

**Nomination of Joseph H. Hunt to be
Assistant Attorney General, Civil Division
Questions for the Record**

QUESTIONS FROM SENATOR GRASSLEY

1. I sponsored the Anti-Terrorism Act of 1992 (ATA), which empowers American victims of international terrorism to bring civil lawsuits in federal courts to vindicate their rights and obtain compensation for their injuries, *regardless* of where the attacks occurred. These lawsuits also serve an important counterterrorism function by disrupting and discouraging the financing and material support of terrorist organizations.

In April of last year, I led a bipartisan coalition of 23 United States Senators in a brief to the Supreme Court urging its review of *Sokolow v. Palestine Liberation Organization*, No. 16-1071, a case brought under the ATA in which the Second Circuit Court of Appeals struck down on jurisdictional grounds the trial court's finding that the Palestine Liberation Organization (PLO) and the Palestinian Authority (PA) were responsible for a series of brutal terrorist attacks in Israel. The Second Circuit's deeply flawed decision guts the central purpose of the ATA, leaving in jeopardy the ability of the *Sokolow* plaintiffs—as well as future victims—to obtain justice against terrorists.

I was stunned to learn that on February 22, 2018, the Solicitor General submitted a brief to the Supreme Court on behalf of the United States urging the Court to not even *consider* the Second Circuit's *Sokolow* decision. The Justice Department, in fact, actively *opposed* the victims' right to seek redress against the PLO and PA in the case. On the cover page for the Department's brief, Chad Readler, the Acting Assistant Attorney General for the Civil Division, is listed directly beneath the Solicitor General as counsel of record. Accordingly—

- a. What specific role did the Civil Division play in the Solicitor General's brief to the Supreme Court in this matter, including any consultations it had with other agencies and departments such as the State Department? Will you commit to me that, if confirmed, you will provide any and all information concerning the Department's specific reasons for discouraging the Supreme Court's review of *Sokolow*?

RESPONSE: The Department of Justice filed a brief concerning whether the Court should grant the petition for a writ of certiorari and I understand that the Supreme Court denied the petition on April 2, 2018. The Solicitor General of the United States sets the position of the United States in the Supreme Court.

I was not in the Civil Division at the time of this particular filing in the Supreme Court. Generally speaking, however, the Civil Division often works closely with the Office of the Solicitor General in connection with cases where the Civil Division participated in the litigation below or where the litigation raises issues within the subject matter expertise of the Civil Division. The Civil Division also

frequently participates in meetings hosted by the Office of the Solicitor General with various stakeholders inside of government, such as the Department of State, and with parties or amici in the case before the Solicitor General makes a determination on the position of the United States. The Department's position and the arguments that support it were set forth in its brief. The Department, through the Office of Solicitor General, would have to decide on whether it would provide any additional information.

- b. If confirmed as the Assistant Attorney General for the Civil Division, will you commit to me that the Division, under your direction, will always work to *advance*—rather than take away from—American victims' ability to obtain justice against those who commit or support acts of international terrorism?

RESPONSE: If confirmed, I will advance the interests of the United States in every case before the Department, and those interests certainly include ensuring that American citizens may obtain justice against those who commit or support acts of international terrorism. While I cannot prejudge the position of the United States in a future case without having access to all of the facts and information, if confirmed I will dedicate myself to fair and appropriate enforcement and defense of the laws passed by Congress to protect those victims.

- c. How does the Justice Department defend its position in this case?

RESPONSE: I was not at the time and am not currently working in the Civil Division. My understanding is that the Department, through the Office of Solicitor General, filed a brief concerning whether the Court should grant the petition for a writ of certiorari and that the Supreme Court denied the petition on April 2, 2018. The Department's position and the arguments that support it were set forth in its brief.

- d. What do you have to say to the victims in the *Sokolow* case, given this Justice Department's position against them?

RESPONSE: My understanding is that the Department filed a brief concerning whether the Supreme Court should grant the petition for a writ of certiorari and that the Supreme Court denied the petition on April 2, 2018. The Department's position and the arguments that support it were set forth in its brief.

2. The False Claims Act is the most effective tool the government has to fight fraud on the taxpayers. Unfortunately time and again we have seen courts overreach as they attempt to unduly restrain the intended reach and force of the law. Several weeks ago I spoke on the Senate floor about such a troublesome trend in lower courts' misreading of the Supreme Court's decision in *Universal Health Services v. United States ex rel. Escobar*. More frequently defendants are arguing, and courts are accepting—in stark contrast to Justice

Thomas's opinion—that continued payment by the government in light of unproven allegations is dispositive proof that fraud is not material. Additionally, it appears that more courts are willing to consider so-called “knowledge” of low-level bureaucrats as evidence of “government knowledge” and even acceptance of fraudulent behavior where the government pays claims in the face of unproven allegations.

If confirmed, will you vigorously enforce and defend the False Claims Act, according to its text and the clear intent of Congress, as well as the Court's decision in *Escobar*, with the understanding that no one factor is dispositive in the materiality analysis?

RESPONSE: Yes. The False Claims Act is a critical tool in the Department's effort to fight fraud against the American taxpayers. I am advised that fiscal year 2017 marked the eighth straight year that the Department's False Claims Act cases recovered more than \$3 billion on behalf of the federal Treasury. These cases involved health care fraud, procurement fraud, customs fraud, and many other matters alleging fraud or false claims against government programs. As a result of the Department's enforcement of the False Claims Act, I understand that total recoveries since the Act was substantially amended in 1986 now exceed \$56 billion. If confirmed, I will continue to support the Department's vigorous use of the False Claims Act to recover taxpayer dollars and to deter future fraud schemes.

I will also support the Department's ongoing efforts to ensure that the Supreme Court's decision in *Escobar* is properly interpreted and applied. Although the Supreme Court's opinion discusses the strength of certain factors relevant to the materiality analysis, I understand that the Department has argued that these factors need to be applied holistically and that no one factor is dispositive in the materiality analysis.

3. Former Associate Attorney General Rachel Brand recently submitted a memorandum instructing the Department that agency guidance may not serve as a basis for liability in civil enforcement. The memorandum notes that the directive applies to False Claims Act cases but does not specify exactly how.

According to information obtained by my office, some DOJ attorneys already have cited to this memorandum as justification for reversing intervention decisions, including where underlying agency guidance and instructions are **incorporated into the actual contracts** between the agency and the provider/supplier. The Chairman strongly supports the Department's leadership in ensuring the proper rulemaking processes are followed. At the same time, however, companies that do business with the government should not be permitted to go back on their word to the taxpayers.

What guidance do you plan to provide to Department lawyers and U.S. Attorneys on the proper interpretation of this memorandum as it applies to the False Claims Act? Is this guidance, as it applies to the Act, a departure from prior Department policy, and if so, in what ways?

RESPONSE: The memorandum issued by former Associate Attorney General Rachel Brand (“Brand Memo”) reaffirms the principle that agency guidance generally does not have the same force and effect as legally binding rules, and should not be relied upon by Department attorneys handling affirmative civil enforcement matters, including False Claims Act cases, to prove violations of applicable law standing alone. If confirmed, I will work with the Office of the Associate Attorney General and with career attorneys in the Civil Frauds Section to formulate any additional internal training or policy that may be needed to clarify the application of these principles to False Claims Act matters.

4. Director of the Civil Fraud section, Michael Granston, also recently submitted a memorandum describing certain factors Department attorneys should weigh in considering whether the government should exercise its authority under the False Claims Act to intervene and dismiss a case. The third of these reads in part as follows:

“Dismissal should be considered where an agency has determined that a *qui tam* action threatens to interfere with an agency’s policies or the administration its programs and has recommended dismissal to avoid these effects. . . . [T]here may be instances where an action is both lacking in merit and raises the risk of significant economic harm that could cause a critical supplier to exit the Government program or [the] industry.”

I am concerned that this guidance may look like a narrow door but is still big enough for a truck. Among other things, this emphasis on agency approval could give undue deference to agencies that are ill equipped or unwilling to hold contractors accountable or otherwise simply fail to identify or recognize fraudulent behavior. If confirmed, will you instruct Department attorneys to conduct an *independent* analysis of an agency’s lack of support for FCA cases?

Where *qui tam* relators have asserted legally defensible allegations of fraud liability, will the Department allow the cases to go forward, even if the government declines to intervene, regardless of agency sign-on?

RESPONSE: I am committed to rigorous enforcement and defense of the False Claims Act. As noted above, the False Claims Act plays a critical role in protecting taxpayer funds, and a key to the Act’s success has been its whistleblower provisions, which I understand have contributed to the return of more than \$38 billion in intervened *qui tam* cases – of the \$56 billion total False Claims Act recovery – to the Treasury since 1986. It is my understanding that the recent internal guidance issued by the Department regarding the use of its dismissal authority was designed to reaffirm rather than undermine this important public-private partnership. To ensure a consistent approach to the Department’s exercise of its dismissal authority, the internal guidance identifies and discusses the factors that the Department has historically used in evaluating the dismissal of a *qui tam* action. The guidance makes clear that the Department’s dismissal authority should be applied

judiciously, and only where truly warranted. I support the ability of whistleblowers to pursue potentially meritorious allegations even if the government declines to intervene.

**Nomination of Jody H. Hunt to be
Assistant Attorney General, Civil Division
Questions for the Record**

QUESTIONS FROM SENATOR FEINSTEIN

1. You served as Attorney General Sessions' Chief of Staff from February 2017 to October 2017. In your Senate Judiciary Questionnaire, you noted that you "had responsibility for day-to-day issues and activities . . . in managing the work of the Attorney General."
(Questionnaire at p. 10)

In your time as Attorney General Sessions' Chief of Staff, please indicate whether you worked on or advised the Attorney General, anyone else at the Department of Justice (Department), or anyone at the White House on any of the following matters. If so, describe the nature of the work and note to whom you provided advice.

- a. Attorney General Sessions's recommendation that the President fire former-FBI Director James Comey.**

RESPONSE: As the Chief of Staff to the Attorney General, I was present for discussions and meetings with the Attorney General or other executive branch officials on a wide range of issues and matters. Whether legal or other advice has been provided on a specific matter and, if it has, the content of that advice, is generally treated as privileged and confidential, and thus it would not be appropriate for me to discuss the nature of any such work.

- b. The September 5, 2017 decision to rescind the Deferred Action for Childhood Arrivals (DACA) program.**

RESPONSE: Please see my response to Question 1(a). Additionally, 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.

- c. The Department policy, announced on May 10, 2017, requiring prosecutors to "charge and pursue the most serious, readily provable offense."**

RESPONSE: Please see my response to Question 1(a).

- d. The Department's June 28, 2017 letter seeking information from 44 states covered by the National Voter Registration Act (NVRA) regarding those states' "procedures for compliance with the [NVRA's] statewide voter registration list maintenance procedures."**

RESPONSE: Please see my response to Question 1(b).

- e. **The Department's assessment of and/or defense of the executive order limiting entry of individuals from certain majority-Muslim nations.**

RESPONSE: Please see my response to Question 1(b).

- f. **The Department's decision to withdraw Title IX guidance that had allowed transgender students to use the restroom that matched their gender identity.**

RESPONSE: Please see my response to Question 1(b).

- g. **The Department's decision to withdraw claims that a Texas voter ID law, SB 14, was created with discriminatory intent?**

RESPONSE: Please see my response to Question 1(b).

- h. **The Department's decision to file a merits stage amicus brief in the Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, in support of cake shop owners who refused service to a same-sex couple.**

RESPONSE: Please see my response to Question 1(b).

- i. **The Department's decision to file an amicus brief in the Second Circuit in *Zarda v. Altitude Express*, arguing that Title VII does not extend to discrimination on the basis of sexual orientation.**

RESPONSE: Please see my response to Question 1(b).

2. Following your time as the Attorney General's Chief of Staff, you served as a Senior Advisor in the Department's Office of Legal Policy (OLP). Your Senate Judiciary Questionnaire does not indicate the nature of your work as a Senior Advisor or the policy areas on which you focused. Since becoming a Senior Advisor in OLP, please indicate whether you worked on or advised anyone at the Department of Justice (Department) or the White House on any of the following matters. If so, describe the nature of the work and to whom you provided advice.

- a. **The Department's January 24, 2018 letters to 23 jurisdictions asking whether those jurisdictions are restricting information-sharing with federal immigration authorities, and indicating that failure to share such information could threaten the jurisdictions' Byrne JAG funding.**

RESPONSE: No.

- b. **The Department's December 12, 2017 letter to the U.S. Census Bureau requesting that a question on citizenship be added to the 2020 Census.**

RESPONSE: No.

- c. **The Department's October 6, 2017 Memorandum regarding "Federal Law Protections for Religious Liberty."**

RESPONSE: No.

- d. **The Department's October 4, 2017 decision to reverse a conclusion drawn by Attorney General Eric Holder that Title VII prohibits employers from discriminating against transgender individuals on the basis of their gender identity.**

RESPONSE: No.

- e. **The Department's vetting and work, including congressional testimony preparation, with the President's judicial, executive, and U.S. Attorney nominees.**

RESPONSE: No.

3. At your nominations hearing, several Senators on the Committee asked you about the Attorney General's recusal from Special Counsel Mueller's investigation. You responded that you are "recused from anything with respect to the Russia investigation and the Special Counsel's work," adding, "I was recused when I was in the Office of the Attorney General, I maintained that after I left his office, and I would continue my recusal if I were fortunate enough to be confirmed."

- a. **To be clear, your testimony is that you are recused from every aspect of the Special Counsel's investigation, including aspects that do not touch directly on Russia?**

RESPONSE: Yes. Given my recusal, I am not aware of aspects of the Special Counsel's investigation, if any, that do not touch directly on Russia. I have been recused from all aspects of the Special Counsel's investigation and intend to continue that recusal.

- b. **On what date did your recusal from these matters go into effect?**

RESPONSE: My recusal stems from the Attorney General's formal recusal and became effective on the same date, March 2, 2017.

- c. **If the President were to appoint a new Attorney General who is not recused from the Special Counsel's investigation, would your recusal from the Special Counsel**

investigation remain in effect?

RESPONSE: Yes. In the event that a new Attorney General were appointed and confirmed, I would maintain my recusal from the Special Counsel investigation.

- d. **In deciding to recuse yourself from the Special Counsel's investigation, did you consult with career ethics personnel in the Department?**

RESPONSE: Yes. I was present for the Attorney General's consultation with career Department of Justice officials with whom he consulted regarding recusal. The recusal announcement, which made clear that the recusal applied to members of the Office of the Attorney General staff (including me), also was drafted in consultation with career Department of Justice officials.

- e. **Did your recusal from the Russia investigation also recuse you from advising the Attorney General on his recommendation to the President that former-FBI Director James Comey be fired? If not, why not?**

RESPONSE: No. My recusal stems from that of the Attorney General. The Attorney General's letter to the President concerning former-FBI Director Comey, which forwarded to the President the recommendation of Deputy Attorney General Rod Rosenstein with respect to Director Comey's removal, speaks for itself as to the Attorney General's determination. As described in the Attorney General's public remarks, including his June 2017 testimony before the Senate Select Committee on Intelligence, and his October 2017 testimony before the Senate Judiciary Committee, the Attorney General's recusal from the Russia investigation did not render him recused or unable to deal with management issues in the leadership of the Department of Justice, including the leadership of the FBI.

4. You joined the Federal Programs Branch as a trial attorney in 1999. Apart from your current detail to OLP and your detail to the Office of the Attorney General last year, your only other detail was from 2001 to 2002 to the Office of the Deputy Attorney General.

- a. **In 2017, did you request, apply, or ask to go on detail in the Office of the Attorney General? If not, were you requested to go on this detail? If so, by whom?**

RESPONSE: I did not request, apply, or ask to go on detail to the Office of the Attorney General in 2017. The Attorney General contacted me in February 2017 and asked if I would serve as his Chief of Staff.

- b. **In 2017, did you request, apply, or ask to go on detail in the Office of Legal Policy? If not, were you requested to go on this detail? If so, by whom?**

RESPONSE: Upon the announcement of an intent to nominate me to be Assistant Attorney General for the Civil Division, the Attorney General hired a new Chief of Staff. When the new Chief of Staff began in October 2017, the Assistant Attorney General for the Office of Legal Policy and I discussed serving on detail in a vacant counselor or advisor position on an interim basis.

- c. **Did any official in the Department or the White House discuss how serving on detail in the Office of the Attorney General or the Office of Legal Policy would lead in any way to a nomination as Assistant Attorney General for the Civil Division or any other Senate-confirmed position in the Department? If so, what were you told and by whom?**

RESPONSE: No.

- d. **Did you ever consider going on detail during the Obama Administration? If not, why not?**

RESPONSE: An opportunity to go on detail during the Obama administration was never presented to me for consideration.

5. The organization American Oversight filed a complaint against the Department in the U.S. District Court for the District of Columbia on January 26, 2018. Among other relief sought, the complaint asks the court to order the Department to produce certain documents requested under the Freedom of Information Act (FOIA).

The complaint notes that American Oversight had not received the Department's response to the following FOIA request: "All communications from Chief of Staff Jody Hunt to anyone in the National Security Division or Criminal Division that discuss any ongoing investigation and in which Mr. Hunt express[es] any views regarding the outcome of the investigation, including, but not limited to, stating or directing that the investigation should end in a particular outcome; or stating or implying that a particular outcome would be preferable, better, easier, or more palatable, including that a particular outcome would be preferable for litigation, policy, optical, or other reasons; and any responses thereto." (Complaint at 3, *American Oversight v. U.S. Department of Justice*, Case No. 18-cv-166)

- a. **While serving as Chief of Staff to Attorney General Sessions, did you at any point discuss ongoing investigations with anyone in the Department's National Security Division or Criminal Division?**

RESPONSE: Please see my response to Question 1(b).

If so, in those conversations, did you express any views regarding the outcome of the investigation, including stating or implying that a particular outcome would be “preferable,” “better,” “easier,” or “more palatable”? If so, please describe the investigation you discussed and, for each, the preferred outcome expressed.

RESPONSE: Please see my response to Question 1(b).

6. If you are confirmed as Assistant Attorney General for the Civil Division, what steps will you take to ensure the Division responds quickly and fully to FOIA requests?

RESPONSE: If I am confirmed, I will continue to strongly support the presumption of openness that is inherent in the Freedom of Information Act (FOIA) and the efforts the Division has made in creating and maintaining an efficient, effective system for responding to requests. My understanding, based on public reporting, is that notwithstanding the substantial increase in FOIA requests, the Civil Division has reduced its backlog each of the last four years and by nearly 50% since Fiscal Year 2013. I intend to continue these good practices and, where possible, decrease response times and further reduce any backlog.

7. If you are confirmed as Assistant Attorney General for the Civil Division, what steps will you take to keep Congress apprised of the Division’s work and its litigation priorities? Will you commit to appearing before this Committee for an oversight hearing? Will you commit to answering this Committee’s inquiries quickly and fully?

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 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.

**Nomination of Joseph H. Hunt to be
Assistant Attorney General, Civil Division
Questions for the Record**

QUESTIONS FROM SENATOR DURBIN

For questions with subparts, please answer each subpart separately.

1. **While you were on detail as chief of staff to Attorney General Sessions in 2017, did you communicate with anyone in the Office of the Texas Attorney General regarding DACA in advance of the Justice Department's September 5, 2017 announcement that the Administration was rescinding DACA? If so, please describe those communications in detail.**

RESPONSE: No.

2. **While you were on detail as chief of staff to Attorney General Sessions in 2017, were you aware of anyone else in the Administration communicating with the Texas Attorney General's office regarding DACA in advance of the Justice Department's September 5, 2017 announcement that the Administration was rescinding DACA? If so, please describe those communications in detail and state who participated in these communications and how you became aware of the communications.**

RESPONSE: As has been reported publicly, the Texas Attorney General, along with ten other state Attorneys General, sent a letter (dated June 29, 2017) to Attorney General Sessions concerning the rescission of DACA. Although there could have been other communications between the Texas Attorney General's office and the Department of Justice regarding then-ongoing litigation matters, I do not recall other communications that officials in the Administration had with the Texas Attorney General's office regarding DACA.

3. **While you were on detail as chief of staff to Attorney General Sessions in 2017, did you work on any matters involving immigration? If so, please list with specificity the immigration matters you worked on.**

RESPONSE: As the Chief of Staff to the Attorney General, I was present for discussions and meetings with the Attorney General or other executive branch officials on a wide range of issues and matters. Whether legal or other advice has been provided on a specific matter and, if it has, the content of that advice, is generally treated as privileged and confidential, and thus it would not be appropriate for me to discuss the nature of any such work.

4. **While you were on detail as chief of staff to Attorney General Sessions in 2017, did you work on any matters involving criminal justice, including charging policy? If so, please list with specificity the criminal justice matters you worked on.**

RESPONSE: Please see my response to Question 3.

5. While you were on detail as chief of staff to Attorney General Sessions in 2017:

- a. **Did you work on the Justice Department's response to the President's travel ban executive orders?**

RESPONSE: Please see my response to Question 3. Additionally, 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 it.

- b. **Were you aware that the Office of Legal Counsel had been asked to review the travel ban and that this review was kept secret from then Acting Attorney General Sally Yates? If so, did you have concerns about this at the time and did you raise them with other Administration officials?**

RESPONSE: OLC's review of that order and Acting Attorney General Yates's disagreement with OLC's conclusion both became public before my detail began, and so I was not aware of it.

6. You noted during your hearing that while you were on detail as chief of staff to Attorney General Sessions in 2017, you were part of the process that led to Attorney General Sessions' recusal from the Russia investigation.

- a. **As part of this process, did you review then-Senator Sessions' public statements in 2016 regarding Russia?**

RESPONSE: No, to the best of my recollection then-Senator Sessions' public statements in 2016 regarding Russia were not part of the process in which the Attorney General consulted with career Department ethics officials concerning his recusal and in which I participated. I refer you to the March 2, 2017 announcement of recusal, to the Attorney General's public remarks concerning his recusal decision, to the Attorney General's June 2017 testimony before the Senate Select Committee on Intelligence concerning his recusal, and to the Attorney General's October 2017 testimony before the Senate Judiciary Committee concerning his recusal.

- b. **As part of this process, were you aware that on July 31, 2016, then-Senator Sessions gave an interview with CNN where he was asked about possible connections between Trump businesses and Russian investors, and he responded as follows:**

What I want to tell you is Hillary Clinton left her email system totally vulnerable to Russian penetration. It's probably clear that they have what was on that system. I have people come up to me all the time and say, "why don't

you - if you want to find out where those 30,000 emails are, why don't you ask the Russians. They're the ones who have them." (<https://www.cnn.com/videos/tv/2016/07/31/sotu-sessions-full-interview.cnn>)

RESPONSE: No, to the best of my recollection then-Senator Sessions' interview with CNN was not part of the process in which the Attorney General consulted with career Department ethics officials concerning his recusal and in which I participated. I refer you to the March 2, 2017 announcement of recusal, to the Attorney General's public remarks concerning his recusal decision, to the Attorney General's June 2017 testimony before the Senate Select Committee on Intelligence concerning his recusal, and to the Attorney General's October 2017 testimony before the Senate Judiciary Committee concerning his recusal.

- c. **Did you have any conversations with Attorney General Sessions about who came up to him "all the time" to say "why don't you ask the Russians" for information involving Hillary Clinton? If so, when did you have these conversations?**

RESPONSE: Please see my response to Question 3.

- d. **Are you aware if the FBI or Special Counsel have been provided with the names of the people to whom Attorney General Sessions was referring in his July 31, 2016 interview?**

RESPONSE: No, I am not aware.

- e. **During his confirmation process Attorney General Sessions told me in written responses that he had not read the January 6, 2017 Intelligence Community Assessment on Russian involvement in the U.S. election. Are you aware if he ever read that Assessment and if so, when he first read it?**

RESPONSE: No, I am not aware.

7. **Please list with specificity the matters you have worked on while you have been a detailee to the Office of Legal Policy.**

RESPONSE: I have served as counselor and advisor to the Assistant Attorney General for the Office of Legal Policy. During my detail in the Office of Legal Policy, I have worked on matters related to human trafficking and on matters related to the Sex Offender Registration and Notification Act.

8. **Have you worked on matters involving immigration while at the Office of Legal Policy? If so, please discuss the work you have performed.**

RESPONSE: No.

**Nomination of Joseph H. Hunt,
to be an Assistant Attorney General, Civil
Division Questions for the Record**

QUESTIONS FROM SENATOR WHITEHOUSE

1. 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?

RESPONSE: No one in the administration has ever asked me 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?

RESPONSE: There are no circumstances in which I would offer such a pledge.

- b. If not, how would you react to any such request?

RESPONSE: See my response to Question 1(a). My oath is to protect and defend the Constitution of the United States. If confirmed, I will continue to honor that oath.

2. Have you signed the Trump Ethics Pledge? If not, when do you intend to do so? Are you seeking or have you been granted any waivers to that pledge? Please specify.

RESPONSE: Not yet. As a career official in the Department of Justice I have not yet signed the pledge. I have worked with the Department's career ethics officials through the course of the nomination process and have been advised that I would sign the pledge if confirmed and upon taking the position to which I have been nominated.

3. At your confirmation hearing, Senator Blumenthal asked you about your communications with the former White House chief of staff about the attorney general's possible intention to step down from his office. You declined to answer his question, stating that "it wouldn't be appropriate for me to comment on a particular communication that the attorney general and the president may have had with respect to any issue." You further stated that you could not address "any communication that I would have had with a senior adviser to the president," and that "communications with senior advisers to the president are in fact covered by executive privilege."

- a. Is it your position that executive privilege over presidential communications extends to your communications with senior advisers to the president even if the president was not himself a party to such communications? If so, what specific legal precedent supports that position? If that is not your position, please respond to Senator Blumenthal's question about your communications with former White House Chief of Staff Reince Preibus regarding the attorney general's possible

intention to resign.

RESPONSE: Yes. That position is supported by, among other legal precedents, *In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997), in which the D.C. Circuit held that the presidential communications privilege “extends to cover communications which do not themselves directly engage the President, provided the communications are either authored or received in response to a solicitation by presidential advisers in the course of gathering information and preparing recommendations on official matters for presentation to the President.” *Id.* at 757.

- b. The United States Circuit court for the District of Columbia Circuit has held that the presidential communications “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). Is it your position that the presidential communications privilege extends to Department of Justice officials? If so, how do you reconcile that with the D.C. Circuit’s precedent quoted above?

RESPONSE: The presidential communications privilege does apply to some communications between Department of Justice officials and certain White House staff members. The language that this question quotes from *Sealed Case* made the point that communications that do not include White House staff members are not covered by that privilege. *See Sealed Case*, 121 F.3d at 752 (“[T]he privilege should not extend to staff outside the White House in executive branch agencies. Instead, the privilege should apply only to communications authored or solicited and received by [White House staff].”). In a subsequent decision involving communications concerning potential presidential pardons, the D.C. Circuit, drawing from its earlier decision in *Sealed Case*, held “that the presidential communications privilege applies to [communications] ‘solicited and received’ by the President or his immediate advisers in the Office of the President,” and further held that “the deliberative process privilege” (rather than the presidential communications privilege) “applies to internal agency documents that never make their way to the Office of the President.” *Judicial Watch v. Department of Justice*, 365 F.3d 1108, 1123 (D.C. Cir. 2004).

4. Earlier this year, former Associate Attorney General (AAG) Rachel Brand issued a memorandum entitled “Limited Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases” (“Brand memo”). Among other things, that memo instructed that “Department litigators may not use noncompliance with guidance documents as a basis for proving violations of applicable law in [affirmative civil enforcement] cases.”
 - a. Does the Brand memo reflect current Department of Justice policy?

RESPONSE: While I was not involved in the issuance of this memorandum, my understanding is that the memorandum issued by former Associate Attorney General Rachel Brand (“Brand Memo”) is based upon the Attorney General’s November 16, 2017, memorandum (“AG Memo”) concerning guidance documents

and reflects current Department of Justice policy with respect to the Department's handling of affirmative civil enforcement matters.

- b. The Brand memo appears to significantly restrict the Department's ability to prove violations of applicable law. Do you think it is advisable for the Department to hamstring its own litigators in this way? Could this restriction impede the Department's ability to enforce federal law?

RESPONSE: The Brand Memo reaffirms the principle that agency guidance generally does not have the same force and effect as legally binding rules have, and should not be relied upon by Department attorneys handling affirmative civil enforcement matters to prove violations of applicable law standing alone. However, it is my understanding that the Brand Memo does not foreclose the use of agency guidance where such guidance is expressly incorporated into a party's contract, or where it simply explains or paraphrases existing legal mandates.

- c. What is the legal basis for the Brand memo generally, and more specifically, for its instruction that Department litigators may not use noncompliance with guidance documents as a basis for proving violations of applicable law?

RESPONSE: The Brand Memo is premised on the principle articulated in the AG Memo that agencies may regulate only within the authority delegated to them by Congress and pursuant to applicable laws such as the Administrative Procedure Act.

- d. Federal agency guidance documents often reflect the product of years of work by issue experts. Do you think it is advisable for the Department to effectively disclaim carefully developed guidance across all federal agencies in this fashion?

RESPONSE: As noted above, the Brand Memo does not reject the value or proper role of guidance developed by federal agencies; it merely reaffirms the principle that such guidance itself generally does not create legally binding obligations.

5. In response to a February 2017 Freedom of Information Act (FOIA) request, the Department of Justice produced an email chain sent to attorney general Sessions on February 22, 2017. The initial email, later revealed to have been authored by the Heritage Foundation's Hans von Spakovsky, expressed concerns about the potential appointment of Democrats and "mainstream Republicans and/or academics" to what would become the now-disbanded Presidential Advisory Commission on Election Integrity ("the Commission"). You were Sessions's Chief of Staff at the time he received that email chain.

- a. Did you ever see this email chain? For reference, the FOIA production is available at <http://www.campaignlegalcenter.org/document/letter-response-foia-request-voter-fraud>

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 it.

- b. The Department's above-linked FOIA production was heavily redacted. Based on your experience at the Federal Programs Branch, were all of the redactions to that production appropriate?

RESPONSE: See my response to Question 5(a).

- c. To your knowledge, did the attorney general take any actions in response to receiving this email chain?

RESPONSE: See my response to Question 5(a).

- d. To your knowledge, did the attorney general have any role whatsoever in the consideration, evaluation, or selection of appointees to the Commission? If so, what role did he play? Please specify.

RESPONSE: See my response to Question 5(a).

- e. Did you have any role whatsoever in the consideration, evaluation, or selection of appointees to the Commission? If so, what role did you play? Please specify.

RESPONSE: See my response to Question 5(a).

- f. I have been asking the above questions since September 2017, but have yet to receive any meaningful response from the Department about this email chain and any resulting actions by the attorney general. If confirmed, will you commit to providing timely responses to Congressional inquiries regarding the Civil Division? What do you believe is a reasonable time frame for responding to a Congressional oversight inquiry?

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 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.

- 6. Occasionally, the interests of the Civil Division conflict or stand in tension with the interests of other component divisions within the Department of Justice. For example, whereas the Civil Rights Division may have an interest in interpreting federal civil rights laws broadly (in order to aggressively enforce those laws), the Civil Division, which is

responsible for defending the United States against federal civil rights lawsuits, may have an interest in interpreting those laws more narrowly (in order to avoid United States liability).

- a. As a general matter, do you believe the interests of the Civil Division should predominate over those of other component divisions?

RESPONSE: No. As a longtime career Department of Justice attorney, I am familiar with the manner by which various components within the Department work collaboratively to ensure that their components' views, interests, or equities in an issue are addressed in the context of the particular facts or circumstances presented. In my experience, career attorneys handling particular cases in the Civil Division coordinate proactively with their counterparts in other components and frequently take steps when drafting or revising briefs or other position papers to accommodate another component's views on an issue.

- b. As AAG of the Civil Division, how would you account for the interests of other component divisions in establishing the Civil Division's positions?

RESPONSE: If I am confirmed, I will continue to foster the collaborative practice between Department of Justice components that I have seen during my nearly two decades of public service. Should any such issues concerning the interests of other component divisions rise to my attention, I intend to carefully evaluate the issues and the interests of the component in question based on the facts, the evidence, and the law. If needed, I also would meet with the career attorneys and staff under my supervision to attempt to resolve any matter of interest to another component. Should the need arise, I would work with the head of that component to resolve any disputed issue and accommodate that component's interest, and, if necessary, I or my staff would elevate the issue to the appropriate leadership in the Department for consideration and resolution.

**Nomination of Joseph H. Hunt,
to be an Assistant Attorney General, Civil
Division Questions for the Record**

QUESTIONS FROM SENATOR COONS

1. On March 10, 2017, President Trump requested the resignations of 46 U.S. Attorneys appointed by President Obama.
 - a. Were you aware of the administration's intention to ask for these resignations before the request was formally issued to U.S. Attorneys?

RESPONSE: Yes. I was made aware of the decision on March 10, 2017.

- b. Do you agree with the President's decision to make the U.S. Attorneys' resignations effective immediately, rather than effective upon filling each position?

RESPONSE: I respect the authority of every President to choose the political appointees who serve in the President's administration.

- c. Despite that then-President-elect Trump had asked Preet Bharara to remain in his role as the U.S. Attorney for the Southern District of New York, the President requested that he resign too. Please describe when you learned that President Trump had decided to remove Mr. Bharara and list the names of anyone providing input as to that decision.

RESPONSE: On March 10, 2017, when I learned of President Trump's decision to remove all U.S. Attorneys at the same time.

- d. The President did not accept Dana Boente's resignation from his position as the U.S. Attorney for the Eastern District of Virginia in March, but then the President abruptly requested that he resign in October 2017. Please describe when you learned that President Trump had decided to remove Mr. Boente and list the names of anyone providing input as to that decision.

RESPONSE: I learned of Mr. Boente's resignation when it was publicly reported.

2. During his confirmation hearing, Attorney General Sessions stated that he did not have communications with the Russians, even though he had met with the Russian Ambassador on multiple occasions during the 2016 presidential campaign.
 - a. Based on these facts, do you believe Senator Sessions' testimony was accurate?

RESPONSE: Yes. I refer you to the Attorney General's June 2017 testimony before the Senate Select Committee on Intelligence and to his October 2017 testimony before the Senate Judiciary with respect to this question.

- b. Do you agree with Attorney General Sessions' decision to recuse himself from any current or future inquiry into 2016 presidential campaign, including the special

counsel's investigation?

RESPONSE: The Attorney General consulted with career Department of Justice ethics officials and considered Department recusal regulations in reaching his decision to recuse, and I believe he did so appropriately.

3. During your confirmation hearing, you committed that if confirmed, you will remain recused from the Russia investigation.
 - a. How will you ensure, to the best of your ability, that you and others honor their recusal commitment and are not involved in any investigations concerning the 2016 presidential campaign, including the special counsel's investigation?

RESPONSE: A decision to recuse from a matter is not to be made lightly, and thus someone who recuses from a matter should be considered to be acting in good faith in reaching such a decision and then honoring it. Where I have recused, I have an ethical responsibility to properly honor and maintain that recusal. With respect to the recusal from investigations concerning the 2016 presidential campaign, including the special counsel investigation, instructions were sent to relevant Department of Justice components, and when such instructions have been given Department personnel are expected to follow the instructions they have been given. Moreover, with respect to any investigation concerning the 2016 presidential campaign, including the special counsel investigation, the Deputy Attorney General, who is aware of the recusal and is Acting Attorney General for such investigations, has a responsibility to police the investigations and to ensure that the recusal instructions are being followed appropriately.

- b. If you learn that a Department of Justice official violates his/her recusal from the investigations related to the 2016 presidential campaign, including the special counsel's investigation, will you notify the Chairman and Ranking Member of the Senate Judiciary Committee?

RESPONSE: If I were to learn that a Department of Justice official violated his/her recusal from the investigations related to the 2016 presidential campaign, including the special counsel investigation, I would notify the Office of the Deputy Attorney General, which has oversight of such investigations.

4. On February 1, 2018, the *New York Times* reported that the Department had effectively closed the Office for Access to Justice by reallocating staff and resources, even though a decision to close the office requires notifying Congress. Please describe when you learned of these reallocations of staff and resources and whether it is your understanding that the administration intends to close the Office for Access to Justice.

RESPONSE: I am not familiar with the Department's decisions regarding this issue or the facts on which any such decisions may have been made.

5. I am concerned about protecting the independence of the Department of Justice.

- a. How would you ensure that the hiring and dismissal of Department of Justice employees are not politicized?

RESPONSE: If I am confirmed, I intend to make all personnel decisions in a fair, even-handed, and ethical manner, consistent with the civil service laws and Department policies. If confirmed, I will be committed to ensuring that the Civil Division's hiring and staffing decisions are conducted with integrity and without regard to political, ideological, or any other prohibited considerations.

- b. How would you ensure that decisions on cases are made based on the facts and the law, free from political influence?

RESPONSE: If confirmed, I would be dedicated to fair and even-handed enforcement of the laws, regardless of political influence. This includes evaluating each case on the merits to decide the best approach to enforcement and resolution based on the specific facts and circumstances and the Civil Division's available resources and consistent with the Department's established procedures.

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

RESPONSE: As a Department of Justice lawyer, I would not follow a directive of the President when I believed that I could not lawfully or ethically follow such a directive.

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

RESPONSE: The Department traditionally defends the constitutionality of a federal statute "whenever a reasonable argument can be made in its support," unless the statute "infringes on the constitutional power of the Executive." *The Attorney General's Duty to Defend the Constitutionality of Statutes*, 5 Op. O.L.C. 25, 25 (1981).

8. How would you respond if your role at the Department of Justice required you to follow a policy directive that was unconstitutional or unlawful?

RESPONSE: I would seek to explain why a policy directive was unconstitutional or unlawful, but in any event I would not follow a policy directive that was unconstitutional or unlawful.

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

RESPONSE: The Department of Justice has an obligation to provide its "advice

and opinion on questions of law when required by the President,” 28 U.S.C. § 511, and I agree that the Department should render its independent judgment in the course of providing such legal advice.

10. I am concerned about repeated attempts by the President of the United States to contact officials within the Department of Justice.

- a. What is your understanding of the Department of Justice’s contact policy regarding interactions between Department of Justice and White House officials?

RESPONSE: According to a 2009 Memo issued by former Attorney General Holder, which remains in effect, initial communications between the Department and the White House concerning pending or contemplated criminal investigations or cases will involve only the Attorney General or the Deputy Attorney General, from the side of the Department, and the Counsel to the President, the Principal Deputy Counsel to the President, the President or the Vice President from the side of the White House. If the communications concern a pending or contemplated civil investigation or case, the Associate Attorney General may also be involved initially.

- b. What is the proper process by which Department of Justice and White House officials communicate?

RESPONSE: See my response to Question 10(a).

- c. When would you refuse to return a phone call from the President of the United States or another White House official?

RESPONSE: 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 Holder 2009 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.

11. How would you respond to the President calling on the Department via social media, a press conference, or other means, to investigate, sue, and/or prosecute a political opponent?

RESPONSE: I would evaluate any such situation based on actual facts and circumstances if and when presented. I will say, however, that all investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to political considerations. The Department must follow the facts wherever they lead, and must make decisions regarding any potential cases based upon the facts and the law, consistent with the Department’s established procedures.

12. How would you respond to the President calling on the Department via social media, a

press conference, or other means, to investigate, sue, and/or prosecute an individual or corporation where that action was not justified by the facts and the law?

RESPONSE: Please see my response to Question 11.

13. If President Trump is unjustifiably critical of a career Justice Department attorney in the Civil Division, how would you respond?

RESPONSE: I would evaluate any such situation based on actual facts and circumstances if and when presented. I will say, however, that I have worked in the Civil Division for almost twenty years as a career attorney and have great respect for the career attorneys in the Civil Division. They are vital to the mission and work of the Department, and they provide a wealth of expertise and experience in litigating cases and advising Executive Branch agencies.

14. During your confirmation hearing, you stated that if confirmed, addressing the opioid crisis and elder fraud would be two of your top priorities. What other legal matters would you prioritize?

RESPONSE: Fighting the opioid crisis is a major Department priority in which the Civil Division is playing an important role. If confirmed, I will continue to aggressively deploy and coordinate all criminal and civil remedies available to the Civil Division under federal law to hold opioid manufacturers, distributors, and others in the distribution and prescription chain accountable for unlawful practices. The administration is likewise focused on vigorously enforcing the False Claims Act and combatting those who commit fraud and who prey on our nation's elderly, and I intend to aggressively pursue those efforts as well if confirmed.

If confirmed, I also will continue to prioritize our efforts to defend suits brought against the government. I intend to ensure that we devote sufficient resources to this defensive effort and that we take steps to improve the ability of the Civil Division's career professionals to protect the government's interests.

In addition to these important efforts, I plan to vigorously enforce the civil denaturalization laws. Civil actions to revoke citizenship unlawfully obtained or obtained by fraud are an integral part of the government's arsenal of remedies to enforce the immigration laws, deter immigration fraud, protect national security and public safety, and promote the rule of law. I will make it a priority to continue and expand upon these efforts.

15. Please provide a complete list of the matters you worked on during your detail in the Office of Legal Policy.

RESPONSE: In the Office of Legal Policy I serve as a counselor and advisor to the Assistant Attorney General. Specifically, during my detail in the Office of Legal Policy I

have worked on matters related to human trafficking and on matters related to the Sex Offender Registration and Notification Act.

16. Describe any involvement you had in sending letters to or filing lawsuits against jurisdictions demanding cooperation with federal immigration authorities, and list the names of anyone providing input.

RESPONSE: As the Chief of Staff to the Attorney General, I was present for discussions and meetings with the Attorney General or other executive branch officials on a wide range of issues and matters. Whether legal or other advice has been provided on a specific matter and, if it has, the content of that advice, is generally treated as privileged and confidential, and thus it would not be appropriate for me to discuss the nature of any such work. Additionally, 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.

17. Describe any involvement you had in the Department of Justice's January 2018 memorandum on marijuana enforcement, and list the names of anyone providing input.

RESPONSE: As the Chief of Staff to the Attorney General, I was present for discussions and meetings with the Attorney General or other executive branch officials on a wide range of issues and matters. Whether legal or other advice has been provided on a specific matter and, if it has, the content of that advice, is generally treated as privileged and confidential, and thus it would not be appropriate for me to discuss the nature of any such work.

18. Describe any involvement you had in the Department of Justice's December 2017 decision to rescind dozens of guidance documents, and list the names of anyone providing input.

RESPONSE: Please see my response to Question 17.

19. Describe any involvement you had in the Department of Justice's December 2017 letter to the U.S. Census Bureau requesting that a citizenship question be added to the 2020 census, and list the names of anyone providing input.

RESPONSE: Please see my response to Question 16.

20. Describe any involvement you had in the Department of Justice's October 2017 memorandum rescinding guidance on the treatment of transgender employment discrimination claims, and list the names of anyone providing input.

RESPONSE: Please see my response to Question 17.

21. Describe any involvement you had in the administration's decision to rescind the Deferred Action for Childhood Arrivals program, and list the names of anyone providing input.

RESPONSE: Please see my response to Question 16.

22. Describe any involvement you had with the Presidential Advisory Commission on Election Integrity.

RESPONSE: Please see my response to Question 16.

23. Describe any involvement you had with the firing of FBI Director James Comey, including any involvement in writing, reviewing, or contributing in any way to the memoranda sent by Attorney General Sessions and/or Deputy Attorney General Rosenstein or any other documents related to the removal of Director Comey.

RESPONSE: Please see my response to Question 17.

24. Describe any involvement in any decision by the administration to reverse its position in a case.

RESPONSE: Please see my response to Question 17.

25. Please provide a complete list of amicus briefs you have worked on during the Trump administration.

RESPONSE: I do not recall having performed work on any amicus briefs filed by the United States in the courts of appeals or the Supreme Court during the Trump administration. Early in the administration, before my detail as the Chief of Staff began, I approved a recommendation to the Acting Assistant Attorney General of the Civil Division to file a Statement of Interest (similar to an amicus brief) in the U.S. District Court for the Southern District of New York in *862 Second Ave., LLC v. 2 DAG Hammar skjold Plaza Condominium, et al.*, 16-cv-8551 (S.D.N.Y.).

**Nomination of Joseph Hunt to be
Assistant Attorney General of the Civil Division
Questions for the Record**

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute 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.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.² 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.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

- a. Do you believe there is implicit racial bias in our criminal justice system?

RESPONSE: Unfortunately, racial bias still exists in our nation. It is the responsibility of everyone who has a role in our justice system to ensure that racism plays no part in the administration of justice in this country.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

RESPONSE: I am generally aware of statistics showing that African-Americans and Hispanic Americans are disproportionately represented in our nation's jails and prisons. But I have not studied this issue and thus have no basis on which to reach any conclusions about it.

2. According to a Pew Charitable Trusts fact sheet, in the ten states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.⁵ In the ten states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.⁶

¹ JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), *available at* <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

² *Id.*

³ ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), *available at* <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴ *Id.* at 8.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), *available at* http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

⁶ *Id.*

- a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you 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; I thus have no basis on which to reach a conclusion on it.

- b. Do you believe there is a direct link between decreases of 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 decreases of a state's incarcerated population and decreased crime rates; I thus have no basis on which to reach a conclusion on it.

3. On March 2, 2017, the Attorney General recused himself from the Russia investigation. In a prepared statement he said, "I have decided to recuse myself from any existing future investigations of any matters related in any way to the campaigns for President of the United States." During that time you were his Chief of Staff and Senior Counselor.

- a. What role did you play in his recusal?

RESPONSE: I was present for the Attorney General's consultation with career Department of Justice officials with whom he consulted regarding recusal, and I sent the recusal announcement to Department officials.

- b. Did you believe he made the right decision to recuse himself from the Russia investigation or do you agree with President Trump that he should not have recused himself?

RESPONSE: The Attorney General consulted with career Department ethics officials and considered Department recusal regulations in reaching his decision to recuse, and I believe he did so appropriately.

4. While you were Chief of Staff and Senior Counselor to Attorney General Sessions, he signed a memo which directed federal prosecutors to "pursue the most serious, readily provable offense." It reversed an Obama-era policy that directed federal prosecutors to avoid charging certain offenders with offenses that could trigger long mandatory minimum sentences. I, along with Senators Mike Lee, Dick Durbin, and Rand Paul, wrote the Attorney General a letter because we believed this ignored the growing bipartisan view that federal sentencing laws are in grave need of reform. While I was not surprised by this announcement, it deeply upset me. Reinvigorating the failed War on Drugs will only cause poor minority communities more pain and will do nothing to make our communities safer.

- a. What role did you play in issuing the new charging and sentencing policy?

RESPONSE: As the Chief of Staff to the Attorney General, I was present for discussions and meetings with the Attorney General or other executive branch officials on a wide range of issues and matters. Whether legal or other advice has been provided on a specific matter and, if it has, the content of that advice, is generally treated as privileged and confidential, and thus it would not be appropriate for me to discuss the nature of any such work.

- b. Do you believe mandatory minimums are used disproportionately on minorities?

RESPONSE: I am not aware of studies reaching this conclusion, and I have not studied this issue; I thus have no basis for reaching a conclusion on this issue.

- c. Do you have any concerns with the way mandatory minimums are utilized?

RESPONSE: I have not studied this issue and do not recall having handled cases involving mandatory minimum sentences; I am thus not in a position to comment further.