Nomination of Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2017

QUESTIONS FROM SENATOR FRANKEN

Question 1. In my original questions for the record, I asked what assurances you could provide the lesbian, gay, bisexual, and transgender (LGBT) community that you would work to protect their rights. I also noted that under both Attorneys General Holder and Lynch, the Department of Justice made protecting and advancing the rights of LGBT people an integral part of the Department's civil rights enforcement. You responded that "[t]he Civil Rights Division has a historic and proud record of defending the civil rights of all Americans, particularly the most vulnerable. That will certainly continue under my leadership, if I am fortunate to be confirmed as Attorney General."

As a part of the Civil Rights Division's efforts to combat discrimination against LGBT people, attorneys, staff, and members of the Division's leadership participate in the LGBTI Working Group. The Working Group advises the Division's leadership and sections on legal and policy issues relating to discrimination based on sexual orientation, gender identity, intersex status, and HIV/AIDS status. In addition to exploring how existing federal civil rights laws can address discrimination against LGBT people, the Group also identifies appropriate matters and cases for the Division.

- In acknowledgement of your commitment to continue the Civil Rights Division's "historic and proud record of defending the civil rights of all Americans, particularly the most vulnerable," will you commit to allowing the LGBTI Working Group to continue its work within the Division?

RESPONSE: In response to a similar question from Senator Blumenthal, I explained that I am not familiar with this working group. I have been cautious not to make any such commitments without a proper evaluation which, of course, I have not been able to undertake as a Senator. If I am fortunate enough to be confirmed, I will evaluate any current practices of the Department or its partnerships as to their effectiveness in the enforcement of federal law and the protections therein.

Question 2. In my original questions for the record, I raised the issue of your opposition to the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, which extended federal hate crimes protections to victims targeted on the basis of their sexual orientation or gender identity. During a 2009 hearing on that bill, you stated that "I'm not sure that women or people with different sexual orientations face that kind of discrimination. I just don't see it."

In my question, I provided you with data from the FBI's annual report on hate crime statistics, which documented that of the 7,121 victims of hate crimes in 2015, 17.7 percent were targeted due to their sexual orientation and 1.7 percent because of their gender identity (*see* U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, THE UNIF. CRIME REPORTING PROGRAM, HATE CRIME STATISTICS, 2015 (2017), *available at* https://ucr.fbi.gov/hate-crime/2015). I asked you whether

you still hold the view that LGBT people do not "face that kind of discrimination." In response, you wrote that your 2009 statement "reflected an opinion that I reached based on information available to me at the time" and you committed to "work diligently to ensure that all Americans receive equal protection under our laws." You did not, however, answer the question.

- In light of the data gathered by the FBI, do you still hold the view that LGBT people do not experience that kind of discrimination? If so, why?

RESPONSE: I respect the findings of the FBI report and have no reason to question the accuracy of this data.

- The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act requires that the attorney general or a designee authorize all criminal prosecutions brought under the Act. Given your opposition to the Act, will you commit to signing off on charges brought pursuant to the Act, including for crimes targeting members of the LGBT community?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, the Justice Department will be guided by the applicable facts and law in each individual case, together with appropriate Justice Department guidelines, in determining which charges to file. I will not hesitate to approve charges in appropriate cases.

Question 3. In my original questions for the record, I explained that federal law does not require state or local law enforcement to report hate crime incidents to the federal government, and I drew your attention to FBI Director Comey's statements acknowledging that underreporting of hate crimes remains a challenge (*see* James B. Comey, Director, Fed. Bureau of Investigation, Address at the Anti-Defamation League National Leadership Summit (April 28, 2014), *available at* https://www.fbi.gov/news/speeches/the-fbi-and-the-adl-working-toward-a-world-without-hate). I asked whether you agreed that underreporting of hate crime incidents by state and local law enforcement remains an obstacle to combatting hate crimes. You responded that you had "not been presented with the information necessary" to form an opinion or to evaluate Director Comey's assertion.

In 2013, the U.S. Department of Justice's Bureau of Justice Statistics (BJS) issued a report that analyzed data from BJS's National Crime Victimization Survey (NCVS) which documented that while 46 percent of hate crime incidents were reported to police for years 2003-2006, that number dropped to 35 percent for years 2007-2011 (*see* U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, NCJ 241291, SPECIAL REPORT: HATE CRIME VICTIMIZATION, 2003-2011 (2013), *available at* https://www.bjs.gov/content/pub/pdf/hcv0311.pdf).

Of the 14,997 law enforcement agencies that participated in the FBI's Uniform Crime Reporting Program in 2015, 88.4 percent of agencies reported that no hate crimes occurred in their jurisdictions (*see* U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT, HATE CRIME STATISTICS, 2015, HATE CRIME BY JURISDICTION (2016), *available at* https://ucr.fbi.gov/hate-crime/2015/topic-pages/jurisdiction_final). Moreover, according to an Anti-Defamation League analysis of the FBI's 2015 hate crime statistics, 87 American cities

with populations over 100,000 either failed to report any information at all or reported zero bias-motivated crimes.

- Having now been presented with Justice Department and FBI data, as well as FBI Director Comey's views on underreporting, are you able to evaluate his assertion or offer an opinion as to whether underreporting of hate crime incidents by state and local law enforcement remains a problem?

RESPONSE: It would be difficult to draw sound conclusions, relying solely on the information provided. If I am fortunate enough to be confirmed as Attorney General, I will evaluate the data using personnel with specific experience on this issue to more thoroughly consider the possibility of underreporting.

Question 4. During your hearing, I expressed an interest in better understanding why you listed four civil rights cases among the top ten "most significant litigated matters which you personally handled" on your questionnaire. In light of your answers, I would like to further explore the role you played in these cases.

RESPONSE: My role in non-criminal civil rights cases, as the local U.S. Attorney and as the senior Department of Justice official in the Southern District of Alabama, was not to prepare the individual filings or make appellate arguments in these historically significant cases from 30 years ago. Question 15 of the Committee's Questionnaire states: "Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record." As I said in my responses to the Committee's Questionnaire: "For the cases described in 2 [*Conecuh County*], 4 [*Davis*], 8 [*Dallas County*] and 9 [*Marengo County*], my role, like most U.S. Attorneys in the nation with non-criminal civil rights cases, was to provide support for the Department of Justice, Civil Rights Division, attorneys. I reviewed, supported and co-signed complaints, motions, and other pleadings and briefs that were filed during my tenure as U.S. Attorney. I provided assistance and guidance to the Civil Rights Division attorneys, had an open-door policy with them, and cooperated with them on these cases."

As Gerry Hebert, an attorney in the Civil Rights Division of the Justice Department, testified:

"We have had difficulty with several U.S. attorneys in cases we have wanted to bring. We have not experienced that difficulty in the cases that I have handled with Mr. Sessions. In fact, quite the contrary." [1986 Hr'g Tr. 58.]

"I have needed Mr. Sessions' help in those cases and he has provided that help every step of the way. In fact, I would say that my experience with Mr. Sessions has led me to believe that I have received more cooperation from him, more active involvement from him, because I have called upon him." [*Id.* at 56.]

"I have had occasion numerous times to ask for his assistance and guidance. I have been able to go to him; he has had an open-door policy and I have taken advantage of that and found him cooperative." [*Id.* at 57.]

"I have worked side by side with him on some cases in the sense that I have had to go to him for some advice." [*Id.* at 62.]

Davis v. Board of School Commissioners of Mobile County

The *Davis* school desegregation case listed on your questionnaire was filed in 1963, long before you became U.S. Attorney.

- Is it correct that your name and signature are not on the complaint? Yes or no.

RESPONSE: My name and signature are not on the first complaint filed in 1963, but the historically significant *Davis* case continued for decades and included my tenure as U.S. Attorney, and my name was listed on pleadings when I was U.S. Attorney.

- Did you prepare any legal brief or other filing in this case? Yes or no. If yes, please provide all such filings.

RESPONSE: See response to Question 4, pp. 3-4.

- Did you appear in any court hearing in this case? Yes or no.

RESPONSE: I do not recall appearing at a hearing. My role, as the local U.S. Attorney, was not to argue the case at hearings, but to provide assistance and guidance. See response to Question 4, pp. 3-4.

- In your questionnaire entry for this case, you listed as co-counsel Joseph D. Rich and Angela Schmidt. Did you supervise either of them on this case? Yes or no.

RESPONSE: My role, as the local U.S. Attorney, was not to supervise the Civil Rights Division attorneys from Washington, D.C, but to provide assistance and guidance. See response to Question 4, pp. 3-4.

- Did any Assistant United States Attorney in your office personally litigate this case along with Joseph D. Rich or Angela Schmidt? Yes or no. If yes, please provide that Assistant U.S. Attorney's name for the record.

RESPONSE: I do not recall. Often, Civil Rights Division attorneys work with Assistant U.S. Attorneys on cases throughout the country. For example, when I was an Assistant U.S. Attorney in the late 1970s, I provided support to Dan Bell of the Civil Rights Division. He described that case as follows: "As a matter of fact, my impression of Mr. Sessions is that he is very eager to pursue criminal civil rights cases and he certainly was at the beginning of my acquaintance with him. The particular case I tried, the government had indicted the sheriff of Mobile County and eight of his deputies for deliberately setting up an ambush and murdering a black inmate, an extremely unpopular case in Mobile, and there were a number of people even in the United States Attorney's office who were not too eager to be that friendly to the prosecution, especially a couple of Washington-based lawyers. And Mr. Sessions and the

then U.S. Attorney, Charles Whitespunner, and his successor, William K[imbrough], were all very helpful to the prosecution." [1986 Hr'g Tr. 133-134.] Additionally, when I was U.S. Attorney, my staff would, when needed, consult with Civil Rights Division attorneys and file pleadings for them.

Various court filings from the mid-1980s in this case are signed solely by attorneys for the Civil Rights Division. Many do not list your name. Some list your name without a signature. Examples are below. For each one, please describe, if you recall, your substantive involvement in any of these filings and state whether you believe they were prepared primarily by attorneys from the Department of Justice's Civil Rights Division based in Washington, DC.

- One filing dated August 26, 1986, is signed by Angela Schmidt. Then-Assistant Attorney General William Bradford Reynolds and Joseph D. Rich are also listed. Your name is not listed.

- Another filing, from July 21, 1986 is signed by Joseph D. Rich. Then-Assistant Attorney General for Civil Rights William Bradford Reynolds and Angela Schmidt are also listed. Your name is not listed.

- Another filing, dated August 21, 1985, is signed by Joseph D. Rich. Then-Assistant Attorney General William Bradford Reynolds, H. Joseph Beard, Jr., and Angela Schmidt are also listed. Your name is not listed.

- Another filing, dated October 16, 1981, is signed by Myron S. Lehtman of the Civil Rights Division. Then-Assistant Attorney General William Bradford Reynolds, Walter Gorman, and Kenneth Barnes of the Civil Rights Division are also listed. Your name is listed as United States Attorney.

RESPONSE: Of the numerous filings in the *Davis* case, I do not recall my involvement for each specific filing, just my responsibility for the litigation and support thereof. See response to Question 4, pp. 3-4.

United States v. Conecuh County

The *Conecuh County* case was filed while you were United States Attorney.

The docket sheet in this case lists Mr. Jones, Mr. Rosenbaum, Mr. Tanner, and you as attorneys. It states that, on November 2, 1983, a hearing on a motion for a temporary restraining order and preliminary injunction was held in Selma, Alabama and denied by the court.

- Did you appear at that hearing?

RESPONSE: I do not recall any specific hearings in this historically significant case from 30 years ago. See response to Question 4, pp. 3-4.

- Did any Assistant United States Attorney under your supervision appear at that hearing?

RESPONSE: I do not recall. Often, Civil Rights Division attorneys work with Assistant U.S. Attorneys on cases throughout the country. For example, when I was an Assistant U.S. Attorney in the late 1970s, I provided support to Dan Bell of the Civil Rights Division. He described that case as follows: "As a matter of fact, my impression of Mr. Sessions is that he is very eager to pursue criminal civil rights cases and he certainly was at the beginning of my acquaintance with him. The particular case I tried, the government had indicted the sheriff of Mobile County and eight of his deputies for deliberately setting up an ambush and murdering a black inmate, an extremely unpopular case in Mobile, and there were a number of people even in the United States Attorney's office who were not too eager to be that friendly to the prosecution, especially a couple of Washington-based lawyers. And Mr. Sessions and the then U.S. Attorney, Charles Whitespunner, and his successor, William K[imbrough], were all very helpful to the prosecution." [1986 Hr'g Tr. 133-134.] Additionally, when I was U.S. Attorney, my staff would, when needed, consult with Civil Rights Division attorneys and file pleadings for them.

- Was this hearing primarily handled by attorneys from the Department of Justice's Civil Rights Division based in Washington?

RESPONSE: While I do not specifically recall, it would be the usual practice for hearings to be handled primarily by the Civil Rights Division attorneys from Washington, D.C., with the local U.S. Attorney providing assistance and guidance.

The consent decree in the *Conecuh County* case is signed by: Judge W.B. Hand; John K. Tanner of the Voting Section of the Civil Rights Division; and attorneys for the defendants (Robert G. Kendall; J.B. Nix; Edward S. Allen; and Carroll H. Sullivan). Steven H. Rosenbaum is also listed, from the Voting Section of the Civil Rights Division. Your name is not listed.

- Please describe in detail the nature of your participation in the preparation or negotiation of this consent decree.

RESPONSE: I do not recall specific negotiations in this case from over 30 years ago, but my general role in these cases was to provide assistance and guidance. See response to Question 4, pp. 3-4.

- Was this consent decree primarily negotiated by attorneys from the Department of Justice's Civil Rights Division based in Washington? Yes or no.

RESPONSE: While I do not specifically recall, it would be the usual practice for negotiations to be handled primarily by the Civil Rights Division attorneys from Washington, D.C., with the local U.S. Attorney providing assistance and guidance. I do recall a Civil Rights Division attorney discussing this settlement with me. The attorney was pleased, and I was pleased, with the result.

- Did any Assistant United States Attorney under your supervision substantively participate in the negotiation or preparation of this consent decree? Yes or no. If yes, please identify that Assistant United States Attorney.

RESPONSE: I do not recall. Often, Civil Rights Division attorneys work with Assistant U.S. Attorneys on cases throughout the country. For example, when I was an Assistant U.S. Attorney in the late 1970s, I provided support to Dan Bell of the Civil Rights Division. He described that case as follows: "As a matter of fact, my impression of Mr. Sessions is that he is very eager to pursue criminal civil rights cases and he certainly was at the beginning of my acquaintance with him. The particular case I tried, the government had indicted the sheriff of Mobile County and eight of his deputies for deliberately setting up an ambush and murdering a black inmate, an extremely unpopular case in Mobile, and there were a number of people even in the United States Attorney's office who were not too eager to be that friendly to the prosecution, especially a couple of Washington-based lawyers. And Mr. Sessions and the then U.S. Attorney, Charles Whitespunner, and his successor, William K[imbrough], were all very helpful to the prosecution." [1986 Hr'g Tr. 133-134.] Additionally, when I was U.S. Attorney, my staff would, when needed, consult with Civil Rights Division attorneys and file pleadings for them.

United States v. Dallas County Commission

As you state, *United States v. Dallas County Commission* was filed in 1978, and the first trial in this case took place in 1979 and 1980—all before you became U.S. Attorney. The post-trial decision issued by the district court in 1982.

Following the first trial, the district court concluded that the government had not proven vote dilution. The Eleventh Circuit reversed and remanded in 1984. See *United States v. Dallas County Commission*, 739 F.2d 1529 (11th Cir. 1984).

The 1984 appellate decision in this case, as available on an online search database (LexisNexis), lists the following as counsel from the Civil Rights Division in Washington, DC: William Bradford Reynolds; Jessica Silver; and Irving Gornstein. It also lists Thomas H. Figures, an Assistant U.S. Attorney in Mobile, Alabama, who was under your supervision.

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in this case? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

According to the Eleventh Circuit, following a remand from the 1984 appellate decision, "The district court conducted a hearing with regard to elections for County Commission, and on March 6, 1986 it issued a preliminary injunction against at-large voting in Commission races in the June 1986 Democratic Primary." *United States v. Dallas County Commission*, 791 F.2d 831, 832 (11th Cir. 1986).

- Did you draft any brief or motion seeking this preliminary injunction?

RESPONSE: While I do not recall the preparation of specific briefs and motions in this case from over 30 years ago, my role, as the U.S. Attorney, was not to draft briefs, but to provide assistance and guidance. See response to Question 4, pp. 3-4. I do recall the Proposed Findings of Fact in this case, which set forth the history of blatant voter discrimination dating back to the late 1800s that had effectively disenfranchised African-American voters.

- Did you otherwise participate in the briefing on this motion for a preliminary injunction? If so, what was the nature of your participation?

RESPONSE: I do not recall particular briefs or hearings in this case from over 30 years ago. In general, however, my role as the U.S. Attorney was to provide assistance and guidance. See response to Question 4, pp. 3-4.

- Did you participate in the preliminary injunction hearing discussed in this quotation? If so, what was the nature of your participation?

RESPONSE: I do not recall particular briefs or hearings in this case from over 30 years ago. In general, however, my role as the U.S. Attorney was to provide assistance and guidance. See response to Question 4, pp. 3-4.

According to the Eleventh Circuit, the district court after the 1984 remand denied a motion for preliminary injunction against the Dallas County School Board—and the United States appealed. *Dallas County*, 791 F.2d at 831-33. The Eleventh Circuit reversed and ordered the district court to grant the preliminary injunction. *Id*. at 833.

The 1986 appellate decision in this case, as available on an online search database (LexisNexis), lists the following as counsel from the Civil Rights Division in Washington, DC: Gerald W. Jones, Paul F. Hancock; J. Gerald Hebert. It also lists you as U.S. Attorney.

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in this case? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

Following the remand of the school board case, the district court entered orders approving remedial plans for the County Commission and School Board over the objections of the United States. See *United States v. Dallas County Commission*, 850 F.2d 1433, 1436 (11th Cir. 1988) (school board); *United States v. Dallas County Commission*, 850 F.2d 1430 (11th Cir. 1988) (county commission). In both cases, the Eleventh Circuit reversed, finding that the remedial plans approved by the district court did not cure the violations of the Voting Rights Act.

The 1988 appellate decision in the Dallas County Commission case (850 F.2d 1430) as available on an online search database (LexisNexis) lists the following as attorneys for the United States in the appeal: "Marie Klimesz McElderry, U.S. Department of Justice, Civil Rights Division, Washington, District of Columbia, Jessica Dunsay Silver"; and "Wm. Bradford Reynolds, U.S. Department of Justice, Civil Rights Division, Washington, District of Columbia, For U.S.A." It does not list your name.

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in the *Dallas County Commission* appeal that resulted in the 1988 decision? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

The 1988 appellate decision in the *Dallas County School Board* case (850 F.2d 1433) as available on an online search database (LexisNexis) lists the following as attorneys for the United States in the appeal: "Marie Klimesz McElderry, U.S. Dept. of Justice, Jessica Dunsay Silver, Civil Rights Division, Washington, District of Columbia, J. Gerald Hebert, U.S. Dept. of Justice, William Bradford Reynolds, Voting Section, Gerald W. Jones, Civil Rights Division, Paul F. Hancock, Washington, District of Columbia, J.B. Sessions U.S. Attorney, Mobile, Alabama."

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in the *Dallas County School Board* appeal that resulted in the 1988 decision? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

Following the 1988 Eleventh Circuit decisions, the district court entered an order finding that commissioners elected in 1988 were only to serve two-year terms, instead of four-year terms. This was appealed to the Eleventh Circuit, which reversed. *United States v. Dallas County Commission*, 904 F.2d 26 (11th Cir. 1990).

The 1990 appellate decision in this case as available on an online search database (LexisNexis) lists the following as attorneys for the United States in the appeal: "John R. Dunne, Asst. Attorney General, Department of Justice, Jessica Dunsay Silver, Irving Gornstein, Washington, District of Columbia for plaintiff."

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

The 1988 appellate decision in the *Dallas County School Board* case (850 F.2d 1433) as available on an online search database (LexisNexis) lists the following as attorneys for the United States in the appeal: "Marie Klimesz McElderry, U.S. Dept. of Justice, Jessica Dunsay Silver, Civil Rights Division, Washington, District of Columbia, J. Gerald Hebert, U.S. Dept. of Justice, William Bradford Reynolds, Voting Section, Gerald W. Jones, Civil Rights Division, Paul F. Hancock, Washington, District of Columbia, J.B. Sessions U.S. Attorney, Mobile, Alabama."

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in the *Dallas County School Board* appeal that resulted in the 1988 decision? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

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- As U.S. Attorney, did you participate in the preparation of the appellate briefs in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

United States v. Marengo County Commission

The Department of Justice's complaint in *United States v. Marengo County Commission* was filed in 1978, and the first trial in this case was conducted in Selma, Alabama on October 23, 1978 and January 4, 1979. See *Clark v. Marengo County*, 469 F. Supp. 1150, 1154 (S.D. Ala. 1979). The post-trial decision issued on April 23, 1979 (469 F. Supp. 1150). All of these actions took place before you became U.S. Attorney.
The Eleventh Circuit in 1984 noted that the 1979 decision found that the "at-large system for electing the Marengo County, Alabama county commission and school board" did not violate the Constitution, Civil Rights Act of 1870, or Section 2 of the Voting Rights Act. *United States v. Marengo County Commission*, 731 F.2d 1546, 1550 (11th Cir. 1984).

In that appellate decision, the court noted that, since the 1979 decision, the court had "remanded this case once" already. The decision later notes that, following the Supreme Court's decision in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), the appeals court remanded the case to the district court for presentation of additional evidence. *Marengo County*, 731 F.2d at 1552.

The appeals court decision then notes: "On July 30, 1981, the district court in the present case again ordered judgment for defendants on the ground that the plaintiffs had not established unresponsiveness. The court rejected the United States' offer to present additional evidence." *Id*.

- Any proceedings leading up to this July 30, 1981 order occurred prior to your becoming the U.S. Attorney, correct?

RESPONSE: Yes.

The United States appealed the July 30, 1981 order. The Eleventh Circuit then granted the United States' motion to hold the appeal in abeyance pending the outcome of the Supreme Court's review of *Rogers v. Lodge*, 458 U.S. 613 (1982). See *Marengo County*, 731 F.2d at 1552.

Following the Rogers decision and the 1982 amendments to Section 2 of the Voting Rights Act, the Eleventh Circuit in 1984 "remand[ed] this case to the district court to allow the parties a limited opportunity to update the record and, in the event that the court finds a continuing violation of the Voting Rights Act, to allow the court to devise an appropriate remedy."

The 1984 appellate decision in this case as available on an online search database (LexisNexis) lists the following as attorneys for the United States in the appeal: "William F. Smith, Attorney General, U.S. Department of Justice, Civil Rights Division, Washington, District of Columbia, William B. Reynolds, Asst. AG, U.S. Department of Justice, Civil Rights Division, Washington, District of Columbia, Joan A. Magagna, U.S. Department of Justice, Civil Rights Division, Washington, District of Columbia, Brian K. Landsberg, U.S. Department of Justice, Civil Rights Division, Washington, D.C., William R. Favre, Jr., U.S. Attorney, Mobile, Alabama, Thomas H. Figures Mobile, Alabama, for Appellant." Your name does not appear.

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- As U.S. Attorney, did you participate in the preparation of any motions in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

The Eleventh Circuit's 1984 decision notes, "The purpose of the remand is to allow the parties to update the record and to supplement the record with evidence that might tend to affect our finding of discriminatory results. In view of the evidence already in the record, the defendants

bear the burden of establishing that circumstances have changed sufficiently to make our finding of discriminatory results in 1978 inapplicable in 1984." *Marengo County*, 731 F.2d at 1574-75.

The district court held a post-remand hearing in March 1985 in the Northern Division (Selma). *See Clark v. Marengo County*, 623 F. Supp. 33 (S.D. Ala. 1985). The district court found "no significant changes have occurred since 1978 that affect the Eleventh Circuit Court of Appeals' finding of a Section 2 violation." *Id*. at 34. The Court says that the Eleventh Circuit's mandate essentially made the district court's role "merely ministerial." *Id*.

The 1985 district court decision as available on an online search database (Westlaw) lists the following as attorneys for the United States: "J. Gerald Hebert, Christopher G. Lehmann, Dept. of Justice, Civil Rights Div., Washington, D.C., for United States."

- As U.S. Attorney, did you participate in the preparation of any filings leading up to the March 1985 post-remand hearing in this case? If so, how?

RESPONSE: I do not recall the preparation of specific filings in this case. See response to Question 4, pp. 3-4.

- Did you participate in the March 1985 post-remand hearing? If so, how?

RESPONSE: I do not recall the particular hearings in this case. See response to Question 4, pp. 3-4.

- As U.S. Attorney, did you participate in the preparation of any motions in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in the oral argument in the Eleventh Circuit? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

The Eleventh Circuit's 1984 decision notes, "The purpose of the remand is to allow the parties to update the record and to supplement the record with evidence that might tend to affect our finding of discriminatory results. In view of the evidence already in the record, the defendants bear the burden of establishing that circumstances have changed sufficiently to make our finding of discriminatory results in 1978 inapplicable in 1984." *Marengo County*, 731 F.2d at 1574-75.

The district court held a post-remand hearing in March 1985 in the Northern Division (Selma). *See Clark v. Marengo County*, 623 F. Supp. 33 (S.D. Ala. 1985). The district court found "no significant changes have occurred since 1978 that affect the Eleventh Circuit Court of Appeals'

finding of a Section 2 violation." *Id*. at 34. The Court says that the Eleventh Circuit's mandate essentially made the district court's role "merely ministerial." *Id.*

The 1985 district court decision as available on an online search database (Westlaw) lists the following as attorneys for the United States: "J. Gerald Hebert, Christopher G. Lehmann, Dept. of Justice, Civil Rights Div., Washington, D.C., for United States."

- As U.S. Attorney, did you participate in the preparation of any filings leading up to the March 1985 post-remand hearing in this case? If so, how?

RESPONSE: I do not recall the preparation of specific filings in this case. See response to Question 4, pp. 3-4.

- Did you participate in the March 1985 post-remand hearing? If so, how?

RESPONSE: I do not recall the specific hearings in this case. See response to Question 4, pp. 3-4.

On August 8, 1986, the District Court issued another order, which is cited in your questionnaire. *Clark v. Marengo County*, 643 F. Supp. 232 (S.D. Ala. 1986). The decision notes that there had been a hearing "on July 29, 1986 for the purpose of addressing the parties' objections to the Court's June 23, 1986 districting plan and determining whether said plan complies with Section 2 of the Voting Rights Act." *Id*. at 233.

The 1986 district court decision in this case as available on an online search database (Westlaw) lists the following as attorneys for the United States: "Jefferson B. Sessions, III, W.A. Kimbrough, Jr., U.S. Attys., Mobile, Ala., J. Gerald Hebert, Voting Section, Civil Rights Div., Dept. of Justice, Washington, D.C., for U.S."

- As U.S. Attorney, did you participate in the preparation of any filings (including proposed districting plans) leading up to the July 29, 1986 hearing? If so, what was the nature of your participation?

RESPONSE: I do not recall the preparation of specific filings in this case. See response to Question 4, pp. 3-4.

- As U.S. Attorney, did you participate in the preparation of any filings (including proposed districting plans) filed with the court in 1985 or 1986 prior to the Court's issuance of the June 23, 1986 districting plan?

RESPONSE: I do not recall the preparation of specific filings in this case. See response to Question 4, pp. 3-4.

- Did you participate in the July 29, 1986 hearing? If so, what was the nature of your participation?

RESPONSE: I do not recall the specific hearings in this case. See response to Question 4, pp. 3-4.

As you note, on appeal, the Eleventh Circuit upheld the districting plan. *Clark v. Marengo County*, 811 F.2d 610 (11th Cir. 1987) (table).

- As U.S. Attorney, did you participate in the preparation of the appellate briefs in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

- Did you participate in any oral argument in the Eleventh Circuit in this appeal? If so, what was the nature of your participation?

RESPONSE: Normally, the Civil Rights Division attorneys would handle the appeals in these cases. See response to Question 4, pp. 3-4.

Question 5. After you admitted to not understanding the gravity of the problem of violence against native women when you voted against the reauthorization of the Violence Against Women Act (VAWA) in 2013, I asked you on the record about your willingness to defend the special domestic violence criminal jurisdiction (SDVCJ) provision. Your response stated, "I understand that a pilot program has been initiated that seeks to conform tribes' exercise of criminal jurisdiction over non-Indians to the requirements of the Sixth Amendment. I will carefully study this program before reaching any legal conclusions about the VAWA tribal jurisdiction provision."

VAWA 2013, which was enacted on March 7, 2013, recognizes tribes' inherent power to exercise SDVCJ over non-Indians who commit acts of domestic violence and amends the Indian Civil Rights Act to require due process protections before a tribe can exercise SDVCJ. Congress recognized that it may take time for many tribes to get these protections in place and set the effective date for the provision two years after passage of the law. Congress also created the Pilot Project, which you reference in your response, to allow for accelerated implementation for those tribes who demonstrated to the attorney general's satisfaction that the tribe's criminal justice system had adequate safeguards in place to protect defendants' rights. The Pilot Project ended nearly two years ago, in March 2015. It has been widely hailed as a success for holding domestic violence offenders accountable while also protecting their fundamental right to due process. It has been the subject of DOJ reports, Congressional briefings, law review articles, and dozens of newspaper articles and conference sessions. Two bills have since been introduced to build on the success of the Pilot Project and further strengthen tribal authority.

- When did you learn about the SDVCJ pilot program, which was a key provision of the law you opposed in 2013? Was it before or after your nomination hearing, during which you stated that your opposition to VAWA rested on your concerns surrounding the SDVCJ provision?

RESPONSE: The pilot program was enacted by Congress. Therefore, as Attorney General, it would be my duty to review the program's findings as would be necessary to enforce the 2013 law, regardless of past opinions I may have held. As a Senator, however, I have not had an occasion to conduct an evaluation of the pilot program.

- In the two weeks since your hearing, during which your familiarity with SDVCJ was raised several times, what efforts have you undertaken to learn more about how tribes are exercising this jurisdiction? Have you spoken with any tribal governments exercising SDVCJ?

RESPONSE: While I am still currently charged with carrying out my duties as a Senator from Alabama, I would undertake these efforts if confirmed as Attorney General. While I do not have these resources available to me at present, as Attorney General, I would have two specific agencies within the Justice Department at my disposal that maintain substantial expertise on tribal matters and jurisdiction.

Question 6: In response to my question about how you would address the high rates of violent crime in Indian country you stated, "I will be committed to ensuring that federal law enforcement resources are fully deployed to investigate and prosecute crime on Federal reservations, and will request additional resources where existing resources are inadequate." Thank you for your commitment. I look forward to working with you to ensure the federal government fulfills its responsibilities to investigate and prosecute crime on reservations.

In response to my question about violence against Native women, however, you stated that "State and local law enforcement resources greatly exceed those of Federal and tribal governments combined. On the exclusively Federal reservations where federal law enforcement has proved to be inadequate to reduce high levels of violent crime, Congress may consider allowing state and local authorities to exercise criminal jurisdiction. State and local law enforcement has proven effective on many existing Indian reservations, and the extension of such criminal jurisdiction to both Indians and non-Indians in Indian country does not offend constitutional guarantees."

Your suggestion to empower state law enforcement on reservations is not new. It was first enacted by Congress in 1953 as Public Law 83-280 (PL 280). Initially enacted in six states, PL 280 authorized state jurisdiction on Indian reservations and eliminated federal jurisdiction over major crimes committed in Indian country, but it also allowed other states to acquire jurisdiction at their option. At first, PL 280 was forced on tribes without their consent. President Nixon disavowed it, calling it a "policy of forced termination", in favor of a policy that acknowledged that tribal governments are best positioned to exercise authority to govern their lands and people. Since amendments to PL 280 in 1968, tribal consent is required before a state can acquire jurisdiction and states are permitted to cede jurisdiction back to the federal government. Importantly, since 1968, no tribe has consented to state jurisdiction, and many states have ceded jurisdiction back to the federal government, often citing their view that PL 280 is largely an unfunded mandate to police lands that they cannot tax.

Finally, the bipartisan Indian Law & Order Commission concluded in its recent report – A Roadmap for Making Native America Safer – that "While problems associated with institutional illegitimacy and jurisdictional complexities occur across the board in Indian country, the Commission found them to be especially prevalent among Tribes subject to P.L. 83-280 or similar types of State jurisdiction. Distrust between Tribal communities and criminal justice authorities leads to communication failures, conflict, and diminished respect."

- What is the basis for your recommendation that Congress should consider allowing state and local authorities to exercise greater jurisdiction on tribal lands?

RESPONSE: The vast majority of the nation's criminal law-enforcement resources, *i.e.*, police officers and prosecutors, belong to state and local governments. In many cases, these state and local authorities will have a proximity to a reservation, and manpower—something that a U.S. Attorney's Office cannot match. Because both Indians and non-Indians alike vote in elections and serve on juries of the state, county, and municipal governments where they are residents, allowing these authorities to exercise criminal jurisdiction over them does not offend constitutional guarantees. Thus, to the extent that Congress is concerned about the high level of crime on Indian reservations under exclusively federal jurisdiction, extending state and local law-enforcement jurisdiction to such reservations appears to be an obvious solution.

- Have you reviewed the effectiveness of PL 280, the Indian Law & Order Commission's report on the issue, or gathered the views of tribal governments about an expansion of state jurisdiction on their lands?

RESPONSE: I have not had the occasion to review this report. However, as I have stated many times, this is an issue I look forward to learning more about if I am so fortunate as to be confirmed.

Question 7: During your hearing, I asked you about a claim made by the then-president-elect. In late November, he tweeted that "In addition to winning the electoral college in a landslide, I won the popular vote if you deduct the millions of people who voted illegally." As you know, President Trump lost the popular vote by 2.86 million votes. And as you know, state officials have found virtually no credible reports of fraud, and no sign of widespread fraud.

So I asked you whether you agreed with the president-elect that millions of fraudulent votes had been cast, and you responded, "I don't know what the President-elect meant or was thinking when he made that comment, or what facts he may have had to justify his statement." I also asked you whether you had talked to the president-elect about the issue. You replied, "I have not talked to him about that in any depth."

Yesterday, January 24, 2017, President Trump welcomed House and Senate leaders to the White House for their first official meeting, where the president reportedly again claimed that he lost the popular vote because millions of undocumented immigrants cast illegal votes. Only this time he provided a slightly more specific number, saying it was somewhere between 3 million and 5 million fraudulent votes. These were the headlines in two of our nation's leading papers in

response to his claim: "Trump Repeats Lie About Popular Vote in Meeting With Lawmakers," the *New York Times* said. "Without evidence, Trump tells lawmakers 3 million to 5 million illegal ballots cost him the popular vote," reported the *Washington Post*.

- Yes or no, do you agree with the president that millions of fraudulent votes were cast in the presidential election? If not, why? Do you anticipate that he will request that the Department investigate once you are confirmed?

RESPONSE: I have not been privy to any information that might have been relied upon in making this assertion, nor have I discussed this with the President. I have no basis on which to opine as to whether or not an investigation will be requested.

- If somewhere between 3 million and 5 million illegal votes were cast in the presidential election, where do you believe such votes were cast? Please identify the states and precincts where the criminal activity is alleged to have taken place.

RESPONSE: I have not been provided with any information on this matter.

- In what way are the 3 million to 5 million votes believed to be illegal?

RESPONSE: I have not been provided with any information on this matter.

- Since your hearing, have you spoken with the president about his claims that millions of illegal ballots were cast? Have you asked the president why he continues to believe that there was widespread voter fraud in the presidential election? If so, when? And please describe your conversation.

RESPONSE: No.

Question 8: I asked you what steps law enforcement can take to address a culture that often fails to hold perpetrators of sexual violence accountable and instead blames the victims. You replied, "Law enforcement authorities can best 'address' such a culture by aggressively investigating sexual assault offenses and vigorously prosecuting them to the fullest extent of the law."

In December 2015, the Department of Justice issued guidance – "Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence" – that examined how gender bias can undermine the response of law enforcement agencies to sexual and domestic violence and provided a basic set of recommendations for law enforcement to help address that gender bias. The guidance, which was designed in collaboration with law enforcement leaders and advocates, found that gender biases can affect law enforcement officers' perceptions of crimes committed against members of certain populations and prevent them from effectively handling allegations of such crimes, which could ultimately amount to unlawful discrimination. For example, if a police officer believes a sexual assault to be less severe because the victim was assaulted by an acquaintance or was intoxicated when the assault occurred, that constitutes gender bias and could impact whether the officer fully investigates the claim or prioritizes a swift response. The guidance also found that eliminating gender bias in policing

practices is integral to combatting sexual and domestic violence and preventing future victimization because an appropriate law enforcement response fosters victim confidence and makes victims more likely to report future incidents. On the other hand, if law enforcement does not respond effectively to an incident of sexual assault or domestic violence, the guidance found that victims are less likely to participate in the investigation and prosecution of their case or seek police assistance in the future.

- Are you familiar with this guidance? If not, will you commit to reviewing it to better understand some of the system barriers to addressing sexual violence?

RESPONSE: I have not had the occasion to review the Department's guidance on this issue. However, as I have stated, if I am fortunate enough to be confirmed as Attorney General, I will evaluate any current practices of the Department—including this particular guidance—as to its effectiveness in furthering the enforcement of federal law and the protections therein.

- Do you agree that this guidance demonstrates that addressing sexual violence in our country requires more than simply "aggressively investigating and vigorously prosecuting" sexual assault offenses? Will you work with me to address these systemic barriers?

RESPONSE: As stated above, I have not yet had the occasion to review the Department's guidance on this issue. However, if I am confirmed, I would be happy to work with you and other members of Congress to find ways to further the enforcement of federal law and the protections therein, particularly as it pertains to sexual assault.