

**Nomination of Beth Williams to be Assistant Attorney General for the
Office of Legal Policy
Questions for the Record
Submitted July 5, 2017**

QUESTIONS FROM SENATOR FEINSTEIN

1. The Office of Legal Policy's website states: "As the Department's think tank, OLP provides a space distinct from the Department's day-to-day work for long-term planning that anticipates and helps to shape the terms of national debate on a wide range of forthcoming legal policy questions." **If you are confirmed, do you have any priorities or legal policy questions that you would like to see OLP confront?**

RESPONSE: If confirmed, I would like to continue and further the fight against human trafficking and child exploitation. I also hope to assist the Department with its Crime Reduction and Public Safety Task Force. I look forward to learning more about how the Office of Legal Policy can contribute to the Department's mission and support the Department's law enforcement and litigation priorities.

2. Again, according to its website, OLP also "often handles special projects that implicate the interests of multiple Department components." **How do you anticipate balancing competing interests or differences of opinion between Department components?**

RESPONSE: If competing interests or differences of opinion arise between Department components, and if the Office of Legal Policy is called to weigh in, my approach would be to listen to the competing components, to investigate and consider the arguments on each side, to determine whether there is room for mutual understanding or agreement, and ultimately to make a recommendation that would best serve the mission of the entire Department of Justice.

3. At your nomination hearing, you mentioned that one of the initiatives you were looking forward to focusing on was the Justice Department's "Violent Crime Taskforce." In establishing the Crime Reduction and Public Safety Task Force," the Department of Justice noted that it "is central to the Attorney General's commitment to combatting illegal immigration and violent crime, such as drug trafficking, gang violence, and gun crimes, and to restoring public safety to all of the nation's communities." (Justice Department Press Release, Feb. 28, 2017.)

Police chiefs across the country have noted that to effectively combat violent crime and improve public safety, it is important for law enforcement to build trust with immigrant communities. There are reports that the Trump Administration's immigration enforcement policies are leading to reduced reporting of crimes such as domestic violence, sexual assault, and violent crimes in cities across the country.

- a. **Do you agree that it is important for law enforcement to foster trust with immigrant communities in order to most effectively combat violent crime? If so,**

will it also be your priority to promote Justice Department efforts to help law enforcement build that trust?

RESPONSE: I believe it is important for law enforcement to foster trust with all of the communities they protect, and I will promote Justice Department efforts to help build that trust. If confirmed, I hope to assist in determining the most effective ways to combat violent crime, and will support, consistent with the Department's resources and priorities, appropriate enforcement of all laws.

- b. On April 17, 2017, the Attorney General published a memorandum instructing all federal prosecutors to make immigration offenses high prosecution priorities. Do you believe these cases should receive higher prioritization than prosecution of violent crimes such as human trafficking, terrorism, or violent organized crime?**

RESPONSE: The Office of Legal Policy is not a litigating component. However, if I am called upon regarding a litigation matter, whether related to immigration offenses or violent crimes, I would approach the case based on a full, fair, and open-minded review of the facts and a serious and impartial analysis of the law.

QUESTIONS FROM SENATOR DURBIN

1. You say in your questionnaire that you have been a member of the Federalist Society since 2001. **Why did you join the Federalist Society?**

RESPONSE: I joined the Federalist Society as a first year law student in 2001 after visiting a student group activities fair. The group presented intellectual debates and discussion, and I appreciated hearing different sides of issues discussed and presented. Days later, the September 11 terrorist attacks occurred, and the civic engagement fostered by the Federalist Society took on heightened importance.

2. **Do you agree with the views espoused by the Federalist Society?**

RESPONSE: As I understand, the Federalist Society espouses no views of its own on any political or legal issues and its members hold wide and diverse views. For that reason, I am uncertain what is meant by “the views espoused by the Federalist Society.” The Federalist Society website states that the group was “founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be.” I believe those propositions are not controversial.

3.
 - a. **Do you believe it was appropriate for the President to announce the involvement of the Federalist Society in the selection of his candidates for the Supreme Court?**

RESPONSE: I am not aware of the context or basis for the remarks and therefore am not in a position to comment.

- b. **Do you believe that the President’s announcement sent a message that lawyers and judges should not assert views that are at odds with the Federalist Society if they aspire to serve on the Supreme Court?**

RESPONSE: Please see my response to No. (2) above.

- c. **Are you concerned that the announced involvement of the Federalist Society and Heritage Foundation in selecting Supreme Court candidates undermines confidence in the independence and integrity of the federal judiciary?**

RESPONSE: Please see my responses to Nos. 2 and 3(a) above. The independence of the federal judiciary is imperative and is established, first and foremost, by the Constitution. I have no basis to comment on whether public confidence would be affected positively or negatively by the President’s consultation with individuals or groups as part of the nomination process.

4. The Federalist Society website lists the organization’s statement of purpose. That statement begins with the following: “Law schools and the legal profession are currently strongly

dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.” **Do you agree or disagree with this statement? Please explain your answer.**

RESPONSE: I cannot speak to what the authors of that statement meant by it. I believe that generally it is beneficial to have a diversity of viewpoints at law schools and in the legal profession.

5. **Please list all years in which you attended the Federalist Society’s annual national convention.**

RESPONSE: I do not have a record of my attendance and cannot say with certainty which years I attended the Federalist Society’s annual national convention. My best estimate is that I attended some portion of the convention approximately 10 times since 2001.

6. During the confirmation process of Justice Gorsuch, special interests contributed millions of dollars in undisclosed dark money to a front organization called the Judicial Crisis Network that ran a comprehensive campaign in support of the nomination. It is likely that many of these secret contributors have an interest in cases before the Supreme Court. I fear this flood of dark money undermines faith in the impartiality of our judiciary.

- a. **Do you approve of special interests making undisclosed donations to front organizations in support of federal judicial nominations?**

RESPONSE: I certainly understand the importance of public faith in the impartiality of our judiciary. I am not personally aware of any such donations made in support of or in opposition to Justice Gorsuch’s nomination.

- b. **Would you discourage donors from making such undisclosed donations?**

RESPONSE: Please see my response to No. 6(a) above.

- c. **If you are confirmed as the head of the Office of Legal Policy and if undisclosed donations are made in support of judicial nominees whose nominations the Office is working on, will you call for the donors to make their donations public so that these nominees, if confirmed, can have full information when they make subsequent decisions about recusal in cases that these donors may have an interest in?**

RESPONSE: Please see my response to No. 6(a) above. I am not personally aware of any such donations made in support of or in opposition to judicial nominees.

7. According to its website, the Office of Legal Policy “assists the Attorney General with responsibilities in recommending candidates for federal judgeships, and coordinates the judicial nomination and confirmation process with the White House and the Senate.”

President Trump has made a number of comments about federal judges and the federal judiciary that are beyond the pale. It is important to make clear to those who are considering being candidates for federal judgeships that the views President Trump has expressed are not

shared by the Office of Legal Policy.

- a. **Was then Presidential candidate Trump wrong when he made his remarks about Judge Gonzalo Curiel and his ethnicity?**

RESPONSE: I am not personally aware of the context or basis for the remarks, but I believe that the integrity of the judiciary is of the utmost importance, and I have the highest regard for the work that judges do. In coordinating the judicial nomination and confirmation process, lawyers from the Office of Legal Policy participate in interviews conducted by attorneys in the White House Counsel's Office, vet potential judicial nominees, assist judicial nominees with the preparation of their Senate Judiciary Questionnaires, and prepare judicial nominees for their Senate Judiciary Committee hearings. To my knowledge, the Office of Legal Policy does not take a position on statements like the one to which you are referring.

- b. **Was President Trump wrong when he tweeted that District Court Judge James Robart was a "so-called judge" after he temporarily blocked the President's travel ban, and when the President tweeted "Just cannot believe a judge would put our country in such peril. If something happens, blame him and court system"?**

RESPONSE: Please see my responses to No. 7(a) above.

- c. **Was then Presidential candidate Trump wrong when he tweeted about Justice Ginsburg on July 12, 2016: "her mind is shot. Resign!"**

RESPONSE: Please see my responses to No. 7(a) above.

8. **If you are confirmed, do you believe you have the responsibility to say no to the President if he asks for something that's improper?**

RESPONSE: Yes.

9. **If the views that the President wants to execute are unlawful, should the Justice Department say no?**

RESPONSE: Yes.

10. **Do you think Acting Attorney General Sally Yates acted properly when she refused to defend the President's travel ban executive order in court?**

RESPONSE: I lack sufficient personal knowledge to express an opinion as to whether Acting Attorney General Yates acted properly.

11. **Do you agree, as a factual matter, with President Trump's claim that 3 to 5 million people voted illegally in the 2016 election?**

RESPONSE: I am not aware of the basis for the remarks and therefore am not in a position to comment.

12. In 1886, the Supreme Court noted that the right to vote “is regarded as a fundamental political right, because [it is] preservative of all rights,” a quote which Chief Justice Roberts paraphrased at his confirmation hearing. References to the right to vote appear five times in the Constitution.

a. Do you believe that the right to vote is fundamental?

RESPONSE: Yes. The Supreme Court has long held that the right of citizens to vote is a fundamental right. *See, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

b. Do you believe that laws that make it more difficult for Americans to exercise this right must be scrutinized very closely by the courts?

RESPONSE: I believe that courts should assess voting rights cases under the legal standards provided by the Constitution, federal statutes, and precedent of the Supreme Court and intermediate appellate courts.

c. Is it preferable for this judicial scrutiny to take place before the law goes into effect so that, if the law is unconstitutional, it will not have done irreparable harm by preventing someone from voting?

RESPONSE: Please see my response to No. 12(b) above.

13. **Do you believe that courts should interpret the Constitution according to its original public meaning?**

RESPONSE: I believe that courts should faithfully apply the precedent of the Supreme Court. The Supreme Court has stated that it looks to text and history when interpreting the Constitution.

14. **Do you believe that the original public meaning of the Constitution evolves or changes over time?**

RESPONSE: Please see my response to No. 13 above.

15. **What is your understanding of the original meaning of the Foreign Emoluments Clause in Article I, Section 9, Clause 8, of the Constitution?**

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Foreign Emoluments Clause is currently the subject of active litigation in federal court. Because this is ongoing litigation, it would not be appropriate for me to comment.

16. Do you believe that this original public meaning of the Foreign Emoluments Clause should be adhered to by courts in interpreting and applying the Clause today?

RESPONSE: Please see my response to No. 15 above.

QUESTIONS FROM SENATOR WHITEHOUSE

1. Traditionally, home state senators have been allowed to return blue-slips signaling or withholding approval for judicial nominees for federal district courts in their state. **What is your view of the blue-slip process? If confirmed, will you commit to upholding the blue-slip process in your new role?**

RESPONSE: It is my understanding that the blue slip process is an established courtesy recognized in the Senate, and that any Senator has the prerogative to return or not to return the blue slip as he or she wishes. It would not be within my power to affect the blue slip process, which is an internal Senate procedure.

2. You served as Special Counsel to the Senate Judiciary Committee from July 2005 until February 2006. **Please describe your role on the committee during that time, and how that work may have affected your viewpoint on the proper procedures for judicial nominations.**

RESPONSE: While serving as Special Counsel to the Senate Judiciary Committee, I assisted with the nominations of Chief Justice John G. Roberts, Jr., Associate Justice Samuel A. Alito, Jr., and Harriet Miers to the United States Supreme Court. My role was to assist the Senators on the Committee in their diligence regarding the nominees. That period impressed upon me the intense work conducted by the Senators and their staff in evaluating nominees to the Supreme Court.

3. You currently represent Facebook in a multi-district litigation proceeding. **What is your view of the MDL procedure as it currently exists? Are you in favor of further codification of the MDL process, or do prefer to continue allowing the MDL panel discretion in its assignment of cases?**

RESPONSE: When used appropriately, the MDL process can be a helpful tool both to litigants and to the courts by consolidating similar cases in one location and before one judge. I have not studied the matter of further codification, and I currently have no view as to whether the MDL process should be further codified.

4. In the MDL context and beyond, additional procedural formalities can make it more difficult for victims to receive restitution – for example, noted MDL expert Elizabeth Cabraser remarked in the earlier *Amchem* case that the Court’s prioritization of process spared “asbestos victims and their families the indignity to their legal due process rights that might have accompanied the prospect for monetary compensation in their lifetimes.” **How would you approach resolving issues of procedural formality when weighed against the possibility of denying victims restitution on procedural grounds?**

RESPONSE: I have not studied the issue, but I would hope that in the great majority of circumstances victims’ legal due process rights would assist, rather than impede, compensation. I do not anticipate that I would be asked to resolve issues of procedural formality weighed against compensation in connection with the work of the Office of Legal

Policy.

5. **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: I have affirmed in my Ethics Agreement sent to the Office of Government Ethics that I understand that if confirmed I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and I will be bound by the requirements and restrictions therein. I have not yet been asked to sign the Ethics Pledge, and I have not sought any waiver to that pledge.

6. The Department of Justice has been slow or non-responsive to oversight letters from senators of both parties, but particularly to requests from Democratic senators in recent months. **What, in your view, should be the DOJ policy on responding to such oversight requests, and will you commit to working to ensure timely responses to such letters in the future?**

RESPONSE: It is my understanding that the Department of Justice has procedures for responding to requests from members of Congress and that function falls outside the purview of the Office of Legal Policy. However, I believe the Department of Justice should be responsive to inquiries from members of Congress, whenever possible, in a manner that is consistent with the Department's obligations and its law enforcement, litigation, and national security responsibilities.