would violate Article II of the Constitution by impermissibly burdening the exercise of core discretionary powers within the Executive branch.

...

[T]he President’s exercise of its Constitutional discretion is not subject to review for ‘improper motivations’ by lesser officials or by the courts.^{iv}

Barr’s dangerously expansive view of executive authority dates back at least to his work in the George H. W. Bush administration. In 1989, while in the Office of Legal Counsel, he wrote that the president has immense authority under the “unitary executive” theory and should forcefully resist what he considered congressional “incursions ... into executive branch prerogatives.”^v

Three years later as attorney general, Barr also urged President Bush to pardon the leading figures in the Iran-Contra investigation, an act that ended any legal process that could have determined Bush’s own role in the scandal. As Independent Prosecutor Lawrence Walsh stated at the time:

The Iran-contra cover-up, which has continued for more than six years, has now been completed.^{vi}

Barr oversaw Walsh's investigation but was "outspokenly hostile" to it and caused the independent prosecutor and his staff to fear they would be shut down before they could issue a final report.^{vii}

It is clear why a president seeking to operate outside the constraints of law and with a guarantee of unaccountability would nominate William Barr to be attorney general. If confirmed, Barr would improperly give the president legal cover to engage in any number of unlawful actions without criminal accountability. This view is unacceptable during any presidency.

Civil Rights

In addition to the Constitution, numerous congressional statutes protect civil rights. But Congress cannot carry those laws out. Much of the responsibility for turning its legislative promises into enforceable real-world rights belongs to the Justice Department. When the rule of law erodes, so too do the rights of vulnerable populations.

Perhaps the most damning indictment of William Barr's current views on civil rights is his effusive praise of Jeff Sessions as "an outstanding attorney general."^{viii} But history will record Sessions' tenure as a time of an unprecedented rollback in protections for millions of people.

Barr praised Sessions for stripping transgender people of the statutory protections of federal anti-discrimination laws, notwithstanding a growing number of court rulings that they are so included. The Sessions Justice Department filed an *amicus* brief in the *Masterpiece Cakeshop* case, arguing that business owners have a right under the First Amendment to ignore those parts of anti-discrimination laws that protect LGBTQ patrons. Barr praised the so-called "religious liberty" guidance^{ix} Sessions gave to all federal agencies in October 2017. While Barr called it "guidance for protecting religious expression," it was really a "blueprint for religion-based discrimination"^x against LGBTQ people (among others) based on distortions of both the First Amendment and the Religious Freedom Restoration Act. Should the Senate confirm Barr, the Justice Department will likely continue to treat LGBTQ people as second-class citizens, regardless of what the law actually requires.

Barr also praised Sessions for "attack[ing] the rampant illegality that riddled our immigration system." In fact, it is the administration's discriminatory and inhumane immigration policies that stray from the law, to the detriment of groups long targeted by the right-wing base. For instance, Barr claimed that Trump's first Muslim ban was "squarely within both the president's constitutional authority and his explicit statutory immigration powers,"^{xi} a conclusion strongly rejected by the courts. In fact, the order was so hastily thrown together without regard to law that the administration felt compelled to replace it twice. Nevertheless, Sessions defended it, as he did the inhuman policy of separating immigrant children from their families.^{xii} He even held public events designed to frighten the public by linking Latino immigrants to gang members.^{xiii} Barr's praise for Sessions implies he finds these actions legal, wise, and humane.

The nominee, if confirmed, would also pose a grave risk to the Constitution's protection of women's right to abortion. At his 1991 confirmation hearing, he bluntly told the Judiciary Committee his view that the Fourteenth Amendment's right to privacy does not extend to

abortion and that *Roe v. Wade* should be overturned.^{xiv} The Senate should not make an avowed opponent of a basic civil right into the nation's chief officer in charge of protecting civil rights.

The attorney general is also the country's chief law enforcement officer, yet Barr fails to recognize the severe problems that plague the criminal justice system. When serving in the Bush administration, he supported policies of mass incarceration that have been shown to have had devastating and unfair consequences to communities of color.^{xv} It does not appear that the evidence of the past quarter century has shown him that this has been a failed approach to law enforcement. He signed on to a letter opposing the Sentencing Reform and Corrections Act of 2015, condemning the bill's reduction of mandatory minimums and its retroactivity provisions.^{xvi} And his praise of Jeff Sessions includes the false claim that "the [Obama] administration's policies had undermined police morale, with the spreading 'Ferguson effect' causing officers to shy away from proactive policing out of fear of prosecution."

Conclusion

It is clear that Barr's record shows that he should not be confirmed by the Senate to be our nation's next attorney general. Senators must use Barr's confirmation hearing to delve into his record. Unless he vows to recuse himself from the Mueller investigation and reverse the department's attacks on civil rights that have characterized this administration's first two years, his nomination should be rejected.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ "Citing Recusal, Trump Says He Wouldn't Have Hired Sessions," *New York Times*, July 19, 2017, <https://www.nytimes.com/2017/07/19/us/politics/trump-interview-sessions-russia.html>.

ⁱⁱ "Trump made the right call on Comey," William Barr, *Washington Post*, May 12, 2017, http://www.washingtonpost.com/opinions/former-attorney-general-trump-made-the-right-call-on-comey/2017/05/12/0e858436-372d-11e7-b4ee-434b6d506b37_story.html.

ⁱⁱⁱ "Barr turned down defense attorney job with Trump" *The Hill*, Dec. 9, 2018,

<http://thehill.com/homenews/administration/420460-barr-turned-down-defense-attorney-job-with-trump-report>.

^{iv} "Mueller's 'Obstruction' Theory," Memorandum from William Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel, June 8, 2018, <https://www.documentcloud.org/documents/5638848-June-2018-Barr-Memo-to-DOJ-Muellers-Obstruction.html>.

^v "Common Legislative Encroachments On Executive Branch Authority," Memorandum Opinion for the General Counsel's Consultative Group, July 27, 1989, <https://www.justice.gov/file/24286/download>.

^{vi} "Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'," *New York Times*, Dec. 24, 1992, <https://www.nytimes.com/1992/12/25/us/pardons-bush-pardons-6-iran-affair-aborting-weinberger-trial-prosecutor-assails.html>.

^{vii} "How Trump's Next Attorney General Could Derail the Mueller Probe," *Politico Magazine*, Dec. 11, 2018, <https://www.politico.com/magazine/story/2018/12/11/william-barr-trump-attorney-general-mueller-iran-contra-222859>.

^{viii} “We are former attorneys general. We salute Jeff Sessions,” *Washington Post*, November 7, 2018, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html.

^{ix} “Federal Law Protections for Religious Liberty,” Memorandum for All Executive Departments and Agencies, October 6, 2017, <https://www.justice.gov/opa/press-release/file/1001891/download>.

^x “Trump Administration Guidance On Religious Freedom Is A Blueprint For Religion-Based Discrimination” Americans United, Oct. 6, 2017, <https://www.au.org/media/press-releases/trump-administration-guidance-on-religious-freedom-is-a-blueprint-for-religion>.

^{xi} “Trump was right to fire Sally Yates,” William Barr, *Washington Post*, Feb. 1, 2017, https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html.

^{xii} “Judge Rejects Long Detentions of Migrant Families, Dealing Trump Another Setback,” *New York Times*, July 9, 2018, <https://www.nytimes.com/2018/07/09/us/migrants-family-separation-reunification.html>.

^{xiii} E.g., “Attorney General Sessions Speaks with Families of Victims Killed by Illegal Aliens,” Department of Justice News, June 29, 2017, <https://www.justice.gov/opa/pr/attorney-general-sessions-speaks-families-victims-killed-illegal-aliens>.

^{xiv} “Barr Opposed to *Roe vs. Wade* Decision: Justice Dept.: The attorney general-designate tells Senate panel right to privacy does not extend to obtaining an abortion,” Nov. 14, 1991, *Los Angeles Times*, http://articles.latimes.com/1991-11-14/news/mn-1917_1_wade-decision.

^{xv} “The Case for More Incarceration,” Office of Policy Development, Department of Justice, Report 1992 NCJ-139583, <https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

^{xvi} <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.



January 14, 2019

Dear Members of the Senate Judiciary Committee:

The mission of the Department of Justice (DOJ) is to “ensure fair and impartial administration of justice” as the chief enforcer of [the nation’s laws](#). With this great responsibility, the DOJ plays a critical role in our nation’s ongoing progress by defending and enforcing existing federal laws that reflect the values and principles of our country. As the head of the DOJ, the Attorney General must show great respect for the human rights and liberties guaranteed by our Constitution and laws, regardless of his or her own policy preferences or those of the President who appointed him. One of these fundamental liberties includes the right of safe and legal abortion for all in this country.

The right to safe and legal abortion has been the law of the land for more than 45 years and is therefore part of the fabric of American history and jurisprudence. Given the attacks on women’s health taking place at the federal and state levels, it is imperative that any nominee for Attorney General be ready to enforce and defend legal precedents that protect people’s access to affordable sexual and reproductive health care. The attorney general, and the Department of Justice, is charged with enforcing the nation’s laws, including the Freedom of Access to Clinic Entrances (FACE) Act, which helps protect women accessing reproductive health care.

As his record shows, William Barr, President Trump’s nominee for Attorney General, has failed to demonstrate that he will be fair and impartial in upholding our country’s laws, especially those relating to reproductive health and rights. Since his time as the Attorney General under George. H.W. Bush (1991–1993), Barr has consistently demonstrated hostility towards *Roe v. Wade*, which should disqualify him from consideration. **Planned Parenthood Federation of America has a longstanding history of working to protect reproductive health and rights and strongly urges Senators to oppose William Barr for Attorney General.**

Barr was openly hostile to reproductive rights when he was the Attorney General under former President George H.W. Bush. In his 1991 Senate confirmation hearing for Attorney General, when asked about his views on privacy rights as it relates to abortion, Barr [stated](#) that he does not believe that the right to privacy extends to abortion and that *Roe v. Wade* was incorrectly decided and should be overruled. He then went on to say that, to the extent abortion is permitted, it should be an issue decided by the states. As Attorney General, Barr sent a [letter](#) to the Senate expressly opposing the Freedom of Choice Act (FOCA), the landmark legislation that would have codified *Roe*. The letter went on to say that he would advise then-President H.W. Bush to veto the legislation if it were approved by Congress. Barr penned a similar [letter](#) to Representative Henry Hyde stating that FOCA would force “abortion on demand” on all 50 states. After the *Planned Parenthood v. Casey* (1992) decision, Barr appeared on CNN and stated that he was disappointed in the decision. He then further reiterated that he believes that *Roe* should be overturned and that it will ultimately be overturned because “it does not have any constitutional underpinnings.”¹

Barr has consistently expressed opposition to abortion rights through his personal writings and associations. In addition to expressing hostility towards abortion rights while working at the DOJ, Barr has further proven his

¹ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992)



opposition in his personal writings years after his appointment was completed. In his 1995 article for the Catholic Lawyers entitled "*Legal Issues in a New Political Order*," Barr lamented what he called "the breakdown of traditional morality," citing *Roe* as a "secularist" effort to "eliminate laws that reflect traditional moral norms." Also, Barr also has long term associations with groups with known hostility towards abortion rights. Barr was on the Board of Advisors for the Becket Fund for Religious Liberty, a group that has opposed women's reproductive rights including challenging the Affordable Care Act's contraception mandate on the grounds of religious freedom in the *Hobby Lobby v. Burwell* Supreme Court case.

Barr has also been an active opponent of the Affordable Care Act. In 2011, Barr joined other former Republican Attorneys General on an amicus brief in opposition to the Affordable Care Act in the *Commonwealth of Virginia v. Sebelius* in which they argued that Congress sought to coerce healthy patients into the insurance market through the ACA and that the law was unconstitutional.²

William Barr has demonstrated throughout his over thirty-year career that he will not defend abortion rights as Attorney General but will actively work to dismantle them. It is the self-proclaimed duty of the DOJ to impart equal and impartial justice to all citizens regardless of their political opinions, and Barr has consistently proven his outward hostility to reproductive rights.

Planned Parenthood Federation of America urges Senators to oppose William Barr for Attorney General.

² Brief of Amici Curiae Former United States Attorneys General William Barr, Edwin Meese, III, and Dick Thornburgh, In Support of Appellees, *Commonwealth of Virginia v. Sebelius* (4th Cir. 2011) (Nos. 11-1057 & 11-1058)


SIECUS

 Sexuality Information and Education
 Council of the United States

January 15, 2019

 The Honorable Lindsey Graham
 Chair
 Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

 The Honorable Dianne Feinstein
 Ranking Member
 Senate Committee on the Judiciary
 152 Dirksen Senate Office Building
 Washington, D.C. 20510

RE: SIECUS Opposition to the Confirmation of William Barr for Attorney General

Dear Chairman Graham and Ranking Member Feinstein:

The Sexuality Information and Education Council of the United States (SIECUS) writes to express our strong opposition to the confirmation of William Barr for the role of Attorney General. We call upon the Senate Judiciary Committee, as well as the full Senate, to reject his nomination, as Mr. Barr is uniquely unfit to serve as the chief law enforcement officer of the nation. Mr. Barr's record proves that he is incapable of protecting constitutional rights.

SIECUS has served as the national voice for sex education, sexual health, and sexual rights for 55 years. SIECUS asserts that sexuality is a fundamental part of being human, one worthy of dignity and respect. We advocate for the rights of all people to accurate information, comprehensive sexuality education, and the full spectrum of sexual and reproductive health services. SIECUS works to create a world that ensures social justice inclusive of sexual and reproductive rights, and we view sex education as a vehicle for social change.

Mr. Barr's record on civil rights and privacy is abhorrent. During his 1991 Senate Judiciary Committee hearings, he plainly stated his belief that the constitutional right to privacy does not extend to abortion. This is particularly troubling given that *Roe v. Wade* is the law of the land, and the Attorney General of the United States is responsible for respecting and upholding the law. While serving as Attorney General in the 1990s, Mr. Barr asserted several times that anti-discrimination laws protecting LGBTQ are immoral. Furthermore, Mr. Barr played a significant role in ignoring science and medicine and abusing his power to promote hostility against HIV+ individuals throughout his tenure as Attorney General. Our nation desperately needs a new Attorney General who will base their decisions on facts and law, not on their own ideology or personal disdain for LGBTQ individuals.

While public support for the rights of LGBTQ individuals has grown drastically in recent years, Mr. Barr does not appear to have expanded his understanding of civil rights in the last two decades. In December 2018, he published an op-ed praising former Attorney General Jeff Sessions for his withdrawal of civil rights protections for transgender individuals. In the same op-ed, he expressed his support for the Department of Justice giving business owners a license to discriminate against LGBTQ individuals. Mr. Barr's decades of animus against civil rights for

1012

all Americans – including LGBTQ Americans – makes him uniquely unqualified to serve once again as Attorney General.

Thank you for the opportunity to share our concerns regarding Mr. Barr's nomination. SIECUS joins our fellow advocates for sexual and reproductive health and rights in urging you to vote against the confirmation of William Barr for Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read 'CHS', with a stylized flourish at the end.

Christine Soyong Harley
Interim President and CEO
SIECUS



THE FALSE CLAIMS ACT LEGAL CENTER

January 10, 2019

The Honorable Lindsey Graham, Chairman
Senate Judiciary Committee
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member
Senate Judiciary Committee
331 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of William P. Barr to serve as United States Attorney General

Dear Chairman Graham and Ranking Member Feinstein:

As the leading non-profit organization dedicated to the promotion and protection of the effectiveness of federal whistleblower programs, Taxpayers Against Fraud (TAF) takes this opportunity to communicate its serious concerns in connection with the nomination of William P. Barr to serve as Attorney General of the United States. This letter describes the basis for these concerns.

TAF and its sister organization, the TAF Education Fund, are uniquely situated to comment on the government's enforcement efforts to identify, remedy and prevent fraud, waste and abuse in government contracting and procurement and the delivery of government-funded healthcare services. Since 1986, TAFEF's members, in partnership with the Department of Justice (DOJ), have represented whistleblowers in False Claims Act (FCA) matters that have generated tens of billions of dollars in civil and criminal recoveries. The FCA's whistleblower provisions are recognized as DOJ's chief civil fraud enforcement tool and have served as a model for the states and for other federal agencies that have adopted whistleblower statutes. FCA whistleblower enforcement has also yielded serious efforts to improve internal compliance within various sectors of the U.S. economy and is estimated to have saved tens of billions of dollars through deterrent effects.

I. Mr. Barr's comments on the False Claims Act made in connection with an Oral History of the Presidency of George H.W. Bush (April 5, 2001)

In an April 5, 2001 interview, conducted in connection with the preparation of an oral history of the presidency of George H.W. Bush, Mr. Barr was asked whether, during the time he served in the Justice Department, there had been significant disagreements within the Department on particular issues. He identified the debate between the Solicitor General's Office and the Office of Legal Counsel (which he directed at the time) over the constitutionality of the *qui tam* provisions of the False Claims Act as one such contentious issue. In his response, he referred to these provisions, which incentivize private persons to bring allegations of fraud to the attention of the Department, as "an abomination."

"One of the big [disagreements] was [over] the *qui tam* statute [the False Claims Act], which is basically a bounty hunter statute that lets private citizens sue in the name of the United States and get a bounty. I felt then, and feel now, that is an abomination and a violation of the appointments clause under the due powers of the President as well as the standing issue of the Supreme Court. So I wanted to attack the *qui tam* statute, and the SG's office wanted to defend it. That was a big dispute."

In 2000, the U.S. Supreme Court had just made it clear, in a decision authored by Justice Scalia, that the *qui tam* provisions of the False Claims Act pass constitutional muster. See *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 US 765. In our view, it is cause for significant concern that Mr. Barr's comments were made the year after *Stevens* was decided.

II. Mr. Barr's Memorandum to Attorney General Richard Thornburgh on behalf of the Office of Legal Counsel of the Department of Justice (July 18, 1989)

On July 18, 1989, in his capacity as Assistant Attorney General in charge of DOJ's Office of Legal Counsel, Mr. Barr sent a memorandum to the Attorney General describing in detail the dispute between his office and the Solicitor General's Office and setting forth his arguments that the *qui tam* provisions of the False Claims Act are unconstitutional. (Here is a link to the Memorandum: [Opinion of the Office of Legal Counsel - July 18, 1989.](#))

A. The drafters of the Memorandum demonstrated a profound misunderstanding of Congress's intent in enacting the 1986 amendments to the False Claims Act.

Congress enacted the 1986 amendments to the False Claims Act to address what it considered to be a growing epidemic of procurement fraud by incentivizing insiders to report and

assist the Government in prosecuting false claims, broadening the liability provisions of the statute, and adding civil investigative demand authority to the tools available to the Department of Justice to investigate allegations of false claims. The Memorandum articulates an intense and unwarranted negative view of Congressional intent:

“The congressional proponents of [the 1986] amendments made no pretense about the fact that they distrusted the Executive’s willingness or ability to enforce the law properly. . . .

“[T]he 1986 Amendments substantially interfere with the Executive’s functions. The Executive Branch today is fully capable of policing claims against the Government. Indeed, procurement is now one of the most heavily regulated and policed sectors of public activity. In resuscitating the dormant *qui tam* device, Congress’s express purpose was to interfere with the Executive’s law enforcement activities, to displace official prosecutorial discretion with the mercenary motives of private bounty hunters.”

Congress understood that fraud, waste and abuse can easily evade detection, and wisely concluded that strengthening the False Claims Act would provide the Department of Justice with powerful legal tools, vital sources of information and enhanced resources through public-private partnerships. Government agencies expend extraordinarily large sums of money in fulfilling their mandates, but have limited resources for oversight and investigation. Congress recognized the importance of incentivizing individuals and companies with knowledge of wrongdoing to come forward, and DOJ’s extraordinary success in enforcing the False Claims Act has amply validated the good sense that motivated the 1986 amendments.

B. The Memorandum’s arguments concerning the purported unconstitutionality of the False Claims Act have been definitively rejected, explicitly or implicitly, by the Supreme Court.

The fundamental thrust of the Memorandum is an aggressive attack on the constitutionality of the False Claims Act’s *qui tam* provisions:

“First, we believe that private *qui tam* actions violate the Appointments Clause of the Constitution. . . . The Constitution . . . does not permit Congress to vest governmental law enforcement authority in self-selected private parties, who have not been injured and who act from mercenary motives, without commitment to the United States’ interests and without accountability.

“Second, we believe *qui tam* suits violate Article III standing doctrine. . . . *Qui tam* relators suffer no injury in fact and thus, fail to meet this bedrock constitutional requirement. Because Congress may not abrogate this requirement, the False Claims Act’s grant of universal standing to any person violates Article III.

“Third, we believe that *qui tam* actions violate the doctrine of separation of powers. The Supreme Court has consistently ruled that the authority to enforce the laws is a core power vested in the Executive. The False Claims Act effectively strips this power away from the Executive and vests it in private individuals, depriving the Executive of sufficient supervision and control over the exercise of these sovereign powers. The Act thus impermissibly infringes on the President’s authority to ensure faithful execution of the laws.”

The Supreme Court’s 2000 decision in *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens* clearly affirmed the Article III standing of relators to bring suit on behalf of the United States. While the case is reported as a 7-2 decision written by Justice Scalia, the dissenters (Justices Stevens and Souter) implicitly agreed with the Court’s conclusion on standing. They dissented in order to argue for a more expansive reading of the False Claims Act and to opine that a state or state agency should be considered a “person” subject to liability in a *qui tam* suit. Challenges to the constitutionality of the FCA on grounds that it violates the Appointments Clause or the Separation of Powers have never gained traction with the Court.

C. The “parade of horrors” predicted in the Memorandum has not materialized.

In addition to these constitutional arguments, the Memorandum predicts that the failure to challenge and eliminate the FCA’s *qui tam* provisions would have devastating effects on governmental operations and law enforcement, disrupting DOJ’s civil and criminal enforcement activities and undermining the Executive’s ability to administer complex procurement contracts:

“The relator is empowered to prosecute the Government’s claim even when the Attorney General has determined that there is no valid claim or that pursuing the suit is not in the interests of the United States. . . .

“[T]he relator retains primary control over the case despite the Government’s intervention. . . .

“[E]very routine decision that an agency makes as a contracting party is now subject to the relator’s influence. . . .

“[R]elators are empowered to overrule the judgment of Executive officials as to whether [a] contractor has, in fact, committed fraud and whether it is appropriate under the circumstances to prosecute the Government’s claim.”

The statutory language itself and three decades of robust and extraordinarily successful FCA enforcement by the Department of Justice have demonstrated that the fears expressed by Mr. Barr are unfounded.

A *qui tam* relator who files a False Claims Action under seal must serve the complaint and a written disclosure of material evidence upon the United States Attorney General and the United States Attorney for the judicial district in which the case is filed. DOJ personnel will typically meet with the *qui tam* relator and his or her attorneys and then will conduct an independent investigation and evaluation of the claims. After investigation, the government may intervene in the case; may decline to intervene; or may seek to resolve the matter through negotiation with the defendant prior to making an intervention decision. If the government intervenes, it assumes primary responsibility for the litigation. The statute explicitly states that “[i]f the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action.” In practice, participation by relator and relator’s counsel in any of the scenarios described in this paragraph occurs at the discretion of the Department of Justice.

The Attorney General has broad authority to dismiss *qui tam* cases that are without merit or would interfere with significant governmental interests, and the Circuit Courts of Appeals that have addressed this issue have taken an expansive view of the Department’s discretion to do so. The District of Columbia Circuit has characterized DOJ’s authority in this context as “an unfettered right to dismiss a *qui tam* action.” *Hoyte v. Am. Nat’l Red Cross*, 518 F.3d 61, 64-65 (D.C. Cir. 2008). The Ninth Circuit has held that *qui tam* cases must be dismissed if the government identifies a valid government purpose for the dismissal “and a rational relation between dismissal and accomplishment of the purpose.” *U.S. ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139, 1341 (9th Cir. 1998). If the government makes this showing, a court must dismiss the case unless it determines “that dismissal is fraudulent, arbitrary and capricious, or illegal.” *Id.* at 1347. The Tenth Circuit has followed the Ninth’s Circuit reasoning in *Sequoia*. See *Ridenour v. Kaiser-Hill Co., L.L.C.*, 397 F.3d 925 (10th Cir. 2005)

In practice, when the Department concludes after investigation and analysis that *qui tam* allegations are factually or legally weak or are unlikely to lead to a significant recovery for the government, the cases are often dismissed voluntarily by relators’ counsel. If relators do not move voluntarily to dismiss such matters, DOJ attorneys are authorized to move to dismiss the cases if they are meritless on their face and/or threaten specific government interests. See Justice Manual, Commercial Litigation § 4-4.111. (Here is a [link to § 4-4.111 of the Justice Manual](#).) If the government declines to intervene in a potentially meritorious matter based upon litigation

priorities or lack of resources, it generally will permit the case to move forward and will closely monitor the proceedings to safeguard the legal and financial interests of the United States. From 1986 through 2018, declined *qui tam* cases have resulted in more than \$2.4 billion in recoveries for the government. See Fraud Statistics Overview, October 1, 1986 – September 30, 2018, Civil Division, U.S. Department of Justice, at p. 2, attached to this letter (also available at [this link](#)). A *qui tam* relator may settle and dismiss a declined case only if the Attorney General gives written consent to the dismissal. 31 U.S.C. § 3730 (b)(1).

D. The False Claims Act has proven to be an invaluable tool for the Justice Department in its efforts to uncover and remedy fraud against the government.

The Memorandum goes into great detail in arguing that the constitutionality of the False Claims Act's *qui tam* provisions cannot be supported by our nation's use of *qui tam* incentives as a law enforcement tool during the early years of the republic or to combat procurement fraud during the Civil War.

"The Solicitor General vastly overstates the historical acceptance of *qui tam*. . . . A fair reading of the history of *qui tam* in the United States reveals it as a transitory and aberrational device that never gained a secure foothold within our constitutional structure because of its fundamental incompatibility with that structure. . . . Never more than a marginal device, it is today an anachronism that easily can be excised without disruption."

However, in addition to the historical significance of *qui tam* prior to the drafting of Mr. Barr's 1989 Memorandum, its importance as a law enforcement mechanism is amply demonstrated by its extraordinary effectiveness in subsequent years. The False Claims Act's *qui tam* provisions permit private individuals and organizations who meet the law's rigorous knowledge and pleading requirements to bring suit in the name of the government and recover awards if their cases result in the successful recoupment of government funds. The *qui tam* provisions provide the essential incentive that has made the FCA an extraordinarily powerful tool for the Department of Justice. During the 32 years since President Reagan signed the 1986 FCA amendments into law, the United States has realized nearly \$60 billion in FCA recoveries, and 85% of this figure is attributable to *qui tam* cases initiated by whistleblowers. The 31 states that have enacted false claims acts modeled on the federal statute have recovered an additional \$7 billion.

Here are links to the Department of Justice press releases reporting annual False Claims Act recoveries over the past ten years, totaling more than \$37 billion:

<u>2018: \$2.8 billion</u>	<u>2013: \$3.8 billion</u>
<u>2017: \$3.7 billion</u>	<u>2012: \$4.9 billion</u>
<u>2016: \$4.7 billion</u>	<u>2011: \$3 billion</u>
<u>2015: \$3.5 billion</u>	<u>2010: \$3 billion</u>
<u>2014: \$5.69 billion</u>	<u>2009: \$2.4 billion</u>

See also Fraud Statistics Overview, October 1, 1986 - September 30, 2018, Civil Division, U.S. Department of Justice, attached to this letter (also available at [this link](#)).

The *qui tam* provisions have also played an important role in ensuring a level playing field among competitors in an industry. Many of the practices that are remediable under the False Claims Act are also unfair business practices that create barriers to entry within industries or unjustly deprive competitors of opportunities to do business with the Government. Kickbacks, bribes, bid-rigging, evasion of the requirements of the Buy America Act, and violations of “best price” regulations and customs duty laws are just several examples. Because corporate entities may sue on behalf of the United States under the *qui tam* provisions, companies that are aggrieved by such practices may find relief through *qui tam* actions, thereby increasing open and fair competition within their industries.

III. Conclusion

For more than three decades, the False Claims Act has served the Department of Justice and the American taxpayer extraordinarily well. Based upon Mr. Barr’s own words, it is essential to determine his willingness to respect the intent of Congress and support the *qui tam* provisions of the False Claims Act. We strongly recommend that you ask Mr. Barr to state publicly and in detail his current views on the constitutionality and efficacy of the *qui tam* statute, and on any negative consequences that he believes have resulted from its enforcement. We further recommend that you ask Mr. Barr to affirm that, if confirmed, he will ensure that DOJ enforces the False Claims Act and implements the *qui tam* provisions diligently and in strict accordance with the statutory language and Congressional intent.

1020

Thank you for considering the views of Taxpayers Against Fraud. Please feel free to contact me at (202) 293-1117 or rpatten@taf.org if you have any questions.

Very truly yours,



Robert Patten
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cc: Sen. Chuck Grassley
Sen. John Cornyn
Sen. Michael S. Lee
Sen. Ted Cruz
Sen. Ben Sasse
Sen. Joshua D. Hawley
Sen. Thom Tillis
Sen. Joni Ernst
Sen. Mike Crapo
Sen. John Kennedy
Sen. Marsha Blackburn

Sen. Patrick Leahy
Sen. Dick Durbin
Sen. Sheldon Whitehouse
Sen. Amy Klobuchar
Sen. Christopher A. Coons
Sen. Richard Blumenthal
Sen. Mazie Hirono
Sen. Cory Booker
Sen. Kamala Harris

FRAUD STATISTICS - OVERVIEW

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS*		SETTLEMENTS AND JUDGMENTS*					RELATOR SHARE AWARDS*			
	NON QUI TAM	QUI TAM	NON QUI TAM		QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL					
1987	341	30	86,479,949	0	0	0	86,479,949	0	0	0	
1988	209	43	173,287,663	2,308,354	33,750	2,343,104	175,630,767	88,750	8,438	97,188	
1989	222	67	197,202,160	15,111,719	1,861	15,113,580	212,315,960	1,446,770	200	1,446,970	
1990	243	72	189,864,367	40,483,367	75,000	40,558,367	230,122,734	6,590,936	20,670	6,611,606	
1991	234	64	270,530,467	70,384,431	69,500	70,453,931	340,984,398	10,667,537	18,750	10,686,287	
1992	284	114	137,958,206	133,949,447	994,456	134,943,903	272,902,109	24,121,648	259,784	24,381,432	
1993	304	138	181,945,576	183,643,787	6,603,000	190,246,787	372,192,363	27,576,235	1,766,902	29,343,137	
1994	279	216	706,022,897	379,018,205	2,822,323	381,840,528	1,087,863,425	69,453,350	838,896	70,292,246	
1995	232	269	289,980,642	239,024,292	1,635,000	240,659,292	530,639,934	45,182,296	465,800	45,648,096	
1996	195	340	247,357,271	124,361,203	13,522,433	137,883,636	385,240,908	22,119,619	3,731,978	25,851,597	
1997	163	547	406,968,061	621,919,274	6,021,200	627,940,474	1,034,908,535	65,937,418	1,658,485	67,595,904	
1998	118	469	151,435,794	438,834,846	30,248,076	469,082,921	620,518,715	70,284,372	8,486,645	78,771,017	
1999	140	493	195,390,468	482,565,233	5,067,503	487,632,736	683,023,221	63,018,064	1,374,487	64,392,552	
2000	94	363	387,887,197	1,208,370,688	1,668,957	1,210,039,154	1,597,946,841	183,679,377	375,143	184,054,520	
2001	65	314	484,496,974	1,215,525,918	128,687,151	1,344,113,067	1,828,610,042	187,590,470	30,701,881	218,292,350	
2002	61	319	119,598,292	1,078,174,023	26,786,140	1,103,960,162	1,223,558,454	161,377,822	4,582,319	165,960,141	
2003	92	334	711,098,299	1,534,862,362	5,185,911	1,540,048,263	2,251,146,563	337,307,897	1,362,741	338,670,638	
2004	111	432	115,656,023	561,717,502	9,261,879	570,977,382	686,633,404	110,224,220	2,376,128	112,600,348	
2005	105	406	276,814,863	1,149,047,524	7,481,593	1,156,529,117	1,433,444,099	168,580,543	2,031,695	170,612,237	
2006	70	385	1,712,456,257	1,491,105,499	22,711,363	1,513,816,862	3,226,276,119	219,976,072	5,647,836	225,623,908	
2007	129	365	564,826,844	1,251,726,955	160,246,894	1,411,973,849	1,976,800,693	192,888,212	4,616,899	197,505,111	
2008	160	379	312,193,480	1,060,582,229	12,678,936	1,073,261,165	1,385,454,645	201,932,144	2,997,615	204,929,759	
2009	131	433	488,685,686	1,964,005,251	33,776,480	1,997,761,730	2,466,467,417	249,587,135	9,684,147	259,271,282	
2010	143	577	641,956,368	2,279,055,248	103,778,813	2,383,833,862	3,030,790,230	379,518,436	30,915,991	410,434,427	
2011	125	634	241,365,966	2,656,802,414	173,888,703	2,830,691,117	3,072,057,112	525,035,022	49,041,806	574,076,828	
2012	148	655	1,608,112,862	3,305,485,169	90,248,343	3,395,743,512	5,003,856,374	424,922,456	24,861,743	449,784,199	
2013	101	757	188,378,772	2,796,819,362	200,288,056	2,997,117,418	3,185,494,190	509,000,518	50,123,937	559,124,455	
2014	100	716	1,676,608,226	4,386,812,989	81,378,451	4,468,117,440	6,144,799,665	697,206,106	14,868,000	712,074,107	
2015	114	640	738,442,487	1,897,040,808	514,180,695	2,411,201,503	3,149,643,990	344,105,281	138,316,127	482,421,408	
2016	149	707	1,896,930,624	2,925,411,797	108,298,069	3,033,709,866	4,930,640,490	524,261,529	29,658,600	553,920,129	
2017	145	680	280,997,308	2,885,063,111	699,038,273	3,184,101,384	3,465,096,692	343,852,898	134,519,097	478,371,995	
2018	122	645	787,115,453	1,994,733,622	119,671,636	2,113,406,236	2,880,526,711	288,055,336	32,673,319	301,728,654	

FRAUD STATISTICS - OVERVIEW

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS*		SETTLEMENTS AND JUDGMENTS ¹					RELATOR SHARE AWARDS ²		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
TOTAL	5,157	12,643	16,456,455,688	40,073,957,617	2,470,260,064	42,544,217,681	59,000,673,370	6,436,448,430	588,005,858	7,024,454,288

NOTES:

0. "New Matters" refers to newly received referrals, investigations, and qui tam actions.

1. Non qui tam settlements and judgments do not include matters delegated to United States Attorneys' offices. The Civil Division maintains no data on such matters.

2. Relator share awards are calculated on the portion of the settlement or judgment attributable to the relator's claims, which may be less than the total settlement or judgment. Relator share awards do not include amounts recovered in subsection (h) or other personal claims. See 31 U. S. C. 3730(h).

FRAUD STATISTICS - HEALTH AND HUMAN SERVICES*

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS ¹		SETTLEMENTS AND JUDGMENTS ²					RELATOR SHARE AWARDS ³		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED				
1987	12	3	11,361,826	0	0	0	11,361,826	0	0	0
1988	7	5	2,162,675	355,000	0	355,000	2,537,675	88,750	0	88,750
1989	19	16	350,460	5,999,861	0	5,999,861	6,350,321	50,000	0	50,000
1990	27	11	10,327,500	903,158	0	903,158	11,230,658	119,474	0	119,474
1991	19	12	8,670,735	5,420,000	0	5,420,000	14,090,735	861,401	0	861,401
1992	26	15	9,821,640	2,192,478	0	2,192,478	12,014,118	446,648	0	446,648
1993	22	38	12,823,165	151,760,404	0	151,760,404	164,283,569	22,946,101	0	22,946,101
1994	42	75	381,470,015	6,280,815	240,000	6,520,815	387,990,830	1,113,597	72,000	1,185,597
1995	26	87	96,290,779	84,061,788	1,620,000	85,681,788	181,972,568	14,337,982	465,800	14,803,782
1996	20	177	63,099,873	49,236,698	2,340,000	51,576,698	114,636,572	8,707,168	667,400	9,374,568
1997	48	269	351,440,027	578,987,061	82,500	579,070,561	930,510,608	58,852,805	20,260	58,873,065
1998	35	276	40,107,620	251,824,167	2,528,075	254,352,242	294,459,862	46,863,357	187,015	47,050,372
1999	27	315	38,000,792	396,402,128	1,368,699	397,769,827	435,769,619	45,174,556	317,829	45,492,385
2000	35	212	208,899,015	723,152,746	333,457	723,486,203	932,385,218	115,397,403	87,343	115,484,746
2001	34	181	435,848,179	931,282,922	14,991,554	946,254,475	1,382,103,654	143,904,700	3,735,900	147,640,200
2002	22	194	74,454,427	937,841,188	23,407,571	961,248,757	1,035,703,184	150,280,717	4,008,686	154,289,403
2003	26	215	941,929,810	1,304,320,314	2,890,789	1,307,801,099	1,849,730,909	284,074,368	722,233	284,796,601
2004	28	273	34,818,447	470,335,091	5,715,062	476,110,142	510,926,589	95,320,149	1,625,126	97,945,275
2005	34	270	204,821,548	906,656,836	6,571,593	913,328,429	1,118,149,877	120,889,298	1,900,095	122,889,393
2006	18	216	1,050,520,714	1,227,114,221	16,229,540	1,243,343,761	2,293,864,475	163,167,984	3,921,996	167,089,981
2007	25	169	465,052,993	929,815,846	152,456,840	1,082,072,486	1,547,125,480	156,285,623	2,497,177	158,782,799
2008	60	231	162,972,022	962,481,088	6,852,571	969,313,659	1,132,285,682	185,933,162	1,522,164	187,455,327
2009	34	279	238,061,424	1,368,411,822	30,283,452	1,398,694,974	1,636,756,398	155,440,550	8,669,822	164,110,372
2010	42	386	646,983,732	1,855,905,336	16,386,232	1,872,771,568	2,519,135,301	335,034,132	4,639,804	339,723,936
2011	38	417	178,287,545	2,183,142,874	88,291,393	2,271,438,067	2,448,721,812	448,990,505	24,055,563	470,946,068
2012	26	417	557,273,987	2,510,255,899	37,838,888	2,548,094,567	3,105,368,534	281,818,575	10,598,793	292,417,368
2013	27	504	61,354,329	2,553,766,951	119,260,389	2,673,029,320	2,734,383,649	470,977,353	28,526,451	499,503,804
2014	32	470	88,054,490	2,278,174,137	66,322,326	2,344,496,462	2,432,650,952	383,908,380	10,877,186	394,785,566
2015	26	426	180,758,915	1,482,103,005	474,408,065	1,968,511,070	2,127,269,985	272,916,832	132,579,390	405,496,221
2016	70	503	97,354,415	2,552,004,363	75,145,888	2,627,150,082	2,724,504,467	463,973,837	20,481,847	484,455,684
2017	55	495	32,627,357	1,705,262,991	445,241,304	2,151,504,294	2,184,131,652	234,954,141	123,462,284	358,416,425
2018	60	446	568,088,015	1,854,432,427	80,634,205	1,949,236,632	2,513,355,847	244,377,541	22,259,609	266,637,149

FRAUD STATISTICS - HEALTH AND HUMAN SERVICES*

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS ¹		SETTLEMENTS AND JUDGMENTS ²					RELATOR SHARE AWARDS ³		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
TOTAL	1,022	7,633	6,733,728,793	30,390,264,925	1,671,775,748	32,062,040,673	38,785,769,428	4,905,856,887	407,901,384	5,313,758,251

NOTES:

0. The information reported in this table covers matters in which the Department of Health and Human Services is the primary client agency.
1. "New Matters" refers to newly received referrals, investigations, and qui tam actions.
2. Non qui tam settlements and judgments do not include matters delegated to United States Attorneys' offices. The Civil Division maintains no data on such matters.
3. Relator share awards are calculated on the portion of the settlement or judgment attributable to the relator's claims, which may be less than the total settlement or judgment. Relator share awards do not include amounts recovered in subsection (h) or other personal claims. See 31 U. S. C. 3730(h).

FRAUD STATISTICS - DEPARTMENT OF DEFENSE*

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS*		SETTLEMENTS AND JUDGMENTS*					RELATOR SHARE AWARDS*		
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED				
1987	237	20	27,897,128	0	0	0	27,897,128	0	0	0
1988	122	28	149,136,213	0	33,750	33,750	149,169,963	0	8,436	8,436
1989	120	31	154,588,287	10,902,058	0	10,902,058	164,990,355	1,384,770	0	1,384,770
1990	74	41	117,115,678	21,930,713	69,000	21,999,713	139,015,391	3,778,850	18,870	3,797,720
1991	78	44	227,898,245	57,200,000	42,000	57,242,000	285,140,245	6,625,800	10,500	6,636,300
1992	73	61	62,603,695	127,700,000	994,456	128,694,456	191,298,151	23,540,000	259,784	23,799,784
1993	93	53	83,742,840	24,000,000	5,707,641	29,707,641	113,450,481	3,280,425	1,671,498	4,951,923
1994	62	80	222,796,421	369,136,206	1,530,000	370,666,206	593,462,627	67,712,678	451,200	68,163,878
1995	54	88	110,459,386	140,548,237	15,000	140,563,237	251,022,623	28,348,711	0	28,348,711
1996	44	75	78,085,099	65,908,927	5,924,726	71,833,653	149,918,752	10,825,550	1,696,023	12,521,573
1997	45	79	30,734,273	35,090,213	1,513,000	36,603,213	67,337,486	6,018,810	379,435	6,398,245
1998	29	61	71,063,136	122,463,185	27,717,000	150,180,185	221,243,324	12,213,171	8,298,630	20,511,801
1999	33	66	30,622,711	15,114,509	745,137	15,859,646	46,482,357	2,684,186	170,750	2,854,936
2000	9	40	53,007,693	95,607,325	505,800	96,112,825	149,120,518	15,688,259	122,800	15,791,059
2001	10	41	17,472,751	30,030,696	88,083,098	118,113,794	135,586,545	5,955,566	19,451,866	25,407,432
2002	16	41	15,017,365	18,057,658	1,350,000	19,407,658	34,425,022	2,576,196	381,000	2,957,196
2003	10	36	107,337,000	204,884,468	0	204,884,468	312,221,468	48,592,795	0	48,592,795
2004	16	49	10,098,491	21,361,366	0	21,361,366	31,879,857	3,031,610	0	3,031,610
2005	16	49	10,949,835	101,125,200	0	101,125,200	120,175,135	21,426,065	0	21,426,065
2006	12	68	586,550,395	92,480,219	1,520,203	54,000,421	640,550,806	11,128,675	299,986	11,428,661
2007	25	50	16,400,000	36,230,766	496,908	36,727,674	53,127,705	4,983,718	126,419	5,110,137
2008	28	43	70,756,834	60,468,116	5,701,365	66,169,481	136,926,315	11,891,101	1,439,451	13,330,552
2009	17	51	21,739,666	416,852,869	140,000	416,992,869	438,732,135	64,469,853	26,600	64,496,453
2010	25	56	24,371,482	231,354,446	6,473,700	240,828,146	265,199,628	28,632,565	2,833,839	31,466,404
2011	19	45	29,484,345	113,130,970	0	113,130,970	142,614,915	23,428,827	0	23,428,827
2012	16	59	2,000,000	167,886,739	307,000	168,193,739	170,183,739	21,077,673	70,000	21,147,673
2013	12	78	5,119,188	47,116,462	154,000	47,272,462	52,391,631	7,246,936	41,580	7,288,516
2014	10	44	14,102,250	51,734,261	9,014,000	60,748,261	74,860,501	9,439,658	2,693,500	12,133,158
2015	7	36	109,991,660	145,989,076	26,572,197	172,561,273	282,652,933	24,600,368	2,561,920	27,162,288
2016	8	31	60,625,089	47,939,275	13,715,000	61,654,275	122,279,365	9,837,392	3,928,000	13,765,392
2017	21	29	10,800,000	206,679,712	500,000	209,179,712	220,079,712	42,686,422	135,000	42,821,422
2018	13	34	44,765,439	46,056,955	16,700,000	62,766,955	107,622,394	9,708,444	4,582,900	14,301,344

FRAUD STATISTICS - DEPARTMENT OF DEFENSE*

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS ¹		SETTLEMENTS AND JUDGMENTS ²				RELATOR SHARE AWARDS ³			
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM		TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL	
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED					TOTAL
TOTAL	1,352	1,607	2,685,435,579	3,076,002,246	216,525,382	3,294,527,627	5,879,963,206	534,805,898	51,679,469	586,485,366

NOTES:

0. The information reported in this table covers matters in which the Department of Defense is the primary client agency.
1. "New Matters" refers to newly received referrals, investigations, and qui tam actions.
2. Non qui tam settlements and judgments do not include matters delegated to United States Attorneys' offices. The Civil Division maintains no data on such matters.
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FRAUD STATISTICS - OTHER (NON-HHS, NON-DOD)*

October 1, 1986 - September 30, 2018

Civil Division, U.S. Department of Justice

FY	NEW MATTERS*		SETTLEMENTS AND JUDGMENTS*				RELATOR SHARE AWARDS*			
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
				TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED				
1987	92	7	47,220,995	0	0	0	47,220,995	0	0	0
1988	80	10	21,968,775	1,954,354	0	1,954,354	23,923,129	0	0	0
1989	83	40	42,263,423	10,000	1,561	11,661	42,275,084	2,000	200	2,200
1990	142	20	82,120,269	17,949,496	8,000	17,957,496	80,076,865	2,894,672	1,800	2,896,472
1991	137	29	33,961,497	7,764,431	27,500	7,791,931	41,753,418	1,160,336	8,250	1,168,586
1992	185	38	65,532,871	4,096,969	0	4,096,969	69,629,840	135,000	0	135,000
1993	189	47	85,679,571	7,883,383	895,359	8,778,742	94,458,313	1,349,709	95,404	1,445,113
1994	175	61	101,763,461	3,601,184	1,052,323	4,653,507	106,406,968	627,074	315,696	942,770
1995	152	94	83,239,477	14,414,266	0	14,414,266	77,653,743	2,475,603	0	2,475,603
1996	121	88	106,212,299	19,215,578	5,297,707	24,473,285	130,685,584	2,586,902	1,367,655	3,954,557
1997	80	199	83,303,781	7,941,960	4,415,000	12,296,960	95,600,741	996,005	1,258,800	2,244,805
1998	54	132	40,264,735	64,547,494	8,000	64,555,494	104,817,229	11,187,844	1,000	11,188,844
1999	80	112	126,866,682	71,048,598	2,985,667	74,004,263	200,871,245	15,159,323	676,908	16,036,231
2000	50	111	105,980,469	388,610,617	850,000	389,460,617	495,441,106	52,613,715	165,000	52,778,715
2001	41	92	41,176,045	254,232,268	25,512,500	279,744,768	320,919,843	37,730,204	7,514,514	45,244,718
2002	23	84	30,126,500	122,275,178	1,028,569	123,303,748	153,430,248	8,520,908	192,633	8,713,542
2003	56	83	61,831,489	25,057,571	2,305,126	27,362,697	89,194,186	4,640,694	660,506	5,301,202
2004	67	110	70,747,084	89,801,056	3,486,818	73,287,873	144,028,957	11,272,462	790,999	12,023,461
2005	55	87	83,943,500	141,266,498	810,000	142,076,498	195,119,998	26,163,759	131,800	26,294,759
2006	40	101	75,358,158	211,511,050	4,961,620	216,472,670	291,860,838	45,679,413	1,425,654	47,105,068
2007	79	116	83,373,651	285,680,313	7,283,344	293,173,657	376,547,508	31,618,872	1,993,303	33,612,175
2008	74	105	78,464,624	37,653,025	125,000	37,778,025	116,242,649	4,107,880	36,000	4,143,880
2009	80	103	208,884,996	178,740,859	3,353,028	182,093,887	390,978,883	20,656,732	987,725	30,644,457
2010	76	135	70,621,154	91,895,466	83,938,681	175,834,147	246,455,301	15,801,739	23,442,348	39,244,087
2011	68	172	33,994,105	360,526,170	85,597,310	446,126,480	479,720,585	54,715,691	24,986,043	79,701,934
2012	104	179	1,048,838,895	627,352,331	62,102,876	679,455,206	1,728,294,101	122,026,208	14,152,948	136,219,156
2013	62	175	121,903,274	195,931,949	80,563,687	276,815,636	398,718,910	30,776,225	21,555,906	52,332,131
2014	58	201	1,574,451,486	2,056,904,602	6,042,126	2,062,946,727	3,637,399,213	303,858,069	1,297,314	305,155,383
2015	81	178	467,691,913	288,948,728	13,180,432	272,129,160	739,821,073	46,598,081	3,174,816	49,762,898
2016	71	173	1,738,951,119	325,468,159	16,437,381	344,905,540	2,083,856,659	50,450,300	5,248,753	55,699,053
2017	69	156	237,469,951	670,120,408	153,296,969	823,417,377	1,060,887,328	66,212,335	10,921,813	77,134,148
2018	49	165	164,281,000	84,224,239	21,137,431	105,361,670	259,642,670	14,968,350	5,821,211	20,789,561

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	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM			TOTAL QUI TAM AND NON QUI TAM	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL				
TOTAL	2,783	3,402	7,137,291,368	6,607,690,446	579,968,934	7,187,649,380	14,324,940,738	995,785,646	128,425,005	1,124,210,650

NOTES:

0. The information reported in this table covers matters in which the primary client agency is neither the Department of Health and Human Services nor the Department of Defense.
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Peter Baker 
@peterbakernyt

Follow 

Questions have been raised about what Bill Barr told us for a story in 2017. Here is his full email from then responding to our request for comment. We're grateful he replied and hope this clarifies any confusion.

From: William Barr 
Date: Tue, Nov 14, 2017 at 10:17 AM
Subject: your question
To: @nytimes.com

Peter
Got your text. There is nothing inherently wrong about a President calling for an investigation. Although an investigation shouldn't be launched just because a President wants it, the ultimate question is whether the matter warrants investigation, and I have long believed that the procedure for investigating the witness here, as well as the foundation, is far stronger than any basis for investigating so-called "obstruction."
Likewise the basis for investigating various "national security" activities carried out during the election, as Senator Grassley has been attempting to do. To the extent it is not pursuing these matters, the Department is abdicating its responsibility.
%s Barr

5:23 PM - 15 Jan 2019



WHAT YOU SHOULD KNOW ABOUT
THE CIVIL RIGHTS RECORD OF WILLIAM BARR

A BRIEF BY
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

LDF
DEFEND EDUCATE EMPOWER

What You Should Know about the Civil Rights Record of William Barr

On December 7, 2018, President Trump announced William P. Barr as his nominee for Attorney General of the United States, following the forced resignation of Jefferson (“Jeff”) Beauregard Sessions III. As head of the U.S. Department of Justice (DOJ) and the nation’s top law enforcement official, the position of Attorney General is one of unparalleled power within the Executive Branch and has profound implications for civil rights. The Attorney General must work to advance the full mission of DOJ which includes working to “ensure the fair and impartial administration of justice to all Americans,” including by monitoring and enforcing Americans’ constitutional and civil rights. It is therefore essential that any nominee’s record on civil rights is thoroughly and closely scrutinized before confirmation to this position of extraordinary public trust and firmly opposed if that record indicates a lack of commitment to the constitutional principles of fairness, equality, and the rule of law.

The importance of this inquiry is punctuated by the context in which it arises. The nomination of Mr. Barr must be viewed in the context of this unique and critical moment in our nation’s history, informing how one should evaluate Mr. Barr’s record and his fitness for office. This President is laboring under the cloud of multiple federal investigations into potential felonious activity involving collusion with a foreign power in the very election process that brought him to office and enabled the President to make this nomination. The investigation is ongoing and has resulted in multiple indictments and guilty pleas.¹ These investigations not only taint this President and undermines his credibility and legitimacy to even make nominations, they taint this confirmation process and the nominee.

Below is an initial overview of Mr. Barr’s record on civil rights throughout his career, including his time in the DOJ during the George H.W. Bush Administration, done with an understanding and through the lens of the current state of the Department of Justice he would lead.

The Racial Justice Legacy of Attorney General Sessions

From February 2017 until November 2018, the DOJ was led by Mr. Sessions, who established policies, programs, and practices that undermined and attacked the civil rights of communities of color, including the dismantling of racial diversity efforts and withdrawal of guidance addressing racial disparities in school discipline, promoting voter suppression, and abdicating its obligation to protect the civil rights of persons who encounter the criminal justice system. We provide a non-exhaustive review below.

- The Administration has taken multiple actions that negatively impact the civil rights of students of color. At a time when schools are re-segregating and Black and brown students are increasingly attending racially isolated, under-resourced, high-poverty schools,² the Administration has made a concerted effort to dismantle diversity efforts from K through college. In July 2018, the Departments of Education and Justice withdrew several guidance documents on the voluntary use of race to achieve diversity and reduce racial isolation in K-12 schools and guidance on how to achieve diversity in higher education under Title VI of the Civil Rights Act of 1964. Moreover, these same Departments undermined efforts to address widespread racial disparities in the administration of school discipline shortly after Mr. Session’s departure. In December 2018, under the guise of a Federal Commission on School Safety led by the

¹ See, e.g., Editorial Bd., The Case for Robert Mueller’s Probe of Russian Meddling, *NEWSDAY*, Aug. 25, 2018, <https://www.newsday.com/opinion/editorial/robert-mueller-russian-election-meddling-1.20655665>; Sharon LaFraniere, Paul Manafort, Trump’s Former Campaign Chairman, Guilty of 8 Counts, *N.Y. TIMES*, Aug. 21, 2018, <https://www.nytimes.com/2018/08/21/us/politics/paul-manafort-trial-verdict.html>.

² U.S. GOV’T ACCOUNTABILITY OFFICE (GAO), GAO-16-345, K-12 EDUCATION: BETTER USE OF INFORMATION COULD HELP AGENCIES IDENTIFY DISPARITIES AND ADDRESS RACIAL DISCRIMINATION (2016).

Secretaries of the Departments of Education, Justice, Homeland Security and Health and Human Services,³ the Trump Administration rescinded the 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline.⁴ The guidance did not address school safety, but rather informed school districts how to avoid engaging in racially discriminatory disciplinary practices by detailing the requirements of federal law and offering examples of promising school programs that keep students who experience behavioral problems in school and learning. Additionally, in August 2018, DOJ filed a court document in support of a lawsuit alleging that Harvard College's affirmative action policy discriminates against Asian-American students and seeking as a remedy a race-neutral admissions process that would demonstrably decrease the university's racial diversity and harm all students.⁵ DOJ took this position even though there is U.S. Supreme Court precedent, most recently affirmed in 2016, stating that race can be one of many factors considered in the college admissions process to promote diversity.⁶

- Demonstrated through multiple actions, DOJ has become this Administration's voter suppression agency. Efforts to curtail voting rights and make it more difficult for people to vote intensified under the leadership of Mr. Sessions. For example, immediately following Mr. Sessions' appointment, DOJ reversed course to side with Texas in an effort to impose a racially discriminatory voter identification scheme, asking a federal appeals court to allow the state to enforce the law that a lower court found violated the Voting Rights Act and the 14th and 15th Amendments of the U.S. Constitution.⁷ DOJ similarly sided with Ohio in an effort to unfairly purge voters from its rolls.⁸ This reversed a position which spanned more than two decades and across Republican and Democratic Administrations alike, which interpreted the NVRA as prohibiting the exact type of racially discriminatory voter purges being conducted by Ohio.⁹
- DOJ has also abandoned its obligation to ensure that criminal laws are administered fairly and without regard to race. Despite a decades-long history of police abuse in Baltimore and Chicago,¹⁰ DOJ took steps to prevent the approval of consent decrees to address documented civil rights violation; these are agreements it is authorized to negotiate pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (re-codified at 34 U.S.C § 12601).¹¹
- In January 2017, DOJ filed a motion to delay the court's approval of the proposed consent decree that Baltimore city officials and residents had negotiated for months with DOJ. The judge denied the federal government's 11th hour attempt to derail the consent decree, stating that "[i]t would be extraordinary for the court to permit one side to unilaterally amend an agreement already jointly reached and signed."¹² In Chicago, after DOJ renege on an agreement in principle with city officials to negotiate a

³ *Federal Commission on School Safety, ED.GOV*, <https://www.ed.gov/school-safety>.

⁴ Roger Clegg, *Great News: Administration Rescinds Obama School-Discipline Guidance* (Dec. 21, 2018, 2:55 PM),

<https://www.nationalreview.com/corner/great-news-administration-rescinds-obama-school-discipline-guidance/>.

⁵ *Students for Fair Admissions, Inc. v. Harvard Corp.*, No. 1:14 CV 14176 ADB, 2018 (D. Mass. Aug. 30, 2018),

http://cdn.cnn.com/cnn/2018/images/08/30/harvard_statement_of_interest_filed_0.pdf.

⁶ See *Fisher v. University of Texas*, 579 U.S. ____ (2016).

⁷ Jim Malewitz, *Trump's Justice Department Wants Texas to Keep Invalidated Voter ID Law*, TEX. TRIBUNE, Sep. 1,

2017, <https://www.texastribune.org/2017/09/01/trumps-doj-wants-texas-be-able-use-id-law-struck-discriminatory/>;

Veasey v. Abbott, 265 F. Supp. 3d 684 (Aug. 23, 2017).

⁸ *Husted v. Philip Randolph Institute*, 584 U.S. ____ (2018); Charlie Savage, *Justice Dept. Backs Ohio's Effort to Purge Infrequent Voters from Rolls*, N.Y. TIMES, Aug. 8, 2017.

⁹ <https://www.naacpld.org/files/about-us/16-980bsacNAACPLegalDefenseFundetal.pdf>.

¹⁰ Baltimore, <https://www.justice.gov/crt/file/883296/download>; Chicago,

<https://www.justice.gov/opa/file/925846/download>.

¹¹ This federal law allows the U.S. Department of Justice to investigate police departments to determine if there is a pattern or practice of unlawful policing, including any violation of antidiscrimination laws, such as Title VI of the Civil Rights Act of 1964. See, <https://www.justice.gov/crt/conduct-law-enforcement-agencies>.

¹² Mike Helligren, *Judge Approves Baltimore PD-DOJ Consent Decree, Denies DOJ's Request for Delay* (Apr. 7, 2017, 10:25 PM), <https://baltimore.cbslocal.com/2017/04/07/baltimore-police-department-of-justice-consent-decree/>.

consent decree to address the civil rights violations detailed in DOJ's investigative report,¹³ the Illinois Attorney General filed a separate civil rights lawsuit relying on DOJ's report and entered into a consent decree with Chicago city officials. Even though DOJ was not a party to the case, Mr. Sessions filed a letter of interest opposing the consent decree.¹⁴

In addition to the incredible damage to civil rights spearheaded by Mr. Sessions during his tenure as Attorney General, immediately upon his forced resignation, Matthew Whitaker, Mr. Sessions' former chief of staff, was installed as interim attorney general. There are serious questions and uncertainty about his qualifications for the position. However, equally, if not more, important, there are questions about the legality of the appointment itself, given that Mr. Whitaker was placed in the position without the Constitutionally required advice and consent of the Senate. In previous interviews and speeches, Mr. Whitaker has expressed views that courts "are supposed to be the inferior branch", questioned the Supreme Court's power to review legislative and executive acts and declare them unconstitutional, questioned key long-standing Supreme Court rulings and refused to recuse himself from the Mueller investigation despite the recommendation of the top ethics official at DOJ. For over three months, Mr. Whitaker has led DOJ without any oversight. This is the DOJ that will be inherited by the next attorney general and that person must be committed to restoring the integrity of the Department.

This is a summary of some of the devastating legacy of the prior Attorney General and the DOJ Mr. Barr will lead if confirmed. It is critical to assess whether Mr. Barr would continue to implement these policies or work to reverse them. A preliminary review of Mr. Barr's record is very troubling and reflects his promotion of policies and practices that have disproportionately harmed the civil rights of communities of color in particular. Additionally, a recent Washington Post op-ed co-authored by Mr. Barr wherein he praises the tenure of Mr. Sessions and references his leadership of DOJ as "outstanding", suggests that he may continue to steer DOJ in the same troubling and unacceptable manner as Mr. Sessions and will not engage in the necessary course correction to restore fairness and integrity to the Department.¹⁵

Tenure as Attorney General in the George H.W. Bush Administration

In his zeal to expand executive and police power to incarcerate more Americans, build more prisons, and further the War on Drugs with all of attendant impacts on communities of color, Mr. Barr's tenure in the George H.W. Bush administration was marked by a callous lack of empathy and respect for constitutional rights and democratic norms. His record on criminal justice matters truly stands out as deeply concerning. Mr. Barr promoted the types of policies that would undermine the incremental progress that has been made in the criminal legal system and his rhetoric regarding policing demonstrates a complete lack of understanding, or a disingenuous denial, of the role of race in police interactions. The prospect of Mr. Barr enabling this Administration's worst undemocratic and authoritarian impulses is deeply troubling. But as alarming as Mr. Barr's record in the George H.W. Bush administration is, it may only hint at the harm that will be done to people of color, other marginalized groups, and our democracy, if Mr. Barr holds a key role in the Trump administration.

- As U.S. Attorney General from 1991 to 1993, Mr. Barr was a central architect of the out-dated, draconian "tough on crime" approach that fostered the "war on drugs" and so-called "law and order" policies

¹³ *Agreement in Principle Between the U.S. DOJ and the City of CHI. Regarding the CHI Police Department* (Jan. 13, 2017), <https://www.justice.gov/crt/case-document/file/925921/download>.

¹⁴ Hellgren, M., <https://baltimore.cbslocal.com/2017/04/07/baltimore-police-department-of-justice-consent-decree/>.

¹⁵ William P. Barr, Edwin Meese III, and Michael B. Mukasey, *We are Former Attorneys General. We Salute Jeff Sessions* (Nov. 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.cba198111a8c.

which have caused incarceration rates in the United States to more than triple since the 1980s.¹⁶ This rapid increase is largely attributable to the increased incarceration of non-violent drug offenders over the last three decades. Criminal justice policies like the ones developed by Mr. Barr led to this incarceration rate surge and continue to drive racial inequality and poverty, creating barriers to opportunity and devastating communities of color.

- Mr. Barr acknowledges that he came into office as Attorney General with a specific agenda of imposing harsh criminal penalties.¹⁷ The New York Times reported that Mr. Barr began his tenure as Attorney General by “shift[ing] the department to a more aggressive stance” by enacting “a series of anti-crime measures, mainly redeploying existing manpower on his violent crime priorities: gangs, drugs and guns.”¹⁸
- Mr. Barr has insisted the unrest in Los Angeles following the beating of Rodney King in 1991 underscored the need for a tough-on-crime stance. Mr. Barr maintains that what followed the acquittals of the officers who assaulted Rodney King “was not civil unrest or the product of some festering injustice,” but “was gang activity, basically opportunistic.”¹⁹ Mr. Barr acknowledges his role in preparing a plan “overnight” to send over 2000 federal officers—FBI, SWAT, a border patrol special operations group, U.S. marshals, prison special operations, etc.—to Los Angeles to make clear that, in his own words, “we’re not going to tolerate any of this stuff out in the streets.”²⁰ Mr. Barr told President Bush that an alternative to his plan to send in the federal officers would be to send in “the regular army.” Mr. Barr stated, “We had just gone through an exercise two years earlier in St. Croix, so I was very familiar with how to use regular Army in a domestic situation.”²¹ Mr. Barr regrets that DOJ did not pursue federal indictments against people in the Los Angeles community during the uprising.²²
- A 1991 New York Times editorial on Mr. Barr’s nomination for Attorney General noted that Mr. Barr criticized Democrats as “pro-criminal” because they supported legislation that sought “nothing more than to preserve the right of state prisoners to appeal to Federal courts, as well as safeguards against racial discrimination in death penalty sentencing.”²³
- In 1992, Mr. Barr released a report titled “The Case for More Incarceration.” The report argues against the concept of over-incarceration and urges the building of more prisons while decreasing the use of alternatives to incarceration for felonies in the criminal justice system. He also warns about insufficient sentences and early release. For example, Mr. Barr writes, “One proposition is abundantly clear: Failure to incarcerate convicted criminals will lead to additional crimes. There are two sources of direct evidence of this proposition. First, offenders placed on probation commit new crimes while on probation. Second, offenders who are released early commit new crimes during the period when they would otherwise

¹⁶ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States 1998* (2002); Paige M. Harrison & Allen J. Beck, U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2003* (2004); <https://www.vox.com/policy-and-politics/2018/12/7/18129487/william-barr-trump-attorney-general-criminal-justice-reform>.

¹⁷ Ronald J. Ostrow, *William Barr: A ‘Caretaker’ Attorney General Proves Agenda-Setting Consercation* (June 21, 1992), http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general.

¹⁸ David Johnston, *New Attorney General Shifts Department’s Focus*, N.Y. Times (Mar. 3, 1992), <https://www.nytimes.com/1992/03/03/us/new-attorney-general-shifts-department-s-focus.html>.

¹⁹ William P. Barr Oral History, *supra* note 7.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Editorial, *A New Attorney General Steps Up*, N.Y. Times (Oct. 20, 1991), <https://www.nytimes.com/1991/10/20/opinion/a-new-attorney-general-steps-up.html>.

have been confined in prison.”²⁴ As discussed earlier and below, the very policies promoting harsh sentencing with longer prison sentences exacerbates challenges to recidivism by reducing the formerly incarcerated individual’s opportunities to employment, and stable, safe and affordable housing all of which are foundational to successful re-entry and reduced recidivism. Moreover, studies show that the risk of recidivism reduces significantly over time for those with non-violent convictions, the types of individuals most impacted by “War on Drugs” and Mr. Barr’s policies.²⁵

- Project Triggerlock was a particular hallmark of Mr. Barr’s tenure as Attorney General. According to Mr. Barr in 1991, Project Triggerlock uses federal firearms laws to prosecute “the most dangerous violent criminals in each community” in federal court “to take advantage of stiff mandatory sentences without the possibility of parole.”²⁶ In a 2001 interview, Mr. Barr said the following about Project Triggerlock: “That thing was great because you just give people a directive, and all of a sudden this machine starts. We were putting away over a thousand people, actually incarcerating a thousand people. By the end of the administration, we had done over 18,000 people in a very short period of time. . . .”²⁷
- While Mr. Barr is proud of this achievement, as discussed above, these types of policies caused the number of Americans who have some sort of criminal record to increase significantly. Incarceration rates in the United States have more than tripled since the 1980s.²⁸ As a result of this increase, the United States currently constitutes approximately five percent of the world’s population but holds 25 percent of the world’s prison population.²⁹ From 1975 to 2005 the United States’ incarceration rate increased by 342 percent.³⁰ Criminal justice policies that led to this incarceration rate surge continue to drive racial inequality and poverty. If not for mass incarceration, one study reports that the overall poverty rate would have dropped by 20 percent between 1980 and 2004.³¹ One-in-three Americans are estimated to have a criminal record³² creating barriers to opportunity, such as employment.³³ Unfortunately, data show that one year after their release, 60 percent of formerly incarcerated individuals remain unemployed.³⁴ And, for those able to find employment, most have considerably diminished earnings.³⁵
- The impact of the criminal justice system particularly resonates in communities of color. People of color are disproportionately represented in our prison system as they represent more than 60 percent of the

²⁴ William P. Barr, *The Case for More Incarceration* 5 (1992),

<https://www.ncjrs.gov/pdffiles1/Digitization/139583NCJRS.pdf>.

²⁵ Rebecca Vallas & Sharon Dietrich, *One Strike and You’re Out*, CENTER FOR AMERICAN PROGRESS 1 (Dec. 2014),

<https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

²⁶ William P. Barr, Office of the Att’y Gen., 1991 Annual Report of The Att’y Gen. of the U.S. 19. (quoted in Rachel E. Barkow, *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 Mich. L. Rev. 519, 575 (2011)).

²⁷ William P. Barr Oral History, *supra* note 7.

²⁸ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States 1998* (2002);

Paige M. Harrison & Allen J. Beck, U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2003* (2004).

²⁹ Marc Mauer, *Race to Incarcerate*, 15-14 (1999).

³⁰ Robert DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, SAGE JOURNALS Vol. 59, Issue 4 (2013) <http://journals.sagepub.com/doi/abs/10.1177/0011128708328864>.

³¹ *Id.* at 20.

³² Rebecca Vallas & Sharon Dietrich, *One Strike and You’re Out*, CENTER FOR AMERICAN PROGRESS 1 (Dec. 2014),

<https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

³³ *Id.*

³⁴ Rebecca Vallas et al., *Removing Barriers to Opportunity for Parents with Criminal Records and Their Children*, CENTER FOR AMERICAN PROGRESS 4 (Dec. 2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/12/09060720/CriminalRecords-report2.pdf>.

³⁵ *Id.*

prison population,³⁶ but makeup 37.9 percent³⁷ of the U.S. population. African Americans and Latinos in particular are overrepresented in the prison system. African Americans make up less than 13 percent³⁸ of the U.S. population but are 40 percent of the prison population.³⁹ The prevalence of arrest rates and criminal convictions are far higher among African Americans and Latinos than for whites: African Americans are 2.5 times more likely to be arrested than whites.⁴⁰ These racial disparities are not explained by disproportionate rates of criminal activity—one study found that in 2005, African Americans represented 14% of current drug users, yet they constituted 33.9% of persons arrested for drug offenses.⁴¹ Rather, they demonstrate the roles that racial profiling and discriminatory criminal justice policies have played and continue to play in our criminal justice system.⁴²

- As Attorney General, Mr. Barr believed the criminal justice system was fair because he saw no evidence of intentional bias. He acknowledged that the system may have a disparate impact on black people, including the crack/powder cocaine disparity, but that was not itself a reason to believe the system was operating unfairly.⁴³
- Mr. Barr was the architect of President Bush's controversial signing statement used to enact the Civil Rights Act of 1991. According to a New York Times article, Republicans and Democrats both criticized the statement for endorsing "a hotly debated interpretation of certain provisions of the new anti-discrimination law that gives employers the broadest discretion in citing 'business necessity' to defend policies that exclude blacks, women and other minority groups from hiring."⁴⁴ In a 2001 interview, Mr. Barr said that the signing statement was to help guide future courts in their interpretation, for legislative history purposes:

This raises the whole debate that came up that we felt that the President could refuse to enforce unconstitutional laws, especially if they dealt with his prerogatives. Congress's game

³⁶ Trends in U.S. Corrections, The Sentencing Project, <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

³⁷ See U.S. Census, Quick Facts <https://www.census.gov/quickfacts/table/PST045216/00>.

³⁸ *Id.*

³⁹ Peter Wagner and Bernadette Rabuy, *Mass Incarceration*, PRISON POLICY INITIATIVE (Mar. 14, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

⁴⁰ Recent statistics from the FBI show that African Americans accounted for more than 3 million arrests in 2009 (28.3% of total arrests), even though they represented just 12.9% of the general population; whites, who formed 75.6% of the general population, accounted for fewer than 7.4 million arrests (69.1% of total arrests). Crime in the United States, 2009 U.S. Department of Justice — Federal Bureau of Investigation (Sept. 2010) tbl. 43. <http://www2.fbi.gov/ucr/cius2009/arrests/index.html>. Among persons arrested on felony charges in 2006, 29% were white, while 45% were black and 24% were Latino. Bureau of Justice Statistics, U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties, 2006*, app. tbl. 2 (2010). Similar disparities are seen in conviction rates as well. One recent estimate found that nearly one-fourth of the black adult male population (23.3%) has at least one felony conviction but is not currently under any form of criminal justice supervision, while that figure is only 9.2% for the adult male population as a whole. Christopher Uggen, Jeff Manza & Melissa Thompson, *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, 605 *Annals Am. Acad. Pol. & Soc. Sci.* 281, 288 & tbl. 2 (2006); see also Marc Mauer and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, 3 (2007), http://www.sentencingproject.org/doc/publications/rd_stateratesofincbyraceandethnicity.pdf (finding African Americans incarcerated 5.6 times rate of whites, Hispanics incarcerated at 1.8 times rate of whites).

⁴¹ Marc Mauer, *Justice for All? Challenging Racial Disparities in the Criminal Justice System*, Am. Bar Ass'n (2010). A recent report by the American Civil Liberties Union ("ACLU") found that "Black people are 3.7 times more likely to be arrested for marijuana possession than white people despite comparable usage rates." Press Release, ACLU, *New ACLU Report Finds Overwhelming Racial Bias in Marijuana Arrests* (June 4, 2013), <https://www.aclu.org/criminal-law-reform/new-aclu-report-finds-overwhelming-racial-bias-marijuana-arrests>.

⁴² See, e.g., Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010); Marc Mauer, *Mass Imprisonment and the Disappearing Voters*, in *Invisible Punishment* 53 (Marc Mauer & Meda Chesney-Lind eds., 2002) (discussing war on drugs).

⁴³ Ostrow, Ronald J., http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general.

⁴⁴ Andrew Rosenthal, *Reaffirming Commitment, Bush Signs Rights Bill*, N.Y. Times (Nov. 22, 1991), <https://www.nytimes.com/1991/11/22/us/reaffirming-commitment-bush-signs-rights-bill.html>.

is to take a piece of must-pass legislation and throw something that's quite offensive on it that derogates some Presidential power, that's one of their tactics. So our attitude was Fine, we'll sign the bill. We're just not going to enforce the unconstitutional part. There was a mini debate about whether it's appropriate not to enforce the law.⁴⁵

- Mr. Barr is a proponent of using signing statements to raise constitutional objections, including objecting to legislative checks on executive power. As Deputy Attorney General, Mr. Barr wrote a memo in which he "identified ten categories of legislative action he considered constitutionally problematic and noted that the Administration had objected to many of these perceived intrusions through the issuance of signing statements."⁴⁶
- Mr. Barr believes there are limits on when DOJ should defend the constitutionality of congressional enactments. In 2001, he said that the rule at DOJ followed under his leadership was that "[t]here's a presumption that you will defend the constitutionality of congressional enactments, with an exception, which is that any statute that impinges on executive prerogative we will not defend."⁴⁷ This is consistent with his views of executive power. In a 1989 memo, Mr. Barr urged federal officials to "consistently and forcefully" resist "congressional incursions" into "executive branch prerogatives" such as what executive branch officials the President can appoint and remove.⁴⁸

The Trump administration's assault on civil and constitutional rights would continue uninterrupted with the appointment of William Barr. Certain trends, like the increased militarization of the police force and the growing number of jails, would continue under the policies favored by Mr. Barr, while others, like the slight but steady decrease in national incarceration and the bipartisan movement to end cash bail and provide alternatives to incarceration, would likely be derailed. If it were not already clear when Mr. Barr was Attorney General in the early 1990s, the ensuing years have demonstrated clearly that his policies and worldview are disastrous, extreme, and obsolete. In fact, the stakes may be higher arguably now than in 1992, as this Administration unleashes new threats to the Constitution and to our democratic system on a regular basis. Nothing in Mr. Barr's record shows that he will be a moderating voice in this administration.

Career After the Department of Justice

Since leaving DOJ Mr. Barr has had an extensive and lucrative career in corporate and private law practice. His time away from DOJ has not caused his views on criminal justice, LGBTQ rights and other issues to evolve. In fact, his writings, interviews and affiliations demonstrate problematic thinking and ideals regarding subjects which will comprise a substantial portion of the work he would oversee as Attorney General.

- In 2015, Mr. Barr opposed the Sentencing Reform and Corrections Act of 2015, S. 2123 which would have helped reduce the impact of the criminal justice systems' overly harsh sentencing policies and laws.

⁴⁵ William P. Barr Oral History, *supra* note 7.

⁴⁶ Department of Justice, Office of Legal Counsel, "Common Legislative Encroachments on Executive Branch Authority," 13 U.S. Op. Off. Legal Counsel, 248, 249 (1989) (quoted in Todd Garvey, Presidential Signing Statements: Constitutional and Institutional Implications 4 (2012), <https://fas.org/sgp/crs/natsec/RL33667.pdf>).

⁴⁷ George H.W. Bush Oral History Project April 5, 2001, <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

⁴⁸ *Common Legislative Encroachments on Executive Branch Authority* (July 27, 1989), <https://www.justice.gov/file/24286/download>.

In the opposition letter, he insists, “Our system of justice is not broken.”⁴⁹ The letter also credits the decline in the national crime rate to “[m]andatory minimums and proactive law enforcement measures.”⁵⁰

- In November 2018, Mr. Barr co-authored a piece with former Attorneys Generals Ed Meese and Michael Mukasey honoring Mr. Sessions. The op-ed claims that President Obama’s DOJ “undermined police morale, with the spreading ‘Ferguson effect’ causing officers to shy away from proactive policing out of fear of prosecution.”⁵¹ The piece also praises the reinstatement of the practice of U.S. Attorneys pursuing “the most serious, readily provable offense.”⁵² Mr. Barr and his co-authors also praise Mr. Sessions for “breaking the record for prosecution of illegal-entry cases and increasing by 38 percent the prosecution of deported immigrants who reentered the country illegally.” The piece states that Mr. Sessions “help[ed] restore the rule of law” by “oppos[ing] nationwide injunctions by federal district courts” and “forbid[ding] settlements in which the Justice Department has directed payments from settling defendants to third parties so as to circumvent the appropriate authority of Congress.”
- Mr. Barr appears to have had close associations with the American Legislative Exchange Council (ALEC). In 1994, Mr. Barr “unveiled the ALEC agenda” regarding prison privatization and tough-on-crime legislation to state officials in Pennsylvania at a media event.⁵³ In the forward to a 1994 report by ALEC, Mr. Barr wrote, “This study makes a strong case that increasing prison capacity is the single most effective strategy for controlling crime.”⁵⁴ It unclear whether Mr. Barr has maintained his association with ALEC.
- In a 1993 interview, Mr. Barr expressed hostile views toward assertions that our criminal justice system operates unfairly despite ample evidence of its bias and vigorous support for harsh sentencing and mandatory minimums. Specifically, he said:

The notion that there are sympathetic people out there who become hapless victims of the criminal justice system and are locked away in federal prison beyond the time they deserve is simply a myth. The people who have been given mandatory minimums generally deserve them—richly. This country has spent a decade trying to get across two essential messages: First, that we have a tough federal criminal-justice system—if you do the crime, you’ll do the time. Second, that participating in drug trafficking is morally reprehensible. Backpedaling on mandatory minimums subverts these messages at just the wrong time.⁵⁵

⁴⁹ Letter from John Ashcroft et al. to Sen. Mitch McConnell and Sen. Harry Reid re Sentencing Reform and Corrections Act of 2015, Dec. 10, 2015, <http://nafusa.org/wp-content/uploads/2016/01/Sentencing-Dear-Colleague-Letter-with-Attachment.pdf>.

⁵⁰ *Id.*

⁵¹ William P. Barr et al., *We are Former Attorneys General. We Salute Jeff Sessions*. Wash. Post (Nov. 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.46b45b17219e.

⁵² *Id.* (citing Memorandum from Attorney General Jeff Sessions re: Department Charging and Sentencing Policy, Office of the Attorney General, May 10, 2017, <https://www.justice.gov/opa/press-release/file/965896/download>).

⁵³ Brigitte Sarabi & Edwin Bender, *The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom 5* (2000), https://www.prisonpolicy.org/scans/Prison_Payoff_Report_WPP_2000.pdf; see also Lee Hall, *Nomads Under the Tent of Blue: Migrants Fuel the U.S. Prison Industry*, 6 Rutgers Race & L. Rev. 265, 306-07 (“The American Legislative Exchange Council, or ALEC, has risen to the occasion, offering bills to support privatization and ensure a flow of detainees. By 1994, ALEC was pressing its policies in Pennsylvania with the assistance of William Barr, Attorney General from the first Bush administration.”).

⁵⁴ Quoted in Frank Green, *Trump’s Nominee for Attorney General Helped Create Virginia’s Current Criminal Sentencing System*, Richmon Times-Dispatch (Dec. 16, 2018), https://www.richmond.com/news/local/crime/trump-nominee-for-attorney-general-helped-create-virginia-s/article_3c51f303-ee9b-5b68-98b9-abf9c1a9248f.html.

⁵⁵ *Barr: Clinton Administration Soft on Crime, Going AWOL on Drug War*, Conn. Law Tribune (Aug. 23, 1993).

- After leaving the Bush Administration, Mr. Barr dedicated himself to trying to end parole in Virginia by co-chairing former Governor George Allen’s Commission on Parole Abolition and Sentencing Reform.⁵⁶ The Commission released a plan in 1994 “that would abolish parole, increase sentences for violent criminals by as much as 700 percent and require the construction of dozens of new prisons in the next decade.”⁵⁷
- Mr. Barr holds hostile views toward members of the LGBTQ community, as well as ideas about the role of government in enforcing religious-based concepts that are antithetical to the First Amendment and civil rights. In 1995, Mr. Barr wrote a law review article arguing against secularism in government and in favor of the state imposing a religiously based “transcendent moral order” that “flows from God’s eternal law.”⁵⁸ Mr. Barr calls upon the law to “restrain sexual immorality,” and condemns a District of Columbia law that was applied “to compel Georgetown University to treat homosexual activist groups like any other student groups.”⁵⁹ “This kind of law,” according to Mr. Barr, “dissolves any kind of moral consensus in society.”⁶⁰ More recently, Mr. Barr praised Mr. Sessions for withdrawing policies that protect people from discrimination based on gender identity.⁶¹

Conclusion

At this critical moment in our history, it is essential that DOJ is led by an Attorney General who will respect the independence of the special counsel, uphold the rule of law and enforce our nation’s civil rights laws. A review of his record before, during and after his service in the Bush Administration demonstrates that Mr. Barr is hostile to sensible criminal justice reform, marginalized communities and legislative checks on executive power. Indeed, given the current attacks on our civil rights, Mr. Barr bears the burden of showing that he will indeed promote these principles and will not continue or extend the rollbacks of our civil rights ushered in by this Administration. It is the Senate’s constitutional duty to review his record thoroughly and impartially and to consider whether Mr. Barr will defend civil rights and the rule of law.

⁵⁶ Frank Green, *Trump’s Nominee for Attorney General Helped Create Virginia’s Current Criminal Sentencing System*, *Richmon Times-Dispatch* (Dec. 16, 2018), https://www.richmond.com/news/local/crime/trump-s-nominee-for-attorney-general-helped-create-virginia-s/article_3c51f303-ee9b-5b68-98b9-ab9e1a9248f.html.

⁵⁷ Peter Baker, *Allen Offers Plan to Abolish Parole*, *Wash. Post* (Aug. 17, 1994), https://www.washingtonpost.com/archive/politics/1994/08/17/allen-offers-plan-to-abolish-parole/aa89f603-818d-42aa-9b7d-40a09054b70e/?noredirect=on&utm_term=.325ad6331fcc.

⁵⁸ William P. Barr, *Legal Issues in a New Political Order*, 36 *The Catholic Lawyer* 1, 3 (1995), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=2355&context=tcl>.

⁵⁹ *Id.* at 9.

⁶⁰ *Id.*

⁶¹ William P. Barr et al., *We are Former Attorneys General. We Salute Jeff Sessions*, *Wash. Post* (Nov. 7, 2018), https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?noredirect=on&utm_term=.46b45b17219e.



William Barr

President Trump nominated William Barr to serve as Attorney General on December 7, 2018. Barr is anti-choice.

Career

- Bachelor of Arts, Columbia University, 1971
- M.A., Columbia University, 1973
- Analyst, Central Intelligence Agency, 1973-1977
- J.D., George Washington University, 1977
- Clerk, Hon. Malcom Wilkey, U.S. Court of Appeals for the District of Columbia Circuit, 1977-1978
- Associate, Shaw, Pittman, Potts & Trowbridge, 1978-1982
- Senior Policy Advisor/Deputy Assistant Director, Office of Policy Development, Reagan White House, 1982-1983
- Associate, Shaw, Pittman, Potts & Trowbridge, 1983-1984
- Partner, Shaw, Pittman, Potts & Trowbridge, 1985-1989
- Assistant Attorney General, Office of Legal Counsel, 1989-1990
- Deputy Attorney General, Office of the U.S. Attorney General, 1990-1991
- U.S. Attorney General, 1991-1993
- Partner, Shaw, Pittman, Potts & Trowbridge, 1993-1994
- Senior Vice President and General Counsel, GTE, 1994-2000
- Executive Vice President and General Counsel, Verizon Communications, 2000-2008
- Self-Employed Consultant, 2011-Present
- Counsel, Kirkland & Ellis, 2009, 2017-Present

Record on Choice-Related Issues

- During his 1991 Senate confirmation hearing, Barr was asked for his “point of view with respect to a woman’s right to choose.”¹¹ He responded, “I haven’t taken a position on it publicly, I don’t believe. I believe that there is a right to privacy in the Constitution. I do not have fixed or settled views on the exact scope of the right to privacy. I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled... I believe *Roe v. Wade* should be overruled. I think that the basic issue is whether or not abortion should be something that is decided by society, by the people, the extent to

which it is permitted, the extent to which it is regulated, that those are legitimate issues for state legislatures to deal with, and that's where the decision-making authority should be. *Roe v. Wade* basically, in my view, took it away from the states and found an absolute right in the Constitution, foreclosed any kind of role for society to place regulations on abortion, and I don't think that opinion was the right opinion."²

- Barr authored a letter to the Senate expressing the Department of Justice's strong opposition to the Freedom of Choice Act (FOCA), landmark legislation to codify *Roe v. Wade*'s protections, and asserting that he would advise President George H.W. Bush to veto it should it be enacted by Congress.³ Barr gave numerous reasons for his opposition to FOCA, including that FOCA would "prohibit States from enacting reasonable regulatory restrictions on abortions clearly permitted under *Roe v. Wade* and its progeny;" that the bill did not expressly allow states to require parental notification and consent before a young woman could access abortion; that "the bill does not permit institutions to refuse to perform abortions;" and that nothing in the bill would "permit a state to deny the use of a state facility" for abortion.⁴ He also noted that the bill "contain[ed] no exception" for various states' biased counseling and mandatory delay requirements.⁵ Barr went on to assert that Congress did not have the authority to pass FOCA, and to suggest that abortion law should be left to the states, a common anti-choice talking point.⁶
 - Barr wrote a similar letter to Rep. Henry Hyde claiming that FOCA "would impose on all 50 states an unprecedented regime of abortion on demand going well beyond the requirements of *Roe v. Wade*."⁷
- Barr wrote an article for the *Catholic Lawyer* entitled *Legal Issues in a New Political Order* in which he decried "efforts to marginalize or 'ghettoize' orthodox religion" and warned of "an erosion of the Catholic base."⁸ Throughout the article Barr made numerous ridiculous and offensive assertions, including the following:⁹
 - "It is undeniable that, since the mid-1960s, there has been a steady and mounting assault on traditional values. We have lived through thirty years of permissiveness, the sexual revolution, and the drug culture. Moral tradition has given way to moral relativism. There are no objective standards of right and wrong. Each individual has his or her own tastes and we simply cannot say whether or not those tastes are good or bad. Everyone writes their own rule book. So, we cannot have a moral consensus or moral culture in society. We have only the autonomous individual. After thirty years of this upheaval, what can we say about its results? Has it contributed to the sum total of human happiness? The facts speak for themselves. We are all familiar with them. We have had unprecedented violence. We have had soaring juvenile crime, widespread drug addiction and skyrocketing venereal diseases. In fact, the more we educate people about venereal disease, the more it has increased.

We have 1.5 million abortions per year and record psychiatric disorders. Teenage suicide has tripled in just twenty years.”

- o “Of course, the most significant feature of contemporary society has been the battering that the family has taken. Today in America, we have soaring illegitimacy rates. Almost thirty percent of children are born out of wedlock -- quadrupling in just twenty-five years. In many inner city areas, the illegitimacy rate is eighty percent. We have among the highest divorce rates in the world. Divorce is as common as marriage. As a consequence, we now have the highest percentage of children living in single parent households.”
- o “The state no longer sees itself as a moral institution, but a secular one. It takes on the role of the alleviator of bad consequences. The state is called upon to remove the inconvenience and the costs associated with personal misconduct. Thus, the reaction to disease and illegitimacy is not sexual responsibility, but the distribution of condoms; our approach to the decomposition of the family is to substitute the government as the ‘breadwinner;’ the reaction to drug addiction is to pass out needles.”
- o “Through legislative action, litigation, or judicial interpretation, secularists continually seek to eliminate laws that reflect traditional moral norms. Decades ago, we saw the barriers to divorce eliminated. Twenty years ago, we saw the laws against abortion swept away. Today, we are seeing the constant chipping away at laws designed to restrain sexual immorality, obscenity, or euthanasia. These developments are very serious and cannot be viewed with equanimity. We cannot just worry about our own private morality. The content of the law plays a very important part in framing and shaping the moral culture of the society -- morality will follow the law. What is made legal will ultimately be viewed, by most people, as moral. There is no better example of this than abortion. Prior to the United States Supreme Court's decision in *Roe v. Wade*, the vast majority of Americans believed that abortion was a moral evil, an abomination, and a scandal. Since *Roe*, the number of Americans, including Catholics, who consider abortion a moral evil is steadily declining.”
- o “Laws are proposed that treat a cohabitating couple exactly as one would a married couple. Landlords cannot make the distinction, and must rent to the former just as they would to the latter. This kind of law declares, in effect, that people, either individually or collectively, may not make moral distinctions or say that certain conduct is good but another is bad. Another example was the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student group. This kind of

law dissolves any form of moral consensus in society. There can be no consensus based on moral views in the country, only enforced neutrality.”

- o “Catholics are less and less equipped to deal with the marketplace of ideas that exists today. What good is it for us to charge up a hill and fight issues -- whether abortion, tax exemption, or foster care -- when there are fewer and fewer people following the leadership of the Church? This seems to have grave consequences for the Church as a whole. If the Catholic faithful do not take the hierarchy seriously, why should anybody else in the political structure? It is no accident that the homosexual movement, at one or two percent of the population, gets treated with such solicitude while the Catholic population, which is over a quarter of the country, is given the back of the hand.”
 - Barr gave a speech to the Catholic League for Religious and Civil Rights in which he repeated many of the same points but added the following:¹⁰
 - He referenced Henry Hyde, the author of the discriminatory “Hyde Amendment” prohibiting coverage of abortion for low-income women, as a “legendary figure” who “had such a profound impact on the life of our nation” and did “so much to uphold traditional values.”
 - He defended Christopher Columbus, saying: “There are some people who see the year 1492 as a watershed of evil, the onset of a brutal imperialism. The critics of Columbus focus on the cruelty that the Europeans are said to have brought to the Americas. The truth, of course, is that in 1492 cruelty, slavery, and injustice were not new to these shores. They have been part and parcel of human history in all times and in all places.”
 - “Through a series of misguided court opinions, secularization has been taken to the point where there can no longer be any moral content in public education. Bureaucrats and secular activists have filled this vacuum with curricula that affirmatively promote moral relativism and at times, actively encourage licentiousness. In pursuing this agenda, the State has sought to diminish the role of the parent and encourage children to go behind their parents’ backs. And so, we see, for example, in New York’s condom distribution program, students told they have a ‘sexual bill of rights’ including the right to determine ‘whether to have sex and who to have it with,’ and they are encouraged to bypass their parents if they need help.”
- In a CNN appearance after the *Planned Parenthood v. Casey* Supreme Court decision, Barr said, “We don’t select judges to decide one specific case. We select judges

because of their overall philosophy, and generally I am pleased with the direction of the Supreme Court over the last 12 years. I was disappointed in this decision, the abortion decision. I felt it was a mixed bag. It's a step in the right direction because it does allow the states greater latitude in placing reasonable restrictions on abortion. But it doesn't go far enough in my view. I think *Roe v. Wade* should be overturned." He continued, "I think that *Roe v. Wade* will ultimately be overturned. I think it'll fall of its own weight. It does not have any constitutional underpinnings."¹¹

- Of the direction of the Department of Justice, Barr said: "I think this department will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation."¹²
- Of the pro-choice movement, Barr said: "Certain elements of the pro-choice movement... seem to be defending a very extreme position, which is abortion on demand, abortion as a method of birth control, no reasonable restrictions on it, no parental notice, no parental consent. That's a very extreme position and I think we're headed in the right direction to allow the state legislatures to place reasonable restrictions on abortion."¹³
- When a commentator suggested that Republican-appointed judges were not reliable conservative votes on the courts, Barr said: "Well, I flatly disagree with that. I think you have to look at the big picture. In the '60s and '70s we had a radical, extreme judiciary in this country from the Supreme Court on down. And through a - through 12 years of appointments, the law in virtually every area has moved more into the common-sense realm. In criminal law particularly we've had numerous victories, and now the criminal is starting to deal - protect the rights of society against the predator. And across the board, decisions are becoming more reasonable, and I believe that, as we continue to pick judges who exercise judicial restraint, ultimately we will see the demise of *Roe v. Wade* and other vestiges of the Warren Court years."¹⁴
- The Justice Department, where Barr was Deputy Attorney General at the time, "joined forces...with an anti-abortion group fighting a federal judge's order banning protestors from blocking access to two abortion clinics."¹⁵ DOJ intervened in the case and asked the court to stay an injunction that prohibited "Operation Rescue and its followers from blocking access to the clinics and physically harassing staff and patients, or encouraging others to do so."¹⁶ The judge in the case, District Judge Patrick Kelly, wrote that he was "disgusted by this move by the United States."¹⁷ Barr defended DOJ's actions in his 1991 confirmation hearing, and said, "My feeling there is that if the class that's being invidiously discriminated against are pregnant women, that's not what's happening here. These people were not invidiously discriminating or demonstrating against all pregnant women, they were against abortion, both the patients and the people performing the abortion."¹⁸

- o DOJ's decision to intervene on behalf of Operation Rescue is particularly notable given that Operation Rescue has played a key role over the years in stoking the aggression of the anti-choice movement's most extreme actors. Its aggressive clinic protest activities have been identified by observers as "terrorism." Operation Rescue president Troy Newman has personally gone so far as to call for the government to execute of abortion providers, and its Senior Vice President Cheryl Sullenger has served prison time for attempting to bomb an abortion clinic.
- Barr joined anti-choice former-attorney-general John Ashcroft and others in signing an amicus brief in opposition to the Affordable Care Act's contraceptive-coverage policy, arguing that the policy "compel[s] religious organizations to alter their relations with employees so as to become complicit in what they sincerely view as sinful conduct."¹⁹
- Barr was serving as Executive Vice President and General Counsel at Verizon in 2007 when the company tried to block NARAL's own text program on its network.²⁰ The program allowed NARAL members to opt to receive text messages from our organization. Verizon cited a "right to block 'controversial or unsavory' text messages" as a reason for its decision to censor NARAL's content.²¹ The company later reversed its position after widespread public pushback.²²
- Barr has multiple connections to the American Legislative Exchange Council (ALEC), a conservative, anti-abortion, pro-corporate interest group. ALEC promotes anti-abortion, anti-voting, anti-worker, and anti-ACA policies in state legislatures. Verizon, when Barr was an Executive VP, funded and worked with ALEC to advance pro-corporate policies in state legislatures. Barr also worked with ALEC directly on pro-prison laws when he was attorney general under the Bush Administration.²³
- Barr was a member of the Catholics for McCain National Steering Committee, along with many other anti-choice activists including Marjorie Dannenfelser, President of Susan B. Anthony List, Frank Cannon, Susan B. Anthony List treasurer, and Andresen Blom, former director of Hawaii Right to Life.²⁴
 - o Barr also served as a member of John McCain's "Justice Advisory Committee," intended to assist him in selecting judicial nominees.²⁵ Other members of the Committee included staunch anti-choice figures Sam Brownback, John Kyl, and Trent Lott. As the New Republic noted, "No member of the committee who has been active on reproductive health issues represents a pro-choice or even a moderately pro-life position."²⁶

- When the American Bar Association first took a public position of support for abortion rights, Barr wrote a letter “warn[ing] that taking sides ‘on this divisive political issue’ would endanger the ‘essential’ perception of the ABA as impartial and politically neutral.”²⁷
- Barr has been active in the Federalist Society.²⁸ The Federalist Society is led by Leonard Leo, the anti-choice activist who is heavily involved in selecting Trump’s Supreme Court and lower court nominees. Leo has been outspoken in his anti-choice views, calling abortion “an act of force” and “a threat to human life,”²⁹ and serves as co-chairman of Students for Life,³⁰ a group whose mission is to “abolish abortion.”³¹
- Barr wrote letters of support for several anti-choice judicial nominations, including: the nomination of Samuel Alito to the U.S. Supreme Court, the nomination of Brett Kavanaugh to the U.S. Court of Appeals for the D.C. Circuit.³²
- According to the Washington Post, “Barr has donated more than \$567,000 in the past two decades, nearly all to GOP candidates and groups.”³³
 - Barr has donated to at least 16 current and incoming Senators who will consider his nomination: Lamar Alexander (R-TN)³⁴, Chuck Grassley (R-IA)³⁵, Mitt Romney (R-UT)³⁶, John Kyl (R-AZ)³⁷, Susan Collins (R-ME)³⁸, David Perdue (R-GA)³⁹, Rob Portman (R-OH)⁴⁰, Todd Young (R-IN)⁴¹, Roy Blunt (R-MO)⁴², Pat Toomey (R-PA)⁴³, Tom Cotton (R-AR)⁴⁴, Mike Braun (R-IN)⁴⁵, Ted Cruz (R-TX)⁴⁶, Marsha Blackburn (R-TN)⁴⁷, Josh Hawley (R-MO)⁴⁸, and Martha McSally⁴⁹.
 - This year alone, Barr funded the campaigns of three incoming senators and two incumbents: Hawley, Blackburn, Braun, Cruz, and Cotton.⁵⁰
 - Barr also donated to the unsuccessful senate campaigns of Dean Heller⁵¹ and Martha McSally⁵².
 - Barr gave \$10,000 to the National Republican Senate Committee in October 2018.⁵³

Record on Other Key Issues

- Barr joined fellow former Republicans Attorney General Edwin Meese and Dick Thornburgh in filing a scathing amicus brief in opposition to the Affordable Care Act in *Commonwealth of Virginia v. Sebelius*.⁵⁴ The brief alleges that in passing the ACA, “Congress sought to dragoon healthy individuals into the insurance market,” and insists that “no analytical gymnastics” could justify the Act.⁵⁵
- Barr wrote an op-ed defending President Trump’s firing of Sally Yates after she instructed the Department of Justice not to defend Trump’s discriminatory Muslim

ban.⁵⁶ He wrote that “her action was unprecedented and must go down as a serious abuse of office.”⁵⁷

- Barr wrote a letter to the editor decrying a 1990 crime bill that he opposed because he viewed it as an obstacle to enforcing capital punishment.⁵⁸ According to Barr, “the ‘racial justice’ provisions of the bill would erect a virtually irrebuttable presumption of racial bias in capital sentencing based on raw statistical comparisons” and “a bill that fosters further delay and injects racial statistics in death penalty cases in no sense promotes justice.”⁵⁹
- Barr served as Director of the Board of Advisors for the Becket Fund for Religious Liberty for 21 years.⁶⁰ Becket is the firm behind the *Hobby Lobby* and *Little Sisters of the Poor* cases, as well as at least six other challenges to the Affordable Care Act’s contraceptive-coverage policy.⁶¹ The organization is also strongly opposed to LGBTQ rights, and supported California’s discriminatory Proposition 8 and opposes allowing same-sex couples to adopt.⁶²
- Barr, who was listed as a Senior Associate Fellow at the Heritage Foundation, gave a speech to the group on his theories about crime and the family.⁶³ In the speech, Barr praised as “accomplish[ments]” many of the worst criminal justice policies of the 1980’s: “We abolished parole at the federal level and gave strong minimum sentences and so forth. We had an unfinished agenda – the death penalty, habeas corpus reform, expansion of the good faith exception to the exclusionary rule.” He also expressed his belief that “the welfare policies we have been pursuing since 1965 contain perverse incentives that have contributed to the breakdown of the family by rewarding and promoting non-marriage and illegitimacy.” He reiterated his belief that the so-called “breakdown of the family” is responsible for crime and poverty.
- While Attorney General, Barr published a report entitled “The Case for More Incarceration” in which he disputed the idea of over-incarceration and wrote that “the truth, however, is...we are incarcerating too few criminals, and the public is suffering as a result.”⁶⁴ In one of its most egregious points, the report stated, “Amid all the concern we hear about high incarceration rates for young black men, one critical fact has been neglected: the benefits of increased incarceration would be enjoyed disproportionately by black Americans living in inner cities.”

January 9, 2018

¹ *Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr*, C-SPAN (November 13, 1991), <https://www.c-span.org/video/?c4765758/barr-roe>

² *Ibid.*

³ *Letter from Attorney General William P. Barr to Senator Edward Kennedy*, OFFICE OF THE ATTORNEY GENERAL (July 1, 1992), 16 U.S. Op. Off. Legal Counsel 1 (O.L.C.), 1992 WL 479535

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Sharon LaFraniere, *Barr Attacks Abortion-Rights Bill; Curb on State Restrictions Goes Beyond Roe*, *Attorney General Says*, THE WASHINGTON POST (March 4, 1992)

⁸ William P. Barr, *Legal Issues in a New Political Order*, 36 Cath. Law. 1 (1995)

⁹ Ibid.

¹⁰ Remarks of William P. Barr, Catholic League for Religious and Civil Rights Dinner (Oct. 6, 1992)

¹¹ Rowland Evans and Robert Novak, *Bill Barr Interview*, CNN (July 4, 1992)

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ *Justice Dept. Joins Wichita Case, Backing Antiabortion Protestors*, WASHINGTON POST (Aug. 6, 1991), https://www.washingtonpost.com/archive/politics/1991/08/07/justice-dept-joins-wichita-case-backing-antiabortion-protestors/9f95ffab-0b6c-4142-bd31-76949c6f8a5d/?utm_term=.8ab64037d06f

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ *Confirmation Hearing Before the U.S. Senate Committee on the Judiciary: William Barr*, C-SPAN (November 12, 1991), <https://www.c-span.org/video/?22668-1/barr-confirmation-hearing-day-1>

¹⁹ Brief of Amici Curiae Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell* (U.S. 2016) (Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119 & 15-191)

²⁰ Adam Liptak, *Verizon Blocks Messages of Abortion Rights Group*, NEW YORK TIMES (Sept. 27, 2007), <https://www.nytimes.com/2007/09/27/us/27verizon.html>

²¹ Ibid.

²² Marvin Johnson, *Verizon Reverses Course on Abortion Text-Messaging*, ACLU (Sept. 27, 2007), <https://www.aclu.org/blog/national-security/verizon-reverses-course-abortion-text-messaging>

²³ Carrie Resnick, *AG Nominee William Barr's connections to ALEC*, NARAL Report, Dec. 18, 2018.

²⁴ John McCain 2008, *John McCain Wins Catholic Support Nationwide*, CHRISTIAN NEWSWIRE (March 10, 2008)

²⁵ Sarah Blustein, *Stop Kidding Yourself: John McCain is a pro-life zealot*, THE NEW REPUBLIC (Aug. 27, 2008)

²⁶ Ibid.

²⁷ Sandra Torry, *Lawyers' Group Votes to Back Abortion Rights; Two-year Stance of Neutrality Abandoned*, THE WASHINGTON POST (Aug. 12, 1992)

²⁸ *Questionnaire for Non-Judicial Nominees: William Pelham Barr*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY (December 18, 2018)

²⁹ Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, THE NEW YORKER (April 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>

³⁰ Board of Directors, STUDENTS FOR LIFE, <http://studentsforlife.org/supporters/board-of-directors-1> (last visited July 5, 2018)

³¹ Mission Statement, STUDENTS FOR LIFE, <http://studentsforlife.org/about/mission-statement/> (last visited July 5, 2018)

³² *Questionnaire for Non-Judicial Nominees: William Pelham Barr*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY (December 18, 2018)

³³ Shawn Boburg and Anu Narayanswamy, *Trump has blasted Mueller's team for political donations. But attorney general nominee William P. Barr has given more than \$500,000*, THE WASHINGTON POST (December 11, 2018), https://www.washingtonpost.com/investigations/trump-has-blasted-muellers-team-for-political-donations-but-attorney-general-nominee-william-barr-has-given-more-than-500000/2018/12/11/dce5974a-fcb0-11e8-862a-b6a6f3ce8199_story.html?noredirect=on&utm_term=.506c7f4fddfe

³⁴ Search for "William Barr," FEDERAL ELECTION COMMISSION, https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2004&contributor_name=william+barr&min_date=01%2F01%2F2003&max_date=12%2F31%2F2004&contributor_state=VA (last visited December 13, 2018)

³⁵ Search for "William Barr," FEDERAL ELECTION COMMISSION, https://www.fec.gov/data/receipts/individual-contributions/?two_year_transaction_period=2004&contributor_name=william+barr&min_date=01%2F01%2F2003&max_date=12%2F31%2F2004&contributor_state=VA (last visited December 13, 2018)



January 14, 2019

**OPPOSE THE NOMINATION OF WILLIAM BARR
TO BE ATTORNEY GENERAL OF THE UNITED STATES**

On behalf of The National Coalition of Anti-Violence Programs (NCAVP), we are writing to express our opposition to the nomination of William Barr to serve as Attorney General of the United States. NCAVP is a national coalition comprised of over 50 local and affiliate organizations working to prevent, respond to, and end all forms of violence within and against the lesbian, gay, bisexual, transgender, queer (LGBTQ) and HIV-affected communities.

As the nation's top law enforcement officer and leader of the U.S. Department of Justice (DOJ), the Attorney General is responsible for safeguarding our civil and constitutional rights. That is a core and enduring mission of the Justice Department, and the nation needs and deserves an Attorney General who is committed to that mission and to our country's ongoing progress toward equal justice and racial equality. The Attorney General must also operate with integrity and independence in service to the people, not the president.

Furthermore, the DOJ includes the Office of Violence Against Women which oversees funding for survivors of domestic violence, dating violence, stalking, and sexual assault through the Violence Against Women Act (VAWA). LGBTQ people experience alarming rates of violence¹ and for these survivors, supportive and restorative services are even harder to access than for many of their non-LGBTQ counterparts. VAWA is the only piece of federal legislation that protects the civil rights of LGBTQ survivors, and it is vital that we have an Attorney General who will uphold and honor the VAWA.

Mr. Barr has a troubling record on a number of civil rights issues, including LGBTQ rights and other intersecting issues such as justice system reform, reproductive justice, and immigrant rights. For example, Mr. Barr ignored suggestions made by the Department of Health and Human Services and asserted that HIV-positive immigrants should be barred from entering the United States.² In addition, Mr. Barr has promoted anti-LGBTQ ideologies in his own work, an indication that he would continue the deeply disturbing anti-LGBTQ and anti-civil rights policies and priorities of the past two years.

In *Legal Issues in a New Political Order*, Mr. Barr wrote, "It is no accident that the homosexual movement, at one or two percent of the population, gets treated with such solicitude while the

¹ National Coalition of Anti-Violence Programs (NCAVP). (2018). Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate and Intimate Partner Violence in 2017. New York, NY.

² <https://www.nytimes.com/1991/05/28/us/health-dept-loses-in-aids-rule-dispute.html>

Catholic population, which is over a quarter of the country, is given the back of the hand.”³ He went on to refute “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student group,” asserting “This kind of law dissolves any form of moral consensus in society.”⁴ The widespread promotion of such harmful ideologies further contributes to and exacerbates the current climate of hatred and discrimination against the LGBTQ community.

For the past two years, the Justice Department has been led by an Attorney General intent on restricting civil and human rights at every turn.⁵ Attorney General Jeff Sessions used his office to carry out dehumanizing immigration policies and the reinvigoration of the “war on drugs,” both of which have a disproportionately negative impact of LGBTQ communities, especially LGBTQ people of color, who are routinely over-policed and discriminated against. Session advanced an extreme, anti-civil rights agenda for decades in the U.S. Senate. In a recent op-ed, Mr. Barr called Mr. Sessions “an outstanding attorney general” and offered praise for his policies, many of which undermined civil rights, including those of transgender people.⁶ The Justice Department and the nation need an Attorney General who will prioritize the people of this country and the enforcement of our federal civil rights laws.

Confirming William Barr as Attorney General is putting the LGBTQ community, amongst many other groups experiencing institutionalized marginalization, at grave risk. People in the United States deserve an Attorney General who will promote racial equality, vigorously enforce our federal civil rights laws, and fight discriminatory barriers for the most systematically oppressed among us.

³ William P. Barr (1995) “Legal Issues in a New Political Order,” *The Catholic Lawyer*: Vol. 36 : No.1, Article 2.

⁴ *Ibid.*, p 9.

⁵ <https://civilrights.org/trump-rollbacks/>.

⁶ https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347148762_story.html?utm_term=.6996b10fe367.

