

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015

QUESTIONS FROM SENATOR HATCH

1. On April 25, 2013, Professor Paul Cassell of the University of Utah College of Law testified before the House Judiciary Subcommittee on the Constitution regarding implementation of crime victims' rights statutes. These include the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, and the Crime Victims Rights Act, 18 U.S.C. §3771, both of which I helped to enact. He suggested that your office had failed to follow these statutes in a sealed case involving a racketeering defendant who had cooperated with the government. Specifically, he cited documents appearing to show that your office failed to notify victims of the sentencing in that case and had arranged for the racketeer to keep the money he had stolen from victims, even though the law makes restitution mandatory. Please explain in detail how your office protected the rights of crime victims in this case and, in particular, how it complied with the mandatory restitution provisions of these two statutes.

RESPONSE: The defendant in question, Felix Sater, provided valuable and sensitive information to the government during the course of his cooperation, which began in or about December 1998. For more than 10 years, he worked with prosecutors from my Office, the United States Attorney's Office for the Southern District of New York and law enforcement agents from the Federal Bureau of Investigation and other law enforcement agencies, providing information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra. For that reason, his case was initially sealed.

During my most recent tenure as the United States Attorney for the Eastern District of New York, the Office's only activity related to this matter was to address whether certain materials should remain sealed. My Office's position has consistently been upheld by the courts.

The initial sealing of the records related to Sater—which pre-dated my tenure as United States Attorney—occurred by virtue of a cooperation agreement under which Sater pled guilty and agreed to serve as a government witness. In 2013, following proceedings before United States District Judge I. Leo Glasser of the Eastern District of New York, roughly three-fourths of the materials in this case were unsealed. At this point, the majority of the materials that remain sealed go to the heart of the nature of Sater's cooperation in several highly sensitive matters. Judge Glasser has ruled that these remaining materials should remain sealed on the basis of, among other things, the "safety of persons or property" and the "integrity of government investigation and law enforcement interests."

In addition to Judge Glasser's 2013 ruling, a three-judge panel of the Second Circuit Court of Appeals twice rejected efforts to reconsider the decision to keep certain materials sealed in this case. The judges reviewing Judge Glasser's order concluded that "given the extent and gravity of Sater's cooperation," continued sealing of select materials was appropriate. In a separate

instance, the court went out of its way to warn the plaintiffs behind the lawsuit to cease any further “frivolous” motions or else risk court-imposed sanctions. Finally, just last month, the Supreme Court declined to hear any further arguments from the parties behind this lawsuit.

In terms of restitution, there has been speculation that my Office pursues restitution from cooperating defendants differently than it does from other defendants. It does not. With respect to Sater’s case, the information in the record that concerns the issue of restitution remains under seal. As a matter of practice, however, the prosecutors in my Office work diligently to secure all available restitution for victims, whether the defendants convicted in their cases cooperate with the government or not. In fact, since June 2010, in EDNY cases, judges have imposed nearly two billion dollars in restitution to individual and government victims.

2. For several years, then-Senator Joe Biden and I worked to insure that the Justice Department supported youth mentoring organizations. We helped groups like the Boys and Girls Clubs of America greatly expand the number of those they serve by partnering with the Office of Justice Programs, which you will oversee if appointed to be Attorney General. In recent years, the President’s budgets have proposed to reduce funding for youth mentoring grants and Congress has restored and even increased that funding. Can you assure me that, as Attorney General, you will work with OJP and others to make sure that funds are directed where they can do the most good and maximize the delivery of needed services?

RESPONSE: I know that mentoring organizations in this country, like the Boys and Girls Clubs of America, are doing amazing work with young people. The Department’s Office of Justice Programs (OJP) is invested in supporting the continued expansion of high quality mentoring for at-risk youth through the appropriated mentoring funds. OJP, through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), has worked with and continues to work with many of these mentoring organizations through the use of funding solicitations directed at National and Multi-state mentoring organizations.

If I am confirmed as Attorney General, I will support the work of OJJDP and the many mentoring organizations implementing high quality mentoring programs. I will also support the OJJDP National Mentoring Resource Center, which is a source of training and technical assistance for all mentoring programs across the country.

3. In your hearing on January 28, I urged you to enforce laws prohibiting child pornography and to help victims receive restitution. Adult obscenity also lacks First Amendment protection and harms individuals, families, and communities. It is connected to sexual exploitation and violence against women as well as to human trafficking and is a destructive force in marriages. Even though the Obscenity Prosecution Task Force has been disbanded and prosecution of adult obscenity brought back under the Child Exploitation and Obscenity Section, will you commit to aggressively enforcing the adult obscenity laws and provide current data about the cases initiated and prosecuted by the Department that involve only adult obscenity?

RESPONSE: As you note, obscenity is not protected by the First Amendment. I understand that the Department has brought significant obscenity prosecutions in recent years, and I look forward to ensuring that the Department remains committed to bringing obscenity cases where appropriate. The Department can provide current data concerning obscenity prosecutions, if helpful.

4. I understand that the Justice Department is in the process of reviewing the ASCAP and BMI consent decrees. I want you to know how interested I am in this process and how important it is to the future of songwriters. Will you commit to making meaningful revisions to the decrees as soon as possible?

RESPONSE: I understand that the Antitrust Division is currently reviewing the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) decrees in order to determine whether the decrees' terms continue to be appropriate given advances in markets and technology in music distribution and promotion. The Antitrust Division solicited public comments on a number of questions concerning these decrees. *See* <http://www.justice.gov/atr/cases/ascap-bmi-decree-review.html>. I believe the Department is working as expeditiously as possible to complete the review in a timely fashion and understand that it will pursue any appropriate modifications so that music publishers and licensees benefit from competitive markets, taking into account new media technologies.

5. It has been reported that the Justice Department systematically targets lawful businesses by pressuring financial and banking services providers to stop doing business with firearm and ammunition companies and others dubbed "high risk." Do you believe that this type of targeting is appropriate and will you continue his practice if appointed to be Attorney General?

RESPONSE: The role of the Department of Justice is to enforce the law and as a career prosecutor and the United States Attorney for the Eastern District of New York, I can assure you that I, and my fellow prosecutors and law enforcement partners, take this role seriously. Our job is to investigate specific evidence of unlawful conduct and enforce the law. Our cases should target businesses that are violating the law, not those acting lawfully.

The Department works every day to uphold the law and protect the American people. To ensure that our efforts are effective, the Department also must make sure to prevent any potential misunderstanding of its efforts that could be detrimental to lawful businesses. Thus, if I am confirmed as Attorney General, I will make clear that it is imperative that we inform financial institutions that any investigations are based on specific evidence that a financial institution is breaking the law, and not on the institution's relationships with lawful industries or companies.

6. Several years ago, the ATF was removed from the Treasury Department and became a stand-alone agency and the Department of Homeland Security was created. The ATF and

DHS often work together and share many of the same tasks. Do you believe the ATF should remain a separate agency or should it be merged with DHS?

RESPONSE: Although as the United States Attorney for the Eastern District of New York I have not studied various proposals for re-organizing components of the Department of Justice, I support ATF and believe its law enforcement capabilities must be preserved. ATF is a unique law enforcement agency in the Department of Justice that protects our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. ATF partners with communities, industries, law enforcement, and public safety agencies to safeguard the public through information sharing, training, research and use of technology.

7. I disagree with the Justice Department's decision not to enforce federal marijuana laws in states that have legalized marijuana. It sends the wrong message to our youth and demonstrates disregard for the rule of law. We should all agree, however, about the need to continue fighting drug trafficking organizations and the dangers they cause. In my state of Utah and other western states, drug trafficking organizations divert rivers and streams, clear cut timber, pollute the environment, and even place booby traps in the course of illegally growing marijuana on public lands. I recently introduced legislation with Sen. Feinstein to address these problems, S.348, the Protecting Lands Against Narcotics Trafficking Act. It enhances penalties for growers who degrade the environment and create public safety hazards and creates a fund to remediate environmental harms cause by illegal marijuana cultivation. Will you commit to making the prevention of marijuana growth on federal land a priority and to ensuring that prosecutors use the tools that my bill provides?

RESPONSE: As indicated in the Deputy Attorney General's Memorandum, dated August 29, 2013, combating large-scale marijuana grows, including those on public lands, is a priority for the Department. The geographic isolation of the marijuana grows and the size of federal public lands requires a coordinated and multi-agency effort. I understand that some of my fellow United States Attorneys, particularly those in the western part of the United States, are working closely with DEA, the National Forest Service, the Bureau of Land Management (BLM), and other federal, state, and local partners to enforce the controlled substance laws against drug traffickers who threaten public safety and the environment by using federal public lands for large-scale marijuana cultivations.