

**OPEN HEARING: NOMINATIONS OF
CHRISTOPHER C. FONZONE
TO BE GENERAL COUNSEL FOR THE OFFICE
OF THE DIRECTOR OF NATIONAL INTELLIGENCE;
AND
BRETT M. HOLMGREN
TO BE ASSISTANT SECRETARY OF STATE
FOR INTELLIGENCE AND RESEARCH,
U.S. DEPARTMENT OF STATE**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
OF THE
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

TUESDAY, MAY 18, 2021

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TUESDAY, MAY 18, 2021

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m., in Room SH-216, Hart Senate Office Building, Hon. Mark R. Warner (Chairman of the Committee) presiding.

Present: Senators Warner, Rubio, Feinstein, Wyden, Heinrich, King, Bennet, Casey, Gillibrand (via WebEx), Risch, Cotton, Cornyn, and Sasse.

**OPENING STATEMENT OF HON. MARK R. WARNER, A
U.S. SENATOR FROM VIRGINIA**

Chairman WARNER. I'd like to call the Committee to order.

Good afternoon, everyone. Welcome to our nominees Christopher Fonzone and Brett Holmgren and welcome to your families here or watching from home.

Congratulations on your respective nominations to serve as the General Counsel for the Office of the DNI and as Assistant Secretary of State for Intelligence and Research. These are both critically important positions in the Nation's Intelligence Community at a time of significant challenges and also opportunities for America.

In a moment, I know we're going to be joined by our colleague, Senator Klobuchar, who will be introducing Mr. Holmgren.

Gentlemen, you both have distinguished records as public servants in the fields of national security. Mr. Fonzone, who is currently in private practice, previously served as Deputy Assistant and Deputy Counsel to President Obama and legal adviser to the National Security Council. Before this, he was senior counsel to the General Counsel—that's a lot of counsels—of the Defense Department and also served in the Department of Justice.

Mr. Fonzone, as General Counsel for the ODNI, you will advise the Director on the letter and spirit of the law, including the legal obligation to keep this Committee fully and currently informed on all key intelligence matters, while ensuring that the civil liberties and privacy interests of all Americans are protected.

As we've seen in recent years, this position carries with it the responsibility to make some tough calls. To do so you will need the judgment and ethical compass to make the right decisions, even in the face of political or policy pressure.

In recent years, we've seen patriotic individuals who have come forward as whistleblowers sidelined, fired, or even retaliated against; and I would like to hear your thoughts on how you will work to ensure that such IC whistleblowers are protected going forward, regardless of who is in the White House.

Specifically, I'd like to hear your thoughts on whether there are any circumstances where it would be appropriate for a General Counsel to intercede to prevent a whistleblower complaint from going to Congress.

More broadly, after four years during which the expertise and judgment of American civil servants and intelligence professionals were at times discounted, belittled, or outright ignored, I'd like to hear your thoughts on what you will do to help restore the morale and install the utmost level of integrity in the IC workforce.

Turning to Mr. Holmgren. Brett Holmgren also has an impressive resume, having been Special Assistant to the President and senior director for Intelligence Programs at NSC. Before this, he was senior policy adviser to the assistant to the President for Homeland Security and Counterterrorism and special assistant to the deputy secretary of Defense.

If confirmed, Mr. Holmgren, you will be inheriting a long institutional history at the State Department's Bureau of Intelligence and Research. INR's well-deserved reputation for not bending to political pressure was cemented by its famous dissent to the IC's assessment of whether or not Saddam Hussein possessed WMDs.

INR assessed he did not, stuck to their guns, wouldn't budge, despite the immense pressure and they were ultimately proven correct. INR's stance has become a model for all intelligence analysts.

Whether it's China, Russia, North Korea, or the global pandemic, our alliances will be vital to confronting the many challenges we face around the globe. Our Foreign Service officers, ambassadors, and the Secretary of State all rely on the INR to provide them with the best intelligence assessments to help them understand the world and advance American diplomacy and foreign policy.

Should you be confirmed, fulfilling this Committee's oversight obligation to require transparency and responsiveness from both of you, we may ask you and your staff difficult questions from time to time and we expect honest, complete, and timely answers. But we also encourage you to come to the Committee when our partnership is needed. You can always count on us to hear you out, treat you fairly, usually without partisanship we sometimes see elsewhere.

One concrete example of this partnership, Mr. Fonzone, will be in examining and eventually reauthorizing critical FISA authorities that are set to expire in 2023. This is an area where early engage-

ment with Congress and this Committee will be extremely important.

Now, after the Vice Chairman and I give our opening statements, Senator Klobuchar, who I think will shortly be here, will say a few words and our witnesses will then give their statements. After this, Member questions will be for five minutes in order of seniority at the gavel.

Thank you again for agreeing to step forward to serve our country. I look forward to your testimony and I now recognize the distinguished Vice Chairman.

**OPENING STATEMENT OF HON. MARCO RUBIO, A
U.S. SENATOR FROM FLORIDA**

Vice Chairman RUBIO. Thank you. And I join the Chairman in welcoming both of you today to the hearing. Mr. Fonzone, Mr. Holmgren: Congratulations on your nomination and thank you for your willingness to serve.

Mr. Fonzone, the General Counsel of the Office of Director of National Intelligence has to make sure that the Intelligence Community, together with the Department of Justice, have the authorities and the capabilities anytime to take collection and surveillance that is critical to our national security. So we look forward to hearing in your testimony how you will provide the sound legal counsel to the intelligence agencies and community on those important issues.

Importantly, I note that in your prior written responses and communications with our Committee, you disclosed past work that you performed on your law firm's behalf for the Ministry of Commerce of the People's Republic of China and for Huawei Technologies. I appreciate your candidness in reporting this and the details you provided us. I expect that I, or maybe some of our Members, as I told you personally, will follow-up with some questions in that regard.

Mr. Holmgren, our Committee trusts that the State Department intelligence element has a leader who engages with the Intelligence Community's ongoing and substantive work. Collaboration is important to assess and focus on the threats facing our Nation. And we expect the Assistant Secretary of State for Intelligence and Research to take on that mandate from day one and to keep this Committee fully informed.

I hope with the significant changes announced at U.S. Embassy Moscow, the Department of State will work in earnest to reduce counterintelligence risks at the Embassy and to work to achieve reciprocity in visas. And with no excuses, moving forward, like we have seen in the past.

Our hearing today comes at a time when the threats from China, from Russia, from Iran, from North Korea, and global terrorism are complex and at times divisive. And our hope is that your testimony will describe how you will ensure that, if confirmed, you will provide the leadership, integrity, and impeccable judgment to lead your respective Intelligence Community components.

We also want to hear from you as to how you will be responsive to our Committee's inquiries and requests and how you will support our oversight obligation. So we have a lot of issues to cover

today. I want each of our Members to have the opportunity to ask their questions. And I look forward to today's conversation.

Again, thank you, Mr. Chairman.

Chairman WARNER. I think we will go ahead and administer the oath at this moment and then when Senator Klobuchar comes she will deliver an introduction.

Will the witnesses please stand and raise their right hand?

Do you solemnly swear to give this Committee the truth, the full truth, and nothing but the truth, so help you God?

Mr. HOLMGREN. I do.

Mr. FONZONE. I do.

Chairman WARNER. Please be seated.

The Committee poses five questions to each nominee who appears before us. They just require a simple yes or no answer for the record. And we can do this, I believe, jointly, unless there was disagreement on the answers.

First question, do you agree to appear before the Committee here or in other venues when invited?

Mr. FONZONE. Yes.

Mr. HOLMGREN. Yes.

Chairman WARNER. If confirmed, do you agree to send officials from your office to appear before the Committee and designated staff when invited?

Mr. FONZONE. Yes.

Mr. HOLMGREN. Yes.

Chairman WARNER. Do you agree to provide documents or any other materials requested by the Committee in order for it to carry out its oversight and legislative responsibilities?

Mr. FONZONE. Yes.

Mr. HOLMGREN. Yes.

Chairman WARNER. Will you ensure that your office and your staff provides such material to the Committee when requested?

Mr. FONZONE. Yes.

Mr. HOLMGREN. Yes.

Chairman WARNER. Do you agree to inform and fully brief to the fullest extent possible all Members of this Committee on intelligence activities and covert actions rather than only the Chairman and the Vice Chairman?

Mr. FONZONE. Yes.

Mr. HOLMGREN. Yes.

Chairman WARNER. So far you guys are doing pretty well.

I was going to turn to your opening statements but luckily, with impeccable timing, our colleague, Senator Klobuchar from Minnesota, has arrived to introduce one of the nominees,

Senator Klobuchar, welcome.

**STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR
FROM MINNESOTA**

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman, and thank you to Vice Chairman Rubio as well and distinguished Members of this Committee.

I am glad to be here to introduce a friend and a fellow Minnesotan, Brett Holmgren, as President Biden's nominee to be Assistant Secretary of State for Intelligence and Research. Because of the

pandemic, Brett's family is unable to join us in person but his parents, Mike, and Mary; and his siblings, Ryan, Krista, and Stacie are all back in Minnesota and I know are waving at him right now. While they can't be here, I know that they are probably supporting Brett back from our home state.

Brett grew up in Blaine, where he was raised by parents who showed him the value of public service from a young age. For nearly 40 years, his mom taught at Coon Rapids High School, and his dad worked as a teacher and administrator in the Mounds Public Schools. My mom was a public teacher, too, so I know from experience that teachers raise their kids with a drive to always do better, a drive that has stuck with Brett through his years working in national security.

He embodies our Minnesota values of hard work and service that we need in our leaders. Those values came to the forefront on 9/11, which Brad has said was a life changing moment for him. As our Nation grappled with the grief, and the shock, and the disbelief, like so many in his generation, Brett felt the call to service.

After graduating from the University of Wisconsin Madison, he joined the Defense Intelligence Agency as a counterterrorism analyst and later went on to become a senior analyst at the CIA. His work helped to disrupt plots against American interests around the world and to degrade al-Qaeda.

He served in war zones and provided support to the military and intelligence operations. He understands how intelligence informs and supports our military, policymakers, and diplomats.

After eight years in the Intelligence Community, he went on to serve in policy roles at the Pentagon and the White House, where he held the most senior intelligence position on the National Security Council staff as special assistant to the President and senior director for Intelligence Programs. In those roles he managed and provided leadership on some of the most pressing national security issues, from cyber technology to covert action and counterintelligence.

He also learned from incredible leaders, like Deputy Attorney General Lisa Monaco, who embodies the integrity Americans deserve. Brett has said that she taught him how to lead with humility and showed him the importance of staying calm under pressure, both qualities will serve him well as Assistant Secretary of State for Intelligence and Research.

Brett's accomplishments have earned him several recognitions including the Secretary of Defense Meritorious Civilian Service Award, the Director of National Intelligence Superior Service Award, and the CIA Hostile Actions Service Medal.

In every conversation I've had with him, he has demonstrated a deep understanding of the role of the Intel Community and the importance of Congressional oversight. I know he will be able to offer the State Department both his expertise and an abiding commitment to speaking truth to power, a commitment that has defined his career.

His experiences, judgment, and integrity will be in value, both to the Bureau of Intelligence and Research, the State Department, the Intel Community, and most importantly, the American people.

I'm confident you will see those qualities over the course of this hearing, and I urge the Committee to support his nomination.

Thank you.

Chairman WARNER. Thank you, Senator Klobuchar, for a very strong endorsement and introduction. And I know you've got to go deal with our Canadian friends so the Committee will excuse you.

We'll now move to our witnesses. I believe, Mr. Fonzone, I think you were scheduled to go first.

**STATEMENT OF CHRISTOPHER C. FONZONE, NOMINEE TO BE
GENERAL COUNSEL FOR THE OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE**

Mr. FONZONE. Thank you Chairman Warner, Vice Chairman Rubio, and Members of the Committee, it's an honor to appear before you today as President Biden's nominee to be the General Counsel of the Office of the Director of National Intelligence. Thank you for taking the time to consider my nomination.

I'm only here today because of the efforts of others. My parents, Charles and Mary Ann Fonzone, are watching today's proceedings from home in Allentown, Pennsylvania—probably pretty nervously. They instilled in me and my brother Steve from a young age the importance of working hard and always trying to do the right thing, and I think often of their guidance. My wife Jill is here today and I can't thank her enough for her love, counsel, and patience, and for always being able to make me smile. Her support and encouragement—even though she already knows what it is like to be married to someone who works in a SCIF—is one of the main reasons I am prepared to undertake this challenging role.

I'm also very thankful to President Biden and Director Haines for placing their confidence in me. The Intelligence Community plays a vital role in keeping the Nation safe, but it can only operate effectively if the American people have confidence that its activities are lawful and consistent with the Nation's values. If confirmed, I pledge to do all I can to assist Director Haines in leading an Intelligence Community that earns the American people's trust. I know this is a serious and important responsibility. Legal advice provided in Washington can have far-reaching effects, including for Intelligence Community personnel doing dangerous and difficult jobs far away from headquarters. If confirmed, I would thus strive to provide advice that not only ensures the Intelligence Community carries out its important mission consistent with the law, but also is mindful of context and useful to the recipient. In short, my goal would be to work with the dedicated and talented career lawyers in the General Counsel's Office to be a partner to the Director and to all ODNI employees, providing them with timely, practical, and sound counsel on the issues and challenges they face, while remaining unafraid to deliver tough advice, when necessary.

Another key focus of mine, if confirmed, would be to maintain an effective working relationship with the Congress—and this Committee, in particular. Under the Constitution, the institutions of our government are ultimately accountable to the American people. For this reason, I think the Intelligence Community should be as transparent as it can be about the legal basis for its activities. But much of the Intelligence Community's work is necessarily secret,

and it is therefore crucial for Congress to have the information it needs to exercise its oversight functions, particularly with respect to legal matters. If confirmed, I would thus endeavor to be a partner to this Committee and maintain open lines of communication on the range of legal issues that may arise during my tenure.

Finally, if confirmed, I would also look forward to working with lawyers from across the Intelligence Community. National security lawyers often have to confront novel questions for which traditional legal sources do not provide clear answers. In those cases, collaboration can be extremely helpful, and cooperation between Intelligence Community components can also help ensure that the Community's equities are presented effectively in interagency legal discussions.

I recognize that there is probably no job with a mix of responsibilities identical to the ODNI General Counsel's. But I've been fortunate during my legal career to have had a number of roles—clerking at the Departments of Justice and Defense, at the National Security Council, and in private practice—that I believe provide useful experience.

This experience also teaches me how special it is to serve one's country. Put simply, there's a sense of mission and purpose in working for the government that you simply can't replicate anywhere else. I also know how lucky you have to be and how many things have to break right to have the opportunity to serve in a role like the one for which I've been nominated. That's why, Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, I can commit to you that, if afforded the opportunity to serve, I will do everything in my power to carry out this important office to the best of my ability; to be an effective counselor to and advocate for the Intelligence Community; to be a partner to this Committee; and to be an effective steward of the public's trust.

Thank you again for your consideration of my nomination, and I look forward to your questions.

Chairman WARNER. Thank you, Mr. Fonzone.

Mr. Holmgren.

[The prepared statement of Mr. Fonzone follows:]

Statement for the Record of Christopher C. Fonzone
Nominee for General Counsel of the Office of the Director of National Intelligence
Before the Senate Select Committee on Intelligence
May 18, 2021

Chairman Warner, Vice Chairman Rubio and Members of the Committee, it's an honor to appear before you today as President Biden's nominee to be the general counsel of the Office of the Director of National Intelligence (ODNI). Thank you for taking the time to consider my nomination.

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I know this is a serious and important responsibility. Legal advice provided in Washington can have far-reaching effects, including for Intelligence Community personnel doing dangerous and difficult jobs far away from headquarters.

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That's why, Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, I can commit to you that, if afforded the opportunity to serve, I will do everything in my power to carry out this important office to the best of my ability; to be an effective counselor to and advocate for the Intelligence Community; to be a partner to this Committee; and to be an effective steward of the public's trust.

Thank you again for your consideration of my nomination, and I look forward to your questions.

STATEMENT OF BRETT M. HOLMGREN, NOMINEE TO BE ASSISTANT SECRETARY OF STATE FOR INTELLIGENCE AND RESEARCH, U.S. DEPARTMENT OF STATE

Mr. HOLMGREN. Chairman Warner, Vice Chairman Rubio, and Members of the Committee: It is an honor to appear before you today as the nominee to be Assistant Secretary of State for the Bureau of Intelligence and Research. I am deeply grateful to President Biden and Secretary Blinken for the confidence they have placed in me, and to Director of National Intelligence Avril Haines for supporting my nomination. I also want to thank Senator Klobuchar for leadership in the Senate, for her kind words, and for supporting me today.

I'm excited to be here alongside my friend and colleague Chris Fonzzone. I worked closely with Chris when we served together on the National Security Council staff, and I can attest that while he is an exceptional lawyer, he's an even better colleague and human being.

I would not be here today if it were not for the love and support of my family: my wife, Dana; our son Teddy; my parents, Michael and Mary; and my siblings Stacie, Krista, and Ryan. Each of them has inspired me to live my life with a sense of purpose, love, and humility.

Like many Americans of my generation, the tragic events of 9/11 were a turning point in my life. I left my home State of Minnesota 18 years ago to pursue a career in public service to defend the freedoms, values, and liberties that we all cherish. I came to Washington with a sense of optimism and a deep and abiding belief in the ideals of this country: that America is a force for good in the world, and that all men and women are created equal with the right to life, liberty, and the pursuit of happiness.

These ideals derive from my upbringing in Minnesota, where I was surrounded by family who believed deeply in the role of service. Both of my grandfathers were World War II veterans. My parents, both of whom were public school teachers for 40 years, instilled in me and my siblings the importance of service. And I still share that same sense of optimism and commitment to public service that I brought with me to Washington nearly two decades ago.

While I may be a new face to the Committee, I have a long track record of working with the Intelligence Community. As an analyst, first at the Defense Intelligence Agency and later at Central Intelligence Agency, I authored all-source intelligence products to inform policy decisions. Through deployments overseas, including in warzones, I have seen firsthand the key role that intelligence plays in shaping national security and the tremendous sacrifices of our warfighters, diplomats, and intelligence officers. Throughout my career, I have also served in policy roles at the Pentagon and on the National Security Council staff at the White House. These experiences gave me a richer understanding of the vital role and the limitations of intelligence in shaping policy. Most significantly, I gained, through these experiences, a greater appreciation for the importance of analytic objectivity and the need for the Intelligence Community to tell the policymaker what they need to know, and not what they want to hear.

I have been nominated for this position at a time when the United States and its allies are facing a diverse, interconnected array of threats against the backdrop of a global pandemic that is straining governments and societies, fueling unrest, and accelerating global competition. From China, Russia, Iran, and North Korea the continuing threat of terrorism, cyber, and evolving technologies, these threats pose new challenges and opportunities for the Intelligence Community.

Mr. Chairman, I believe INR has a unique role to play in addressing these challenges. As the oldest civilian intelligence agency in the United States, the Bureau has a long and proud history of providing policymakers with valuable insights into America's most pressing national security issues, while empowering our diplomats with the information and analysis they need to advance US foreign policy objectives.

If confirmed, I look forward to leading this remarkable institution. I understand the role comes with important responsibilities: serving as the principal intelligence advisor to the Secretary of State and as the head of one of the Nation's 18 intelligence agencies; providing timely, objective, all-source analysis to inform consideration of foreign and national security policies; and assuring that our intelligence and sensitive law enforcement activities are consistent with, and supportive of, U.S. foreign policy objectives.

If confirmed, four interrelated imperatives will shape my approach to leading INR.

First, I will ensure that INR's capabilities and resources are aligned and strategically prioritized to address the most pressing challenges and opportunities, to include China, Iran, Russia, North Korea, global health security, cyber, the impact of climate change, and how to capitalize on the revolution in open-source intelligence.

Second, I will prioritize investments in INR's greatest asset—its people. We must continue to attract, train, and retain top talent while placing greater emphasis on diversity and inclusion.

Third, I will focus on upgrading INR's technology infrastructure to empower the analysts with the tools they need and to improve the delivery of INR's products and services to better support its customers, namely, U.S. diplomats overseas.

Finally, I will insist on strong cybersecurity practices throughout INR to safeguard the confidentiality, integrity, and availability of its data, networks, and systems.

In closing, I want to recognize the important role that I believe congressional oversight plays in ensuring that US intelligence activities are lawful, ethical, and consistent with our values. If confirmed, I very much look forward to partnering with this Committee as we confront the many challenges ahead.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Holmgren follows:]

Statement of Brett Holmgren
Nominee for Assistant Secretary of State for Intelligence and Research
Senate Select Committee on Intelligence
May 18, 2021

Chairman Warner, Vice Chairman Rubio, and Members of the Committee, it is an honor to appear before you today as the nominee to be Assistant Secretary of State for the Bureau of Intelligence and Research. I am deeply grateful to President Biden and Secretary Blinken for the confidence they have placed in me, and to Director of National Intelligence, Avril Haines, for supporting my nomination. I also want to thank Senator Klobuchar for her kind words.

I would not be here if it were not for the love and support of my family: my wife, Dana, our son Teddy, my parents, Michael and Mary, and my siblings Stacie, Krista and Ryan. Each of them has inspired me to live my life with a sense of purpose, love, and humility.

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Those ideals derive from my upbringing in Minnesota, where I was surrounded by family who believed deeply in the role of public service. Both of my grandfathers were World War II veterans. My parents, both of whom were public school teachers for 40 years, instilled in my siblings and me the importance of service. I still share the optimism and commitment to public service that I brought with me to Washington nearly two decades ago.

While I may be a new face to the Committee, I have a long track record of working in and with the Intelligence Community. As an analyst, first at the Defense Intelligence Agency and later at Central Intelligence Agency, I authored all-source intelligence products to inform policy decisions. Through deployments overseas, including in warzones, I have seen firsthand the key role that intelligence plays in shaping national security and the tremendous sacrifices of our diplomats, intelligence officers, and warfighters.

Throughout my career, I have also served in policy roles at the Pentagon and on the National Security Council staff at the White House. These experiences gave me a richer understanding of the vital role and the limitations of intelligence in shaping policy. Most importantly, I gained a greater appreciation for the importance of analytic objectivity and the need for the Intelligence Community to tell the policymaker what they need to know, not what they want to hear.

I have been nominated for this position at a time when the United States and its allies are facing a diverse, interconnected array of threats against the backdrop of a global pandemic that is straining governments and societies, fueling unrest, and accelerating global competition. From China, Russia, North Korea and Iran, to terrorism, cyber, climate change, and evolving

technologies, these threats pose new challenges and opportunities for the Intelligence Community.

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If confirmed, I look forward to leading this remarkable institution, serving as the principal intelligence advisor to the Secretary of State and the head of one of the Nation's 18 intelligence agencies. INR's responsibility to provide timely, objective, all-source analysis and to assure that intelligence and sensitive law enforcement activities are consistent with, and supportive of, our foreign policy objectives is more critical than ever.

If confirmed, four interrelated imperatives will shape my approach to leading INR. First, I will ensure that our capabilities and resources are aligned and strategically prioritized to address the most pressing challenges and opportunities, to include China, Russia, Iran and North Korea, as well as global health, cyber, climate change and how to capitalize on the revolution in open-source intelligence.

Second, I will prioritize investments in INR's greatest asset – its people. We must continue to attract, train, and retain top talent while placing greater emphasis on diversity recruitment.

Third, I will focus on upgrading INR's technology infrastructure to empower our analysts with the tools they need to improve the delivery of our products and support our customers, especially our diplomats overseas.

Finally, I will insist on strong cybersecurity practices throughout INR to safeguard the confidentiality, integrity, and availability of our data, networks, and systems.

In closing, I want to recognize the important role that Congressional oversight plays in ensuring that US intelligence activities are lawful, ethical, and consistent with our values. If confirmed, I look forward to partnering with this Committee as we confront the many challenges ahead.

Thank you, and I look forward to your questions.

Chairman WARNER. Well, thank you, gentlemen.

For planning purposes, any Members of the Committee wishing to submit questions for the record after today's hearing, please do so by 5 p.m. on this coming Thursday, May 20th.

The Chair and the Vice Chair will ask questions and we'll have who came in at the gavel and then we'll go back and forth based on order of arrival for five minute rounds.

Mr. FONZONE, I mean, we've seen some real challenges at ODNI over the last couple years. I think Director Haines, I'm encouraged by her early steps. What are you going to be able to do and how can you help her efforts to restore the morale and return that sense of integrity to the Office at ODNI and how do we make sure that the analysis of law is free from any political influence in the ODNI?

Mr. FONZONE. Thank you, Senator, for the question.

Making sure that the ODNI is a place where employees want to work and that can deliver—that can say truth to power is, I think, a fundamental part of the job of the General Counsel. And I think there's a number of ways in which I would see doing that.

One is I would want to, if confirmed, engage with the General Counsel's Office and make sure they have everything they need and that they feel supported by their General Counsel so they can deliver clear and accurate legal advice to everyone in the department.

I think the second thing I would want to make sure to do is that everyone—ensuring that all ODNI employees understand how, if they have any concerns about their legal advice or any politicization of the analysis they're providing, that they understand the channels that they can use to raise those concerns, whether that be through their chains of command to the ombudsman or the inspector general.

And then third, I think dissent is healthy in organizations and I'd want to make sure that all people who do raise concerns would be able to do so without fear of retaliation.

Chairman WARNER. Let me do one more follow-up question then I'll move to Mr. Holmgren.

One of the things we experienced, unfortunately, in the last couple of years was perhaps an unwillingness at the ODNI level and at the Legal Office of the ODNI to make sure that whistleblowers had the ability to exercise their, I believe, legal rights to get a report to Congress. Can you speak to us for a moment about the importance of whistleblowers and making sure their rights are protected?

Mr. FONZONE. Sure, Senator.

Whistleblowers play an integral part in any organization, and particularly, the Intelligence Community where so much of the work is secret and dissent has to come internally.

I know that Director Haines said during her confirmation process that if the ICIG presented a whistleblower complaint on a matter of urgent concern to her, she would transmit it to this Committee and I would, obviously, support her in doing that.

And more broadly, I would want to do two things, one is making sure all ODNI employees, and to extent relevant, broader IC employees, understand how they can raise complaints that they have to the Inspector General or other places where they can raise such

complaints. And two, making sure that they're free from retaliation if they do so and that they're protected to the full extent of the law if they do.

Chairman WARNER. Thank you.

Mr. Holmgren, one of the issues that this Committee is really taken on is the challenges of China. And when we talk of China, we always make clear that our beef is with the Communist Party of China and the leadership of Xi Jinping, not the Chinese people.

Matter of fact, there's a bill on the floor of the Senate right now where this Committee has made in a broad bipartisan way, I think, major commitments to investing in semiconductors and competing in the realm of 5G and the next generation, so-called O-RAN.

Can you speak to us for a moment about what you see is INR's role in informing the United States and the State Department policies to counter China's very aggressive tendencies in terms of technology competition?

Mr. HOLMGREN. Yes. Thank you, Senator, for that question, and I know several of you raised this issue with me during the pre-hearing meetings.

You know, first, I want to commend this Committee, in particular, for elevating the importance of the China and technology challenges and the risks that it poses, not only to our national security but also to our economic security and for American workers here in the United States. So I very much appreciate the issue. I think, you know, the Democracy Technology Partnership Act that several of you have brought forward, has great opportunities and ideas in there to implement.

I think the important thing about China to understand is that their technology agenda underpins and drives their military and their economic ambitions. And so I think it's vitally important for the United States to out-compete China technologically in order to maintain our military and our economic edge. And if confirmed, Mr. Chairman, I commit to you that China will be an unparalleled priority for INR and that I will ensure we have the resources and the capabilities and the expertise to address that challenge.

Chairman WARNER. Well, thank you. And my time is expired. I just want to make one additional point. I won't ask for a response but one of the issues that this Committee is really also taken on in a very aggressive way recently, and again, appreciate everybody's input, is what's been referred to in the press as the so-called Havana Syndrome. And we've got a commitment from Director Burns, from the Agency, to make this a top priority. We'll expect that same kind of commitment from the INR and the State Department writ large.

Senator Rubio.

Vice Chairman RUBIO. Thank you.

Let me start with you, Mr. Fonzone because we've already talked about it and I told you I wanted to give you an opportunity to address this with the Committee as well.

Look, I mean, you just heard Mr. Holmgren's answer but I think it reflects everyone else's view that, in fact, China uses its technological ambitions to further its military and global ambitions. And one of their national champions is Huawei, as an example and one of the things that we've all been focused on and one of the prior-

ities that this country has had is ensuring that Huawei doesn't embed itself in the telecommunication infrastructure of this country and also of other countries.

And so, obviously, you're going to get asked about the fact that as a partner at a law firm that represented both the Ministry of Commerce of the People's Republic of China and Huawei. You know, I understand that your position is that the work you did on this file was "de minimis" but I think the question is really, you know, as you worked in the National Security Council, so you were surely aware of the threat posed by China to American interests.

And I think the reason why it becomes relevant is because one of things we've seen is how the Chinese Communist Party uses our own system against us, in essence, it uses powerful law firms and other entities in Washington with lawyers that are connected to go in and out of government to advance their objective, be it in court or in the lobbying realm.

So I wanted to give you an opportunity to sort of address sort of the work you did, what were the options you have available to you at the time, and how that fits into the role that you've now been nominated to assume or not be relevant to it at all. But I thought it was important both to address it to give you a chance to address it because I think you could understand, seeing that there's going to be some questions coming about that.

Mr. FONZONE. Senator Rubio, thank you for the question. I appreciate the opportunity to address the China-related work I did at my law firm. As I know that this is an issue of great interest this Committee.

I think there are, as you mentioned, two clients that have raised the most questions as I've gone through the pre-hearing process. The first is the Chinese Ministry of Commerce. The work I did there was, as senior partner of my firm, arguing on behalf of the Ministry in the Supreme Court. It was a commercial dispute about how foreign law is incorporated into U.S. law, U.S. antitrust law.

I was asked to prepare for and then participate in a moot court to prepare the advocates for the argument and I did that to help make sure that the partner or firm was able to give the court the information it needs to decide the case. And I've had no follow-up on that since then.

The second representation, as you mentioned, was for Huawei and it was similar in the sense that the firm asked me to look into a question of how U.S. law works. I did a "de minimis" amount of work, less than 10 hours, to explain how U.S. administrative law works. I provided it to my partners and I've had no follow-up since then. Both of those occurred in 2018.

I don't think either of those representations, which were consistent with my entire legal practice, which was largely around helping companies understand and comply with U.S. law, would affect my ability to give Director Haines objective advice as she serves as the DNI.

Vice Chairman RUBIO. Just to clarify, on the Ministry of Commerce you helped prepare a partner for oral arguments, in essence, a moot court practice situation. And on the Huawei representation, you provided internal legal research on how U.S. administrative law works.

Mr. FONZONE. That's correct, Senator.

Vice Chairman RUBIO. Okay.

I'm sure there will be more follow-up but I don't want to take all of our time on that. I know other Members may want to dig into a little bit deeper. I didn't want to skip going to Mr. Holmgren.

Foreign misinformation, informational warfare is a reality. It's growing. It's always been there but we've now seen it sort of diffuse and become a real weapon used in global competition.

What is or should be, through the Global Engagement Center, the INR's role in supporting the Global Engagement Center efforts? In essence, you know, how can we counter through the Global Engagement Center the impact that disinformation and misinformation campaigns are having, not just people think of Russia, I mean, Iran and others are heavily engaged now in this effort in the Western Hemisphere even. So how do you view the role of the Global Engagement Center and your role, in particular, in supporting those efforts?

Mr. FONZONE. Thank you, Vice Chairman, for that important question.

Russia's interference in the 2016, you know, election was an outrageous attack on our democracy. It was an attempt to sow discord, to exacerbate divisions in our country, and it is an effort, as the DNI has indicated, it's likely to be, you know, replicated by other Nations besides Russia moving forward. And so I think it absolutely is a serious issue that we must confront. You know, I publicly called for the need for a whole of government approach to combat foreign malign disinformation and influence campaigns.

And so, Vice Chairman, to your question about the role that State and INR, in particular, would play, I would view, if confirmed, INR's role as providing support to the Global Engagement Center, but also to the recently established Foreign Malign Influence Center that the DNI created, which I think is a very positive step in the right direction to fuse a lot of the intelligence and threat information to share with policymakers.

Chairman WARNER. We'll now go to those Members who were here at the gavel, which is Senator Casey and Senator Cornyn. Senator Casey and then Senator Cornyn.

Senator CASEY. Mr. Chairman, thanks very much.

I want to start by commending both of the nominees for your willingness to serve the country again. Both Mr. Fonzone and Mr. Holmgren are committing to further service and that's laudable, especially at this time.

Mr. Fonzone, I wanted to highlight your Pennsylvania roots, as well as your pride in growing up in the Lehigh Valley. You told me earlier you're a graduate of Parkland High School, is that correct? And then on to Cornell and Harvard Law School? So we want to note that for the record.

And I want to say hello to your parents from a distance. I don't know them. I won't wave to them; that probably is a little too much. But I want to thank them for raising you and I also want to commend your family, your wife, Jill, who I guess is here. Jill. Good to see you. And your family's commitment to public service.

I wanted to start with you and I'll try to get to both of our nominees for a question each.

The question relates to supply chain concerns that I have and I know a lot of people have, specifically as it relates to China. I don't think there's any question right now that the United States has capital investments that have the effect of, in a very real sense, propping up China's governmental effort to create a military-civil fusion strategy that ultimately can compromise U.S. national security.

We've had for more than 40 years now the so-called CFIUS process, the Committee on Foreign Investment, which scrutinizes inbound investment. We don't have a similar or comparable method to analyze outbound investment for the same questions. So no mechanism to assess how outsourcing by U.S. companies to countries of concern may compromise our national security.

So I guess my first question is, in your view, how vulnerable is the United States supply chain to dependencies on China?

Mr. FONZONE. Thank you, Senator, for the question and your focus on this issue. It's an important one. Supply chain is an issue of focus for this Committee and also the Intelligence Community writ large.

And I think that outbound investment is something that probably we should take a closer look at. Obviously, I'm not in government now so I don't have the latest intelligence on exactly what the risks are. I think what I can say is that, if confirmed, I would commit to engaging with experts on this issue in the Intelligence Community, at DNI specifically, and in the Intelligence Community more broadly.

And then offering up my help and the help of my office, working with you or the Committee on any proposals you would have to address the threat raised by China and others with respect to supply chains.

Senator CASEY. I appreciate that. I look forward to working with you. I hope we can help you by way of some new legislation in this area, we hope, as well as to review with you some of the legal tools that ODNI might have to track outbound investment by companies that compromise our security.

Mr. Holmgren, the "Quad" intelligence sharing partnership between the United States, Australia, India, and Japan is emerging as an essential tool to combating Chinese aggression in the Indo-Pacific region. My question for you is about diplomacy. What role can diplomacy play in getting access to critical intelligence regarding China's trade, diplomatic, and military agendas?

Mr. HOLMGREN. Thank you, Senator, for that question. And as I indicated previously, I share the concerns about the serious threat China poses to the United States militarily, economically, and technologically.

Working with our intelligence partners and allies is a vital function in the Intelligence Community generally, but especially at a place like the Department of State where diplomacy is the business. INR serves at the intersection of intelligence and diplomacy and so, if confirmed, I would view INR's role as supporting engagements of our diplomats, to include the Secretary of State, with those partners with the intelligence that they need.

And second, to make sure that we are including those partners that you mentioned—in particular our closest allies, as well as the

Five Eye countries—in the analytic exchanges that INR leads on behalf of the Intelligence Community. They're a couple hundred a year, where you bring in outside experts, non-governmental experts, to focus on particular issues. So I think ensuring that those partners and allies were included would be an important step to help strengthen those relationships.

Senator CASEY. Thanks very much. Thanks, Mr. Chairman.

Chairman WARNER. Senator Cornyn.

Senator CORNYN. Let me start by thanking both of you for your willingness to serve and for your willingness to take a cut in pay.

In all seriousness, Mr. Fonzone, you and I had a chance to visit about some issues in my office and I thank you for that.

I note that Sidley Austin has registered different times for representing clients in the Foreign Agents Registration Act. Have you personally had to register under FARA?

Mr. FONZONE. No, I have not personally registered. I think the firm, in one of its periodic registrations, lists all the partners who were in the firm, but I have not registered personally.

Senator CORNYN. Do share my concern about foreign governments hiring lobbyists on K Street with the lack of any real transparency, so that, basically, people like the Members of this Committee don't know if they're being lobbied by American citizens or by foreign governments?

Mr. FONZONE. Senator, I certainly think that Congress should understand who's asking you to do things. And I can't profess to be an expert on how exactly FARA works, but I think to the extent that there are changes, if you don't feel you're getting the disclosures needed I'd be happy to, if confirmed, work with you on making sure you get the information you need.

Senator CORNYN. Well, once you're on the job, I hope you'll work with us to try to figure this out. They have various disclosure registrations called the Lobbyist Disclosure Act, which then eliminates the need to register as a foreign agent. But I think this is a big concern to a number of us on this Committee and in Congress. And so I hope you'll help us work through that.

I know President Biden asked the DNI to produce a threat assessment on domestic violent extremists. And we certainly recognize the importance of that. But in the United States, we don't allow the Intelligence Community to spy on American citizens, absent some proof of connection with a foreign power—being an agent of the foreign power.

As you know, the FBI is the member of the Intelligence Community that basically is in charge of law enforcement and counter-intelligence operations. But how do you draw the line between what is permissible and what's impermissible under our laws?

Mr. FONZONE. Thank you, Senator, for raising this issue.

As I've gone through the process of preparing for confirmation and talked to folks who held this job before—and others, I think this is one of the issues that would be a major focus if I were lucky enough to be confirmed. There are domestic threats and the government has a role to play in addressing them. But as you just noted, I think there's a lot of history that shows trouble can arise if the IC becomes too involved. I think the way that works out in practice is, as you noted, the FBI and DHS are in the lead. But

as Director Haines noted in her confirmation process, there may be some small role the IC can play to support them.

If confirmed, I can say that it would be a major focus of mine to make sure that the extent the IC is providing assistance in addressing any domestic threats, it does so consistent with its authorities and with due respect for the Constitutional rights of U.S. citizens, and in particular their First Amendment rights to both assembly and speech.

Senator CORNYN. As you know, China is usually the first word out of our mouths these days when it comes to our national security, economic and otherwise. In recent years, Congress has passed some reforms. For example, the CFIUS process, the Committee on Foreign Investment in the United States, to review foreign investments for national security concerns and the like.

I know that it's been a couple of years now and that Treasury, I think, was primarily responsible for convening CFIUS, has not yet completed some of the rulemaking process. And I hope you will help us figure out what—not only how to implement what we've already passed into law, but what other loopholes are there available for our adversaries, primarily China, because we know where they're relentless.

Do you have any sort of plenary thoughts about things that we need to do to make that more effective?

Mr. FONZONE. Senator, I know that there were the amendments to CFIUS that were passed. I'm not completely up to speed on those types of implementation. If I was confirmed, I would obviously help—to the extent that the DNI General Counsel had a role to play there—to assist that.

And in looking into this and understanding how it's been implemented, identified any gaps or areas where further legislation would be helpful to address national security threats. I would obviously work with this Committee to close those gaps.

Senator CORNYN. Thank you.

Chairman WARNER. I'd remind the panel that the Senator from Texas was the lead Senator on that CFIUS reform.

We're going to continue. It's, again, based upon arrival order, so Senator King, Senator Cotton, Senator Feinstein, and Senator Sasse.

Senator KING. Thank you, Mr. Chairman.

Mr. Holmgren, I can't imagine how difficult it would be to grow up in Minnesota in the nineties when your father's got the same name as the coach of the Green Bay Packers. That must have been a challenge at times.

Mr. HOLMGREN. It was tough, Sir. Thanks—yes.

[Laughter]

Senator KING. Character building, however.

Mr. HOLMGREN. Indeed.

Senator KING. Mr. Holmgren, Dan Coats, I think, outlined best the role of the Intelligence Community. He said our job is to seek the truth and tell the truth. And one of the most important characteristics is sometimes it's hard to tell the truth if your customer doesn't want to hear the truth.

Are you willing to incur the displeasure of the Secretary of State or indeed the President or this Committee in order to defend the findings of the analysts in INR?

Mr. HOLMGREN. Thank you, Senator, for that important question. As Chairman Warner indicated at the top of his remarks, if confirmed, I would be joining an institution at INR that has a long and proud history of speaking truth to power.

And so I feel as if I would be joining an institution that's on solid foundation in that regard. Having said that, I believe it is essential that the INR workforce, this Committee, the American people have confidence in the integrity, the accuracy, and the impartiality of Intelligence Community assessments.

And so, if confirmed, I think it's a multi-pronged approach to ensure that policymakers are receiving the professional judgments and candid expertise of INR analysts.

Senator KING. If 2003 repeated itself and the consensus in the Intelligence Community was X and the finding of INR was Y, would you inform this Committee of your findings different from those of your colleagues in the community?

Mr. HOLMGREN. Yes, Senator. I believe that would be a significant enough issue to inform the Committee.

Senator KING. Thank you. I hope we don't have to face that but I think that's an important part of your role. The most important. Intelligence, bad intelligence can lead—does lead—to bad decisions. And your job is to give us the best intelligence that you have, us being policymakers.

Mr. FONZONE, this Committee really, I think, has one role and one mission. The role is oversight of the Intelligence Community. And it's an unusual one because in a democracy, secret agencies are kind of an anomaly.

And all the other agencies of government have all kinds of people looking at them: the press, the specialized press, the constituents. Intelligence not so much. So this Committee has an important responsibility. The mission it seems to me is navigating the tension between the preamble of the Constitution, to ensure domestic tranquility and provide for the common defense, and the First, Fourth, and Fifth Amendments, essentially the right of privacy of American citizens.

Talk to me about how you navigate what is essentially a legal tension.

Mr. FONZONE. Thank you, Senator. I think that's a fantastic framing of the role of this Committee and an excellent explanation for why the relationship between the Intelligence Community and this Committee is so important. I think that the Intelligence Community has a very important job to play in keeping the Nation safe, but it can only do that if the American people trust that what it's doing is lawful and consistent with the Nation's values.

I think that because most of the work is in secret there has to be mechanisms to ensure people of that. I think one is that—

Senator KING. Especially because it's in secret.

Mr. FONZONE. Especially because it's secret. And I think one is that the IC should be transparent as much as it can be. And if I was confirmed, I would be an advocate internally for being trans-

parent about what the IC is doing, particularly about its legal basis.

Two, there are internal oversight mechanisms to help make sure the IC is operating lawfully. There are Inspector Generals, there's the PCLOB, there are General Counsel offices.

And third, and probably most important, there's this Committee. And if I were lucky enough to be confirmed, I would see a major focus in my role both ensuring that the Director carries out her obligation to keep the Committee fully and currently informed about significant intelligence activities, and also just making sure that I'm a partner with the Committee so that all the legal issues that come up that are significant—we're working together on those.

Senator KING. Hold that thought. Partner with the Committee. That's an important concept. I'm just about out of time, but I want to emphasize the importance, as the Chairman mentioned, of the whistleblower statute. By definition, whistleblowers are unpopular, certainly not within the executive branch. So they need articulate and aggressive defense. And I hope you will commit to doing so within the Intelligence Community.

Mr. FONZONE. Certainly, Senator. That's something that a number of Senators have spoken to me about in the run up to this hearing. And I'm committed to, if confirmed, to ensuring that whistleblowers know where to lodge their complaints and receive the full protection of the law if they do so.

Senator KING. Interestingly, the first American whistleblower law was in 1778, prior to the adoption of the Constitution. The people that founded this country understood how important it was.

Thank you, Mr. Chairman.

Chairman WARNER. Senator Cotton.

Senator COTTON. Thank you.

Mr. Fonzone, I want to return to some of the topics about your legal work in private practice, specifically for the Ministry of Commerce in the People's Republic of China and for Huawei. You are a full equity partner at Sidley, is that correct?

Mr. FONZONE. I did have some equity. I couldn't characterize myself as a full partner. But I was a partner.

Senator COTTON. OK. Does Sidley have a policy to allow lawyers to decline work for clients if they find it morally objectionable?

Mr. FONZONE. Senator, I took the work I did for the Ministry of Commerce and Huawei that I described for Senator Rubio. It was work that was consistent with my practice of helping companies understand U.S. law, comply with U.S. law, and or prepare for an argument—in that case, prepare for an argument before the Supreme Court.

So I took it in that vein. That's why I took that work.

Senator COTTON. So, I understand you took it but I'm asking you if Sidley has a policy that allows lawyers to decline work if they have objections to a client? I remember years ago firms would allow lawyers to decline work for tobacco companies, for instance, if they found that work morally objectionable.

Mr. FONZONE. Senator, I don't know if there's an official policy to that end. I don't know if I would have been able to decline the work if I would have tried.

Senator COTTON. Okay. Thank you.

Just this morning the New York Times reported on Apple's years-long collaboration with the Chinese Communist Party to provide every piece of data from Apple's devices in China to Communist police forces, despite years, of course, of evidence of oppression and genocide. This is just one more example of Apple's deep, deep entanglement with the Chinese Communist Party. And you list in your disclosures Apple as one of your major clients.

Could you please characterize the nature of the work you did for Apple?

Mr. FONZONE. Senator, I did a range of work for Apple on a lot of topics. I don't recall doing anything vis-à-vis Apple with respect to its relationship with China, but I worked with them on a number of matters related to privacy and other topics.

Senator COTTON. But you don't recall doing any work for Apple that was related to its relationship with China?

Mr. FONZONE. Not that I recall, though I did a fair amount of work with them over the years so I—

Senator COTTON. Thank you. Thank you. I'll just say, obviously, the Committee has concerns about what's come to be known as the China lobby. And it's pervasive in this country, far more pervasive than these clients you've had. And I don't just mean registered agents for a Chinese company. It's everywhere. Multi-national corporations or small manufacturers in all our states have outsourced production to China.

The CEOs of major investment banks met with China's trade negotiator right before he met with President Trump's trade negotiator. Hollywood won't have movies with Chinese bad guys because they want access to the Chinese market. University presidents will lobby us to maintain the flow of Chinese students who pay full fare at their universities. University professors still want to get money from Chinese-owned entities.

So this is a very, very serious concern of the Committee and I think this is why you have Members asking you questions about the nature of this work.

Mr. Holmgren, I want to turn to question what we discussed in our conversation a couple weeks ago. Nord Stream 2, which is, I'd say, right now Vladimir Putin's number-one foreign policy priority to complete. It's in the final stages of its construction. It will be completed later this year if nothing happens. It will make Western Europe even more dependent on Russian gas while also depriving Eastern European NATO allies of the concessions they get for the pipelines that come from Russia to Western Europe.

Last year's defense bill greatly expanded the scope of companies subject to sanctions for supporting this pipeline. I understand the State Department has contacted some of these companies to make them aware of their potential sanctions exposure. If you're confirmed, can you commit to immediately providing the Senate with the unclassified list of companies involved in that project that the IC produced in response to last year's National Defense Authorization Act?

Mr. HOLMGREN. Thank you, Senator Cotton. And I appreciate our conversation on this issue. Just let me say at the outset I am under no illusion that this pipeline is an economic development project as Putin claims. I believe that it is the latest example of Putin's desire

to weaken Western alliances and ultimately, as you indicated, to exert influence down the road on our European partners and allies.

So I appreciate the seriousness of this issue. If confirmed, I commit to you that INR will support the Department and the Intelligence Community in identifying and assessing and evaluating entities that may be involved in violating U.S.-imposed sanctions. You have my commitment in that regard.

Senator COTTON. Thank you. Ultimately, this is not going to be your call. It's going to be the Secretary's call. And really President Biden's call.

I've seen troubling reports today that the Administration may be preparing to waive sanctions on certain German entities. So we'd be in the very strange position where we're sanctioning the company that's trying to build the pipeline but we're not going to sanction the company that's in charge of it or the company that's going to be using it—all because we want to maintain friendly relationships with Germany, which is currently throwing our Eastern European allies under the bus over this pipeline. So it's a matter of serious concern to the Committee.

Chairman WARNER. I would remind the Senator, and I agreed with your comments about Apple and some of the others, the one industry that refused to meet with this Committee when we were doing our China classified road shows was private equity, which was again, I think it—

Senator COTTON. There's basically no industry and no place, no organization in America that's not potentially compromised by the China lobby. That's why it's so important that we do the work to expose the China lobby.

Chairman WARNER. Senator Feinstein.

Senator FEINSTEIN. Over a decade ago, the CIA engaged in the use of waterboarding and other so-called enhanced interrogation techniques during interrogations. The tactics used were not only more brutal than what's known, they did not produce actionable intelligence. This was all laid out in a Senate Intelligence Committee's 6,000-plus-page classified report and a 500-page declassified summary.

While you both provided straightforward answers in the pre-hearing questions, I want to cover this topic because I believe it remains a very high priority to see that we never return to this. So let me ask you the same questions I asked Director Haines and Director Burns when they were before us.

Do you agree that current law prohibits any interrogation techniques not allowed by the U.S. Army Field Manual on Interrogation?

Mr. FONZONE. I do, Senator.

Mr. HOLMGREN. Yes.

Senator FEINSTEIN. Do you agree that waterboarding and other so-called enhanced interrogation techniques are not effective?

Mr. HOLMGREN. Yes.

Mr. FONZONE. Yes.

Senator FEINSTEIN. Will you assure us that the IC will not be in the business of running undeclared black site detention facilities or engaging in interrogations that use techniques beyond those listed in the Army Field Manual?

Mr. FONZONE. Yes.

Mr. HOLMGREN. Yes.

Senator FEINSTEIN. Thank you very much. Thank you, Mr. Chairman.

Chairman WARNER. Senator Sasse and then Senator Wyden.

Senator SASSE. Thank you, Mr. Chairman. I'm not showing a light, do you hear me? Great. Thanks. Thank you both for being here. Congratulations on your nomination.

Mr. Fonzone, I'd like to go back to the conversation that Vice Chairman Rubio started with, and that you and I discussed on the phone.

Can you explain to me who Huawei is?

Do you regard them as a private sector company?

And what do you think of the role that they've played in the Chinese Communist Party's genocide in Xinjiang?

Mr. FONZONE. Thank you, Senator, for the question. And I know this—we discussed this before the hearing—I'm well aware of what Director Haines has said about Huawei, about the fact that Chinese telecommunication companies pose a significant counterintelligence risk and she specifically named Huawei. I'm also aware of the amount of focus this Committee has placed on the risks posed by Huawei.

If confirmed, I would obviously have access to the way this intelligence, including about Xinjiang—and that would be what would guide the factual underpinning of any legal analysis I would provide to Director Haines if I was lucky enough to be confirmed.

Senator SASSE. But I'm trying to ask a different question. I'm trying to ask why would you make a decision to work for Huawei given who they are? And this isn't new news. You worked in the NSC in the Obama years. And the 2019 DOJ indictment on Huawei, on things as mundane—relative to the genocidal issues we were just talking about in Xinjiang—but as mundane as their intellectual property theft from T-Mobile from 2012 through 2014 was laid out in the indictment two years ago.

And this was roughly the time that you were working for them. 2018, I think, was your legal work for them—2017, 2018. But that followed you leaving the Obama administration. Did you think Huawei was a morally neutral or a neutral or a good actor?

Mr. FONZONE. Thank you, Senator. It was 2018, you're correct there. As I stated in response to Senator Rubio's question, my firm asked if I would help address some questions on how U.S. administrative law works. I did a very small amount of analysis on—with respect to that question. Less than 10 hours.

Senator SASSE. But you knew it was for Huawei?

Mr. FONZONE. I did know it was for Huawei and it was—

Senator SASSE. Who did you think they were?

Because they're the bad guys.

Mr. FONZONE. Senator, I understand the concerns you have about Huawei.

Senator SASSE. Do you have concerns about Huawei?

Mr. FONZONE. I'm very aware of what Director Haines has said about Huawei, what this Committee has said about Huawei, and if I was confirmed, I would be driven by what the Intelligence Community's views are of Huawei. That would underpin my analysis.

I did the work I did because a partner asked me to help a company understand U.S. law, and that's the advice I provided in a very small amount of work.

And there's been no follow-up with it since then.

Senator SASSE. This is a company that's involved in genocide and this is a company that habitually, systematically is involved in stealing IP from U.S. companies. Helping them with rulemaking or their understanding of rulemaking is not helping a morally neutral actor and it's not helping them comply with U.S. law. It's helping them figure out how they can skirt U.S. law.

You're well aware, I assume, that China's national security laws compel China's ostensibly, but not really, private sector companies to share all their information with the government, correct?

Mr. FONZONE. I'm not an expert on Chinese law but that sounds accurate to me, yes.

Senator SASSE. Thank you.

Mr. Holmgren, INR is very important and I think those of us who feel a responsibility to not just help provide oversight for the now 18 intelligence agencies, with Space Force, but also to express gratitude for a lot of people who work in the Intelligence Community who don't have people, private citizens able to thank them often. INR is critically important. It obviously has an illustrious history. But it's also had challenges over the years in intelligence sharing with the broader community.

Can you give us your sense of what INR's particular challenges are as you arrive? That you need to deal with? And how do you advance the agenda of intelligence sharing with the broader community?

Mr. HOLMGREN. Thank you, Senator. And I appreciate those remarks about INR. Again, INR is unique in the Intelligence Community in that it is the only one of three all-source intelligence agencies that serves at the intersection of intelligence and diplomacy. And so, if confirmed, I think the major challenges that I understand INR is facing also align to the priorities I indicated at the top. But importantly in making sure that our finite resources are aligned and strategically and efficiently prioritized against the big four: China, Iran, Russia, North Korea, as well as some other important threats.

Second, on the technology front, I think there's both, in my view, a need to further enable INR's technology modernization program so that it can support our customers but also the cyber security imperative to make sure that we are adequately protecting its data networks and systems.

And then finally on the talent side, INR has a really long and rich tradition of attracting some of the best and brightest experts who spend their careers at INR. We want to encourage that, but at the same time make sure that we have sufficient expertise on the team to address a bunch of really challenging new technical issues in the emerging technology space.

Senator SASSE. Thank you. Thanks for your charity yesterday on our schedule bumps as well. I look forward to continuing the discussions about emerging tech. I'm out of time now but I'll follow-up with you. Thank you.

Chairman WARNER. Thanks. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Fonzone, we talked about whistleblowers when you came to the office. And as you know, I think the Trump administration regularly undermined whistleblowers. And to their credit, the Biden administration officials have told me that it's going to change on their watch.

So I want to be very clear on a point that is critical to me. And I don't think we've gotten into this, but if the inspector general transmits to the Director a whistleblower complaint that the inspector general has said is urgent, is the Director obligated by law to forward it to the Congress?

Mr. FONZONE. Thank you, Senator, for the question. I know this is an issue of concern that we talked about before the hearing.

With respect to your question, the law is clear. When the ICIG presents a whistleblower complaint, it is a matter of urgent concern to the DNI. The DNI shall transmit that complain to Congress.

Senator WYDEN. So the answer is yes.

Mr. FONZONE. Yes.

Senator WYDEN. Operative "shall."

Mr. FONZONE. Yes.

Senator WYDEN. Great. Thank you.

Let's go to data purchases then for a moment. Again, in the office, we talked about the bipartisan legislation I have. The Fourth Amendment is not for sale where the government basically uses a credit card to throw the Fourth Amendment in the trash can.

Now, I believe Americans have a right to know how the government interprets laws, and that includes ways in which the Intelligence Community goes around the courts by buying Americans' private records from these data brokers, these sleazy operators who are basically accountable to no one.

If you're confirmed, will you ensure that the Intelligence Community is transparent about the circumstances in which it does this?

Mr. FONZONE. Senator, during her confirmation process, Director Haines committed to seeking to articulate a framework for how the Intelligence Community purchases data so the public can understand that and what the legal basis for purchasing the data is. And I think the idea would be to make that framework public to the maximum extent you can, consistent with sources and methods. And if confirmed, I would look to support the Director in pulling that framework together.

Senator WYDEN. Do you agree that the public record should include information on the amount of Americans' records collected without a court order?

Mr. FONZONE. Senator, I think transparency is very important to the IC.

Senator WYDEN. That's not the question. The question is: should the American people know the amount of records? Because this is pretty obvious. If it goes on on a very rare basis, then we're going to look at whether there was a sources and methods concern. But I think we need to know the amount of records being collected this way. And I'm interested in whether you think that the public record should include information on the amount.

Mr. FONZONE. Senator, I think the IC should provide as much information as they can about the amount of information they're collecting. I just don't know enough, not being in government right now, about what the potential risks might be.

Senator WYDEN. Well don't you learn a little bit more in the next few days and get back to me within a week. Okay? On that point—

Mr. FONZONE. Senator, thank you.

Senator WYDEN. Good. Now, there's a lot of confusion about how the community interprets the Supreme Court's Carpenter case. This is the big geolocation data case. And whether it can collect Americans' geolocation information without a warrant.

If you're confirmed, would you clear this up by issuing public guidance on how Carpenter applies to the Intelligence Community?

Mr. FONZONE. Thank you, Senator.

Carpenter is a very important decision and, to the IC, it's one of the Supreme Court's major statements about how information created in the digital age is covered by the Fourth Amendment. I know during her confirmation process Director Haines committed to engaging with IC lawyers on whether guidance on Carpenter is necessary. And if confirmed, I would look forward to working with her on understanding Carpenter and how it applies to the IC's actions and whether guidance is necessary.

Senator WYDEN. Why in the world would one say they need to clear up whether guidance is needed? There's tremendous confusion. The agencies are all over the map. That's a matter of fact. So I'm still not clear. Do you think guidance is necessary or not?

Mr. FONZONE. Senator, I can see why guidance might be necessary. Carpenter is a very important decision. Not being in government, I don't know the state of what the different IC entities are—what their positions are on Carpenter. I know the Director wants to look into this.

Senator WYDEN. My time is pretty much up. Why don't you get back to me within a week on that point as well? I'm not even going to ask my other question, because given how much confusion there is, I thought that at a minimum if confirmed you would tell agencies to be transparent about what they're doing. But clearly we're not even at that point. So, I would like within a week an answer to the question of whether you think guidance is necessary for the Community on the Carpenter question, which speaks to geolocation and is right at the heart of this question about whether people are going to have their Fourth Amendment rights protected.

Thank you, Mr. Chairman.

Mr. FONZONE. Thank you, Senator.

Chairman WARNER. The Chairman has no further questions. Anybody else want a second round?

Senator GILLIBRAND. Mr. Chairman, I am on via WebEx.

Chairman WARNER. Oh, I apologize, Senator Gillibrand.

Senator GILLIBRAND. Thank you.

Chairman WARNER. That was my mistake.

Senator GILLIBRAND. No, no. I'm good.

Chairman WARNER. Alright. Senator Gillibrand.

Senator GILLIBRAND. Perfect.

Mr. Holmgren, it has been reported that a growing number of U.S. personnel overseas, including State Department employees, have been targeted in a mysterious series of attacks causing significant health impacts. This has reportedly occurred in Cuba, China, and elsewhere. I cannot overstate how critical it is that we get to the bottom of who is doing this, that we hold the perpetrators accountable, and that we take care of our people.

If you are confirmed, do you commit to doing everything in your power to ensure that the Intelligence Community protects these individuals, determines the origin of the attacks, and makes sure that the victims are given the appropriate medical care? And if confirmed do you commit to regularly engaging with the Committee on this issue?

Mr. HOLMGREN. Thank you, Senator.

I know this is a concern raised by several Members of the Committee during the pre-hearing meetings. And I very much share those concerns. I've spoken to victims of these egregious attacks and I know that they are suffering; I know that their families are suffering. And Senator, if confirmed, I will have no higher priority than ensuring that the Department of State and the Intelligence Community are working to protect the safety and security of U.S. personnel, their families, and U.S. citizens overseas.

And as a testament to how serious I take this issue, if confirmed, I will ask my staff to provide a classified briefing on the matter on my first day in office. And to keep me regularly updated on the issue. And, of course, pledge to keep the Committee informed.

Senator GILLIBRAND. And let me give you some guidance. It's very important with the kind of impact—disease impact that these attacks seem to have been causing, that you create experts in the field. And I would highly recommend that—[audio interruption]—at one location such as Walter Reed where you can have doctors that are read in and understanding what is at stake so that these service members and Intelligence Community members and members of the State Department are not looking far and wide for experts.

With the 9/11 first responders and community members, we developed state-of-the-art care for them based on the nature of their exposure. I think we have to use what we learned there and develop a state-of-the-art-care for the men and women who have been exposed.

And I'd like your commitment to working toward that end.

Mr. HOLMGREN. Yes, Senator, and with INR specifically I commit that this will be a priority in terms of supporting the Department and ensuring that its personnel have the resources they need. I very much appreciate the issue.

Senator GILLIBRAND. Okay. Thank you.

Now with regard to Mr. Fonzone: the families of the victims of September 11th have long been seeking certain documents from the FBI related to the facilitators who enabled the perpetrators of the attacks. The last Administration blocked the release of the requested documents. Almost 20 years after the attacks, the families and the American people deserve much better.

I have read these documents myself and I believe that there's additional information that can be shared with the families. I have

asked DNI Avril Haines to work with me to ensure that while sensitive sources and methods may need to be protected and remain classified, that the documents undergo a full review so that we can maximize transparency with the families and the public.

If you are confirmed, will you commit to work with me to ensure that all appropriate information on this topic is reviewed for declassification so that it can hopefully be shared with the families?

Mr. FONZONE. Thank you, Senator. If confirmed, I would work with the Director and you on this issue.

Senator GILLIBRAND. Thank you. And my last question—do I still have time, Mr. Chairman? Or has my time been consumed?

Chairman WARNER. No, you've still got time for one more.

Senator GILLIBRAND. Okay. Mr. Fonzone, if confirmed you will be the top lawyer in the Intelligence Community. What would be your advice to the DNI regarding the role of the Intelligence Community in addressing the threat of domestic terrorism? Where do you see that line of authorities between the significant domestic national security threat, the Intelligence Community's capability, and the law enforcement community?

And related, we've seen such an intense influx of cyberattacks by sophisticated foreign adversaries who have utilized U.S. computing infrastructure to mask the origin of attacks. This has also raised concerns that the perpetrators are exploiting a perceived gap in intelligence authorities that make it difficult for the IC to track cyber threats on domestic networks.

If confirmed as the top intelligence lawyer in the U.S. Government, what would be your advice to the DNI regarding the intelligence authorities needed to better defend the United States from these type of attacks?

Mr. FONZONE. Thank you, Senator, for the question. I think you flagged two very difficult legal issues where the threats can span the domestic to the international, and drawing a line between where the IC's authorities are and where the authorities of other entities who are responsible for addressing those threats are. If confirmed, I think both cyber security and domestic threats would be areas of major focus for me.

And I would commit to you that I would both, one, try to make sure that the Intelligence Community is operating within—ensure that the Intelligence Community is operating within its authorities. Two, be very careful to ensure that the Intelligence Community is not intruding on the domestic sphere where it should not intrude and it's respecting the Constitutional rights of U.S. citizens. And three, as your question alluded to, if I identify any authority gaps where the Intelligence Community lacks the authorities it needs to keep the Nation safe, I would obviously bring those to this Committee and work with this Committee to fill those gaps.

Senator GILLIBRAND. Yes. And I'm most concerned about the third issue, because we've had several open sessions where there are perceived gaps and perceived vulnerabilities because of the way we have aligned our capabilities. And I think it needs a deep dive and I think it needs advice.

Chairman WARNER. Thank you, Senator.

Senator GILLIBRAND. Thank you.

Chairman WARNER. Let me just reiterate one point that Senator Gillibrand made. And it applies you, Mr. Holmgren, but I think it also applies to you, Mr. Fonzzone. This Committee, frankly, has been shocked on this issue related to the so-called Havana Syndrome. That for now close to five years we've been getting reports. Many of the individuals that work for various parts of the American government appeared not to get treatment in an appropriate manner.

It's fairly stunning to, I think, all of us that we still don't know four to five years in on an attribution issue: who perpetrated these attacks? We don't know what devices were used, and only recently do we feel like the individuals who—clearly many who were harmed—were getting any kind of respected treatment.

And the notion that we're asking people to serve all over the world and the—not only the actual potential—the actual threat posed by whatever actor using whatever device, but just the psychological notion that you and your family could be posted somewhere and be a victim of something that at least for a number of years it appears like the American government didn't take seriously enough in both a medical or from an investigative standpoint.

I've had a number of conversations with the Director on this. IC personnel, State Department personnel, DOD personnel. It appears now people serving domestically here at home. We've got to get to the bottom of this. And Senator Rubio and I and every Member of this Committee is committed to getting those answers. And we'll expect that kind of response.

I want to thank you both again, echoing what so many other Members have said about your willingness to serve. These are critical times. I think you hear from all of us, we're going to ask you hard questions. But should you both be confirmed, this Committee will have your back. But we will also expect forthright, straightforward answers. And now more than ever, it's important that the IC has the willingness to speak truth to power.

And with that, the Committee is adjourned. Thank you both.
[Whereupon at 3:55 p.m. the hearing was adjourned.]

Supplemental Material

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

**SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE**

**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

PART A - BIOGRAPHICAL INFORMATION

1. FULL NAME: Christopher Charles Fonzone
OTHER NAMES USED: Chris Fonzone
2. DATE AND PLACE OF BIRTH: October 16, 1975; Allentown, Pennsylvania
CITIZENSHIP: United States
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: Jillian Suzanne Catalanotti
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: Catalanotti
6. NAMES AND AGES OF CHILDREN:

<u>NAME</u>	<u>AGE</u>
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Not applicable

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
Cornell University	1994-1998	B.A.	1998
Harvard Law School	2004-2007	J.D.	2007

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT).

<u>EMPLOYER</u>	<u>POSITION/TITLE</u>	<u>LOCATION</u>	<u>DATES</u>
First Manhattan Consulting Group	Analyst	New York, NY	9/1998-4/1999

Watch Hill Investment Partners	Assistant Portfolio Manager	Larchmont, NY	4/1999-4/2000
Novantas	Principal	New York, NY	4/2000-8/2004
Professor Arthur R. Miller	Research Assistant	Cambridge, MA	6/2005-2/2006
Gibson, Dunn, & Crutcher	Summer Associate	Washington, DC	6/2006-7/2006
Department of Justice Civil Division, Appellate Staff	Summer Law Intern	Washington, DC	7/2006-8/2006
Professor Richard H. Fallon	Teaching Fellow	Cambridge, MA	9/2006-1/2007
Chambers of Judge J. Harvie Wilkinson III	Law Clerk	Charlottesville, VA	6/2007-6/2008
Department of Justice Civil Division, Appellate Staff	Attorney	Washington, DC	10/2008-7/2009
Chambers of Justice Stephen Breyer	Law Clerk	Washington, DC	7/2009-7/2010
Department of Defense Office of the General Counsel	Special Counsel	Washington, DC	8/2010-1/2012
Department of Justice Office of Legal Counsel	Attorney-Adviser	Washington, DC	1/2012-12/2012
White House Counsel's Office / National Security Council (NSC) Staff	Deputy Assistant and Counsel to the President & NSC Legal Adviser	Washington, DC	1/2013-1/2017
Self-employed (one consulting project between time at White House Counsel's Office and Sidley)	N/A	Washington, DC	3/2017-4/2017
State Department Fulbright Foreign Scholarship Board	Board Member	Washington, DC	2/2017-5/2019
Sidley Austin LLP	Partner	Washington, DC	11/2017-present
PT Fund, Inc.	Volunteer: National Security Policy and NSC Agency Review Teams of the Biden Transition (on leave from Sidley Austin LLP)	Washington, DC	8/2020-1/2021

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8).

See response to Question #8.

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

Much of my legal career has been dedicated to national security and intelligence-related matters. As Special Counsel to the General Counsel of the Department of Defense (DoD), I provided legal advice on a range of national security issues, with a focus on military operations and sensitive litigation matters. This role also afforded me my initial opportunity to participate in legal discussions with lawyers from across departments and agencies and to see how the Executive Branch's interagency legal process works. From DoD, I went to the Department of Justice's Office of Legal Counsel, where much of my work involved the analysis of sensitive national security and intelligence issues. And I then served as the Deputy Legal Adviser and then Legal Adviser to the National Security Council, where I worked closely with lawyers from across the U.S. Government, including the Office of the Director of National Intelligence (ODNI) and elsewhere in the Intelligence Community, and gained substantial experience advising senior clients on a wide range of national security and intelligence-related issues.

During my time in Government, I thus had the opportunity to work closely with lawyers and other officials from the Intelligence Community and developed familiarity with many of the legal frameworks that govern intelligence collection and operations, such as the National Security Act, the Foreign Intelligence Surveillance Act, and key Presidential Directives (e.g., Executive Order 12333). I also counseled senior clients on how these laws are relevant to national security and intelligence activities.

Moreover, since leaving government, a large portion of my practice has focused on cybersecurity and other issues regarding the information economy, topics of current relevance to the Intelligence Community. In particular, I have advised numerous companies on information security and compliance with cybersecurity regulations; data privacy, including cross-border data flows; and the application of legal regimes to new technologies. This experience has kept me abreast of many of the legal developments (at least those that are unclassified) over the past few years.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT).

Intelligence Community Seal Medallion (2017)

Central Intelligence Agency Director's Award (2017)

Office of the Secretary of Defense Award for Excellence (2012)

Harvard Law School: Graduated *magna cum laude*
Articles Committee (ABC) Chair, *Harvard Law Review*
Ames Moot Court Semifinalist (oralist)

Cornell University: Graduated *cum laude* in English and with distinction in all subjects
Phi Beta Kappa

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS).

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
American Bar Association	Member	2017-present
American Society of International Law	Member	2017-2020
District of Columbia Bar	Member	2018-present
Hostage US	Member, Advisory Council	2019-present
Just Security	Member, Advisory Board	2019-present
National Task Force on Election Crises	Member	2020
NYU School of Law Reiss Center on Law and Security	Non-Resident Senior Fellow	2018-present
Pennsylvania Bar	Member	2008-present

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, BLOGS AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES OR REMARKS YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT, TRANSCRIPT, OR VIDEO). IF ASKED, WILL YOU PROVIDE A COPY OF EACH REQUESTED PUBLICATION, TEXT, TRANSCRIPT, OR VIDEO?

To the best of my ability, I have identified materials responsive to the question and have provided links where available. In many cases, I spoke without written remarks or with only notes or slides, but I will, of course, provide a copy of any requested publication, text, transcript, or video to the extent one is available.

GENERAL WRITINGS

Publications in Periodicals, on Blogs (other than those specifically noted below), or in Similar Fora

- *United States, The Privacy, Data Protection, and Cybersecurity Law Review* (October 2019), available at <https://www.sidley.com/-/media/publications/united-states-2019.pdf?la=en> (with Alan Charles Raul and Snezhana Stadnik Tapia).
- *Congress Must Protect America's Treaties*, *Foreign Affairs* (July 17, 2020), available at <https://www.foreignaffairs.com/articles/2020-07-17/congress-must-protect-americas-treaties> (with Scott R. Anderson).

- *Trump Could Lose and Not Leave. But Cabinet Members Who Try to Help Face Prison.*, Washington Post (July 9, 2020), available at <https://www.washingtonpost.com/outlook/2020/07/09/peaceful-transition-power-trump/> (with Joshua Geltzer and Laurence Tribe).
- *Carpenter and Everything After: The Supreme Court Nudges the Fourth Amendment into the Information Age*, American Bar Association Infrastructure and Regulated Industries Journal (Summer 2019), available at https://www.sidley.com/-/media/publications/fonzone-et-al-inf_v058n04_summer2019.pdf?la=en (with Kate Heinzelman and Michael R. Roberts).
- *"This Could Be Heaven or This Could Be Hell": Getting Ready for the (Hotel) California Consumer Privacy Act of 2018*, International Journal for the Data Protection Officer (April 2019) (with Clayton Northouse).
- *Carpenter v. United States: A Revolution in Fourth Amendment Jurisprudence?*, Pratt's Privacy & Cybersecurity Law Report, Volume: 4 Number: 9 (November/December 2018), available at <https://www.sidley.com/-/media/publications/pratts-privacy--cybersecurity-law-reportcarpenter-v-united-states-a-revolution-in-fourth-amendment.pdf?la=en> (with Kate Heinzelman and Michael R. Roberts).
- *The Trump Administration's Approach to Data Privacy, and Next Steps*, Law360 (September 28, 2018), available at <https://www.law360.com/articles/1086945/the-trump-admin-approach-to-data-privacy-and-next-steps> (with Alan Charles Raul).
- *Why it's Unconstitutional for Politicians – including the President – to Block People on Social Media*, Washington Post Outlook (September 26, 2018), available at <https://www.washingtonpost.com/outlook/2018/09/26/why-its-unconstitutional-politicians-including-president-block-people-social-media/> (with Joshua A. Geltzer).
- *After LabMD, Questions Remain for the Healthcare Sector*, Digital Health Legal (August 15, 2018) (with Kate Heinzelman).
- *Life Sciences and the AI Revolution*, Chambers and Partners (June 2018) (with Kate Heinzelman).
- *What Congress's First Steps Into AI Legislation Portend*, Bloomberg Law (May 8, 2018), available at <https://news.bloomberglaw.com/business-and-practice/what-congress-first-steps-into-ai-legislation-portend> (with Kate Heinzelman).
- *What the Military Law of Obedience Does (and Doesn't) Do*, American Constitution Society Issue Brief (March 2018), available at <https://www.acslaw.org/wp-content/uploads/2018/04/What-The-Military-Law-of-Obedience-Does-and-Doesnt-Do-0.pdf>.
- *Should the Government Regulate Artificial Intelligence? It Already Is*, The Hill (February 26, 2018), available at <http://thehill.com/opinion/technology/375606-should-the-government-regulate-artificial-intelligence-it-already-is> (with Kate Heinzelman).
- *DFARS Cyber Compliance and Potential for FCA Risk*, Law360 (December 18, 2017), available at <https://www.law360.com/cybersecurity-privacy/articles/994933/dfars-cyber-compliance-and-potential-for-fca-risk> (with Colleen Brown and Robert Conlan).

- *Can Trump refuse to fill key jobs?*, The Hill (July 31, 2017), available at <http://thehill.com/blogs/pundits-blog/the-administration/344606-can-president-trump-refuse-to-fill-key-jobs> (with Josh Geltzer).
- *It's Not Easy Being Green. A Young Industry Faces Its Biggest Test*, Financial Services Marketing (September/October 2001) (with Sherief Meleis).

Just Security Blog (see <https://www.justsecurity.org/author/fonzonechristopher/>)

- *The More Things Stay the Same: Why the Trump Administration's Counterterrorism Strategy is Surprisingly Conventional* (November 13, 2018) (with Luke Hartig).
- *What the Law of Military Obedience Can (and Can't) Do – What Happens if a President's Orders are Unlawful?* (May 4, 2018) (cross-posted at ACS Expert Blog, available at <https://www.acslaw.org/expertforum/what-the-law-of-military-obedience-can-and-cant-do-what-happens-if-a-presidents-orders-are-unlawful/>).
- *For Quick and Strong Justice, Look to the Courts – Not Guantanamo* (November 1, 2017) (with Joshua Geltzer).
- *Delegating Commander-in-Chief Powers – Where to Strike the Balance* (May 30, 2017) (cross-posted as *How Much Should Trump Delegate to His Generals?*, Newsweek, available at <http://www.newsweek.com/how-much-should-trump-delegate-his-generals-617643>).
- *How Trump's Team Can Use Obama's Counterterrorism Playbook to Defeat al-Qa'ida and ISIL* (February 21, 2017) (with Stephen Pomper).

Lawfare Blog (see <https://www.lawfareblog.com/contributors/cfonzone>)

- *The Irony of "White House Warriors"* (August 15, 2019).
- *Can President Trump Just Leave Key Executive Branch Offices Unfilled?* (July 5, 2017) (with Joshua A. Geltzer).

Sidley Data Matters Blog (see <https://datamatters.sidley.com/author/christopher-fonzone>)

- *East Coast Meets West Coast: Enter the Virginia Consumer Data Protection Act* (March 4, 2021) (with Alan Charles Raul, Colleen Theresa Brown, Richard D. Klingier, Lauren Kitces and Marriam Shah).
- *Third Time's the Charm: CCPA Regulations Finally Approved With Limited Substantive Changes from June 2020 Version* (August 20, 2020) (with Colleen Theresa Brown, Alan Charles Raul, Sheri Porath Rockwell and Michael R. Roberts).
- *Historic Charges: First Enforcement Action Filed by New York Department of Financial Services Under Cybersecurity Regulation* (August 19, 2020) (with Colleen Theresa Brown, Ellen M. Dunn, Joan M. Loughnane, Michael D. Mann, Alan Charles Raul, Michael R. Roberts and Laura Sorice).
- *The Return of the Mac: CCPA 2.0 Qualifies for California's November 2020 Ballot and Could Usher In Sweeping Changes to CCPA* (June 26, 2020) (with Colleen Theresa Brown, Kate Heinzelman, Alan Charles Raul, Sheri Porath Rockwell and Christopher D. Joyce).

- *CCPA Enforcement Date Rapidly Approaching: California Attorney General Proposes Regulations for Final Review With July 1, 2020 Less Than One Month Away* (June 4, 2020) (with Colleen Theresa Brown, Kate Heinzelman, Alan Charles Raul, Sheri Porath Rockwell and Michael R. Roberts).
- *In Midst of COVID-19 Pandemic, Senators Propose Privacy Bill Aimed At Businesses' Use of Consumer Data* (May 7, 2020) (with Colleen Theresa Brown, Kate Heinzelman and Michael R. Roberts).
- *Stay At Home Orders May Have Killed California's Ballot Initiative to Expand CCPA [***Update – But Californians for Consumer Privacy Say Maybe Not**]* (May 4, 2020) (with Sheri Porath Rockwell and Christopher D. Joyce).
- *CCPA Marches On: California Attorney General Proposes Further Revisions to CCPA Regulations, Industry Pleads for Enforcement Delay Amid COVID-19 Crisis* (April 10, 2020) (with Colleen Theresa Brown, Kate Heinzelman, Alan Charles Raul, Sheri Porath Rockwell and Michael R. Roberts).
- *Coronavirus Risks – U.S. and European Employment and Privacy Law Issues* (March 5, 2020) (with Susan Fanning, Wendy M. Lazerson, John G. Levi, Katherine A. Roberts, Colleen Theresa Brown, Kate Heinzelman, William RM Long and Alan Charles Raul).
- *DoD Issues Cybersecurity Maturity Model Certification Version 1.0* (February 24, 2020) (with Colleen Theresa Brown and Robin Wright Cleary).
- *A February 2020 Surprise: California Attorney General Proposes Significant Revisions to CCPA Regulations* (February 12, 2020) (with Colleen Theresa Brown, Kate Heinzelman, Alan Charles Raul, Sheri Porath Rockwell and Michael R. Roberts).
- *Comments Submitted on California Consumer Privacy Act of 2020 – Initiative 19-0021* (November 12, 2019) (with Alan Charles Raul and Colleen Theresa Brown).
- *CCPA In-Depth Series: Draft Attorney General Regulations on Verification, Children's Privacy and Non-Discrimination* (October 24, 2019) (with Alan Charles Raul, Colleen Theresa Brown and Sheri Porath Rockwell).
- *CCPA In-Depth Series: Draft Attorney General Regulations on Consumer Requests* (October 23, 2019) (with Alan Charles Raul, Colleen Theresa Brown and Sheri Porath Rockwell).
- *CCPA In-Depth Series: Draft Attorney General Regulations on Consumer Notice* (October 22, 2019) (with Alan Charles Raul, Colleen Theresa Brown and Sheri Porath Rockwell).
- *Final California Consumer Privacy Act Amendments Bring Practical Changes (But Your Business May Now Be a California "Data Broker")* (September 17, 2019) (with Alan Charles Raul, Colleen Theresa Brown and Sheri Porath Rockwell).
- *Carpenter and Everything After: The Supreme Court Nudges the Fourth Amendment into the Information Age* (September 3, 2019) (with Kate Heinzelman and Michael R. Roberts).

- *The CCPA Ripple Effect: Nevada Passes Privacy Legislation* (June 11, 2019) (with Colleen Theresa Brown and Elizabeth MacGill).
- *NYC Automated Decision-Making Task Force Forum Provides Insight Into Broader Efforts to Regulate Artificial Intelligence* (May 29, 2019) (with Shay Banerjee).
- *The New Congress Turns to an Old Issue – The Possibility of Comprehensive Federal Privacy Legislation* (March 18, 2019) (with Kristen Bartolotta).
- *FTC Seeks Comment on Proposed Changes to its GLBA Safeguards and Privacy Rules* (March 12, 2019) (with Seferina Berch and Snezhana Stadnik Tapia).
- *Takeaways From CCPA Public Forums* (February 12, 2019) (with Sheri Porath Rockwell).
- *U.S. Department of Transportation Issues Third Round of Guidance on Automated Vehicles* (November 5, 2018) (with Colleen Theresa Brown, Michael Mallow, Edward R. McNicholas, Matthew J. Warren, Kate Heinzelman, Elizabeth MacGill and Rachel Straus).
- *FERC Approves NERC's Supply Chain Risk Management Reliability Standards and Directs NERC to Expand Their Scope* (October 29, 2018) (with Gina S. Khanna).
- *California and Preemption* (October 10, 2018) (with Alan Charles Raul).
- *White House and Pentagon Announce New Cyber Strategies* (October 5, 2018) (with Feola Odeyemi).
- *The Trump Administration's Approach to Data Privacy, and Next Steps* (October 2, 2018) (with Alan Charles Raul).
- *Senate Hearing on Federal Privacy Law: Question is Not Whether But What Form* (September 28, 2018) (with Alan Charles Raul, Clayton G. Northouse and Stephen McInerney).
- *Why it's Unconstitutional for Politicians – Including the President – to Block People on Social Media* (September 27, 2018) (with Joshua A. Geltzer).
- *Movement Towards a Comprehensive U.S. Federal Privacy Law: Witnesses Prepare to Testify in Senate Hearing* (September 25, 2018) (with Alan Charles Raul, Clayton G. Northouse and Stephen McInerney).
- *Clean-Up Bill Advances to Amend the New California Consumer Privacy Act* (September 5, 2018) (with Alan Charles Raul, Colleen Theresa Brown, Kate Heinzelman and Sheri Porath Rockwell).
- *Coalition Groups Weigh In on CCPA Clean Up Legislation* (August 16, 2018).
- *After LabMD, Questions Remain for the Healthcare Sector* (August 15, 2018) (with Kate Heinzelman).
- *South Carolina Becomes the First State to Enact the National Association of Insurance Commissioners (NAIC) Insurance Data Security Model Law* (July 30, 2018) (with Stephen McInerney).

- *California Enacts Broad Privacy Laws Modeled on GDPR* (June 29, 2018) (with Alan Charles Raul, Edward R. McNicholas, Colleen Theresa Brown, Cameron F. Kerry, Michael Mallow, Amy Lilly and Ash Nagdev).
- *A Flurry of Recent Cybersecurity Activity from the Trump Administration* (June 25, 2018) (with Michael R. Roberts and Laura Sorice).
- *11th Circuit Vacates LabMD Enforcement Order; Casts Doubt on Decades of FTC Cybersecurity Enforcement Practices* (June 12, 2018) (with Timothy J. Muris, Alan Charles Raul, Cameron F. Kerry, Colleen Theresa Brown and Elizabeth MacGill).
- *Amid Growing Threats, White House Dismantles Top Cybersecurity Post* (May 29, 2018) (with Cameron F. Kerry, Michael R. Roberts and Laura Sorice).
- *Supreme Court Finds Expectation of Privacy for Rental Car Driver* (May 22, 2018).
- *DFAR Cybersecurity FAQs Provide Practical Guidance Highlighting Expansive Scope of Contractor Requirements* (May 15, 2018) (with Colleen Theresa Brown).
- *Potential Congressional Action on Cross Border Data? A Primer on the CLOUD Act* (March 13, 2018) (with Cameron F. Kerry and Edward R. McNicholas).
- *National Academy of Sciences Encryption Study* (February 21, 2018).
- *Movement on Section 702 of the Foreign Intelligence Surveillance Act* (January 22, 2018) (with Kate Heinzelman, Cam Kerry and Alan Raul).
- *Privacy and Cybersecurity Top 10 for 2018* (January 2, 2018) (with Alan Raul, Ed McNicholas, Cam Kerry, Colleen Brown, Wim Nauwelacrts, William Long, Clay Northouse, Isvari Mohan, Gabrielle Whitehall and Maarten Meulenbelt).
- *DFARS Cyber Compliance and Potential for FCA Risk* (December 18, 2017) (with Colleen Brown and Robert Conlan).

Sidley Updates (see <https://www.sidley.com/en/insights/?keyword=Fonzone&articletypes=055f7666-68bc-4cfb-9579-8d5cd0f3cd55¤tviewid=c412c0cf-22a6-45ac-974a-c7f6c0417c25&reload=false&scroll=1371.199951171875>)¹

- *COVID-19 U.S. Employment Law Update and Guidance for Employers* (May 11, 2020) (with Wendy M. Lazerson, John G. Levi, Marketa Lindt, Katherine A. Roberts, Colleen Theresa Brown, Alan Charles Raul, Julie O'Donnell Allen, Eric G. Hoffman, Galit A. Knotz, Abigail Hudson and Katie Sreenan).
- *COVID-19 – Privacy and Cybersecurity: An Action Plan For Businesses* (April 3, 2020) (with Colleen Theresa Brown, William RM Long and Alan Charles Raul).

¹ Some of the *Data Matters* blog posts identified above were simultaneously released as a Sidley client alert; I do not separately list such alerts here. (It is also possible that I was listed as a co-author on further alerts, although I am not aware of any.)

- *In Landmark Case, Illinois Supreme Court Sets Low Bar For Claims Under Illinois' Biometric Information Privacy Act* (January 30, 2019) (with Colleen Theresa Brown, Geeta Malhotra, Alan Charles Raul, Daniel C. Craig and Stephen W. McInerney).

In addition to the writings above, I remember submitting a small number of blog posts on *Talking Points Memo* while I was in law school. I could not readily locate these writings on the Internet or in my files.

WRITINGS IN ACADEMIC JOURNALS

- *Senate v. President: A Moot Court on Treaty Withdrawal Powers*, 113 PROCEEDINGS OF THE ASIL ANNUAL MEETING 141 (2019) (with Ginger Anders, Scott Anderson, Curtis Bradley, Catherine Powell and Donald Verilli, Jr.).
- *What About When the Best View is the Best View?*, 31 GEO. J. OF LEGAL ETHICS 305 (2018) (with Dana Remus).
- Note, *Dissent, Corporate Cartels, and the Commercial Speech Doctrine*, 120 HARV. L. REV. 1892 (2007).
- Case Comment, *The Supreme Court, 2005 Term – Leading Cases*, 120 HARV. L. REV. 125, 283 (2006) (discussing *Randall v. Sorrell*, 126 S. Ct. 2479 (2006)).
- Recent Case, *Capital Sentencing – Juror Prejudice – Colorado Supreme Court Holds Presence of Bible in Jury Room Prejudicial – People v. Harlan*, 109 P.3d 616 (Colo.), cert. denied 126 S. Ct. 399 (2005), 119 HARV. L. REV. 646 (2005).

SPEECHES AND SIMILAR ACTIVITIES

- Congressional Study Group on Foreign Relations and National Security, *Nuclear Command and Control* (May 7, 2020) (panelist).
- Sidley Austin CCPA Webinar Series – *The CCPA Has Kicked In: What to Do Now?* (January 22, 2020); *The Final Countdown: What You Need to Know About the CCPA and its Draft Regulations Before January 1* (November 5, 2019); *California, Here We Come: Getting Ready for the California Consumer Privacy Act* (March 27, 2019); *Getting Ready for the California Consumer Privacy Act* (September 25, 2018) (co-presenter at all four events).
- George Washington Hospital Residency Program, *Constitution Day! (or how to talk about things that aren't residency-related at parties)* (September 16, 2019) (speaker).
- National Committee on U.S.-China Relations, 2019 U.S. Foreign Policy Colloquium, *Questions of Liberty and Security* (May 30, 2019) (speaker).
- American Bar Association, 2019 Section of Litigation & Solo, Small Firm and General Practice Division CLE Conference, *"Trumping" International Law? The Administration at the Half-Term* (May 3, 2019) (panelist).
- American Society of International Law, 2019 Annual Meeting, *Senate v. President: A Moot Court on the President's Treaty Withdrawal Powers* (March 28, 2019), available at <https://www.youtube.com/watch?v=BN8khPdN0Kw&feature=youtu.be> (counsel for the Senate).

- USCYBERCOM Legal Conference 2019, *Persistent Engagement & Domestic Law Roundtable* (March 5, 2019) (moderator).
- Berkeley Center of Law and Technology, Conference on Privacy and Cybersecurity Law Developments in China, the EU, and the US: Cross Border Alignment and Compliance, *Data Governance and Consumer Privacy under GDPR, APEC, China, and US Frameworks* (March 1, 2019) (panelist).
- Brennan Center Symposium on Emergency Powers, *Presidential Emergency Powers, Former Executive Branch Officials* (January 16, 2019), available at <https://www.c-span.org/video/?457012-3/presidential-emergency-powers-executive-branch-officials&event=457012&playEvent> (moderator).
- American Society of International Law, 2018 International Law Weekend Conference, *Refole Me Once, Shame on Who? The United States and Non-refoulement under the Convention Against Torture in Armed Conflict* (October 19, 2018) (panelist).
- Association of Corporate Counsel, *Managing Legal Risk in the Information Era – Emerging Trends in Data Privacy and Cybersecurity: Litigation and Enforcement* (July 18, 2018) (panelist).
- The Society of International Economic Law 2018 Global Conference, Moderator, *A Conversation on Security-Based Investment Restrictions* (July 13, 2018), available at <https://media.wcl.american.edu/Mediasite/Play/669379b409d447f1bc6988aaebd78ee21d> (moderator).
- 11th Annual Sidley MCLE Mini Marathon, *Law on the Cutting Edge: Emerging Legal Issues in Cybersecurity and Artificial Intelligence* (June 14, 2018) (co-presenter).
- Massachusetts Technology Leadership Council Privacy and Policy Series, *The CLOUD Act & Other Government Access Programs vs. Customer Privacy* (May 1, 2018) (co-presenter).
- Princeton University, Woodrow Wilson School of Public and International Affairs, *Defending Democracy: Civil and Military Responses to Weaponized Information, Panel 4: Deterrence* (April 7, 2018), available at [http://www.kaltura.com/index.php/extwidget/preview/partner_id/1449362/uiconf_id/14292362/entry_id/1_lu0wfyd6/embed/auto?flashvars\[streamerType\]=auto](http://www.kaltura.com/index.php/extwidget/preview/partner_id/1449362/uiconf_id/14292362/entry_id/1_lu0wfyd6/embed/auto?flashvars[streamerType]=auto) (panelist).
- Sidley Privacy and Cybersecurity Roundtable, *The Future of Privacy and Cybersecurity Enforcement* (March 26, 2018) (panelist).
- 2018 Life Sciences College: Fostering Innovation Within the Regulatory Landscape, *Artificial Intelligence in Pathology: Raising the Bar for Medicine's Ground Truth* (March 20, 2018) (moderator).
- Sidley Tech Forum, *Tech Policy in an Age of Regulatory Uncertainty* (January 24, 2018) (panelist).
- National Constitution Center, *Podcast: Is The Fight Against ISIS Legal?* (November 10, 2017), available at <https://constitutioncenter.org/interactive-constitution/podcast/podcast-is-the-fight-against-isis-legal> (panelist).

- Council on Foreign Relations, International and National Security Law Roundtable Series, *The Trump Administration's National Security Law Policies: A Nine-Month Assessment* (November 2, 2017) (speaker).
- Harvard Law School, Conference on Challenges in the Application of IHL to Contemporary Armed Conflicts, *IHL's Role in the Policy-Making Process: Now and Looking Forward* (April 1, 2017) (speaker).
- USCYBERCOM Legal Conference 2015, *Address During Unclassified Day of the Legal Conference* (October 2015) (speaker).

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE AS THE GENERAL COUNSEL FOR THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE).

I have spent many years working on national security and intelligence legal issues from multiple vantage points – as an agency counsel, attorney at the Department of Justice, National Security Council (NSC) lawyer, and in private practice – and I believe these varied experiences have helped prepare me to serve as the General Counsel for the Office of the Director of National Intelligence (ODNI).

In particular, through my prior experiences, I am familiar with many of the legal regimes that apply to the Intelligence Community, such that I understand many of the substantive issues I would face if confirmed as ODNI's General Counsel. My prior roles also allowed me to work with lawyers from across the U.S. Government, creating relationships and providing experiences that would be very beneficial not only in performing ODNI's essential integrating role, but also in navigating the interagency legal process.

During my time at the NSC, I was also able to lead an Executive Branch legal office – the NSC Legal Adviser's Office – that worked alongside lawyers from the Intelligence Community on a number of time-sensitive and important legal issues. In this role, I managed a team of senior U.S. Government national security lawyers, learning how to support them as they used their expertise to address the many legal issues that came before the office. I also was able to gain substantial experience counseling senior officials on pursuing their national security objectives consistent with the law, being careful to distinguish legal advice from more general counseling on risks and opportunities.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS).

Contributions:

Biden for President	\$1,000 (9/2020)
Biden Victory Fund	\$1,000 (9/2020)
Biden for President	\$1,000 (4/2020)

Biden for President	\$1,000 (11/2019)
Sidley Austin LLP Good Government Fund	\$500 (3/2019)
Friends of Dan Feehan	\$250 (10/2018)
Andy Kim for Congress	\$500 (10/2018)
Colin Allred for Congress	\$250 (7/2018)
Maura Sullivan for Congress	\$500 (3/2018)
ActBlue	\$10 (3/2018)
Andy Kim for Congress	\$500 (3/2018)
Sidley Austin LLP Good Government Fund	\$500 (12/2017)

Other Activities: In addition to the above contributions, I was a member of the Legal Working Group for the Counterterrorism Policy Committee for the Biden campaign.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE).

I have never been a candidate for elective public office.

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

In 2018, Sidley Austin LLP filed an amicus brief and argued in the Supreme Court on behalf of the Ministry of Commerce of the People's Republic of China in *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.* My sole involvement was participation in a moot court to prepare other advocates for the argument.

In 2019 and 2020, at the request of a partner, I contributed to the U.S. section of a quarterly report on global privacy developments provided to the Hong Kong Trade Development Council, a statutory body based in Hong Kong.

Because it is often unclear whether an entity is foreign government-controlled and because Sidley Austin

does not systematically track clients in that way, it is possible that Sidley Austin may have clients I represented that might be characterized by some as responsive to this question. Accordingly, I have provided my full client list in response to Question #35.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

As an international law firm with offices overseas, Sidley Austin has a practice representing foreign government and foreign government-controlled entities. The firm's records, however, do not systematically identify which clients are foreign government or foreign government-controlled entities. I have thus reviewed the list of clients for whom Sidley was registered under the Foreign Agent Registration Act (FARA) and consulted with individuals who I believe have knowledge of our international representations, including in our New Business/Conflicts Department. With respect to FARA, the list of clients for whom Sidley was registered since I joined the firm is as follows:

- beIN Media Group LLC
- Department for International Trade, Government of the United Kingdom (current)
- Government of Israel (current)
- Hong Kong Trade Development Council
- JSC/VTB Bank (current)
- TENEX, Joint Stock Company (current)

In an effort to be as transparent as possible, I have also reviewed and am disclosing the firm's filings under the Lobbying Disclosure Act (LDA), which are publicly available at <https://lda.senate.gov/system/public/>. LDA registration can serve as an exemption from the need to register under FARA in certain circumstances.

Based on my consultations, I also understand that Sidley represents foreign government and foreign government-controlled entities in engagements that would not be required to be reflected in a FARA or LDA registration. Sidley undertakes these engagements in a number of practice areas, including global arbitration, trade, and advocacy, U.S. litigation and disputes, investment funds, capital markets, global finance, energy, immigration, and many other fields. These engagements have led to Sidley representing a number of foreign governments (at times through their ministries) and foreign government-controlled entities, including those from Bhutan, Canada, China, Colombia, Costa Rica, Guyana, Israel, Mexico, Peru, Qatar, Senegal, Singapore, and the United Kingdom.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No. I do share in the income of Sidley's partnership and that income has been derived in part from engagements with foreign governments and entities controlled by foreign governments as described above.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

I am not and never have been a registered lobbyist. Since joining Sidley in 2017, a portion of my practice has consisted of advising clients on legal matters involving federal law or public policy. Outside of litigation, I do not recall appearing before the federal government during these engagements.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

During the nominations process, I have consulted with the Designated Ethics Official at the Office of the Director of National Intelligence, who has, in turn, consulted with the Office of Government Ethics, to identify potential conflicts of interest. As a result of this process, potential conflicts with Sidley Austin LLP, PT Fund, Inc., the NYU Reiss Center on Law and Security, and my spouse's employers have been identified in an Ethics Agreement, which has been provided to the Committee. More broadly, I will follow the advice of ethics officials to address any potential conflicts of interest identified, in order to resolve them in a manner that is consistent with the conflicts of interest statutes, applicable standards of conduct, and the terms of my aforementioned Ethics Agreement.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

If confirmed, I will resign from Sidley Austin LLP. As described on my OGE 278e, Sidley will make a lump-sum payment of my capital account and final partnership share after I withdraw, with the total amount of the payment calculated as of the date of my withdrawal. I will also continue to participate in Sidley's Savings and Investment Plan, Retirement Plan for Partners, and Cash Balance Retirement Plan for Partners, although the firm will not make further contributions after my separation.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

If confirmed, I do not have plans for what I would do after serving in the Government again. I have no agreements or understandings, written or unwritten, concerning employment after leaving government service.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

Not applicable.

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

My spouse is employed and her employment is not related to the position to which I have been nominated.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

<u>NAME OF ENTITY</u>	<u>POSITION</u>	<u>DATES HELD</u>	<u>SELF OR SPOUSE</u>
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INFORMATION REDACTED

27. LIST ALL GIFTS EXCEEDING \$100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

I am not certain if I have received any gifts in the past five years that are responsive to this question, although I note the following:

On a few occasions, colleagues from Sidley Austin have taken me to dinner (sometimes with my spouse) and, on one occasion, to a Capitals playoff game; it is possible that the value of one or more of these events may have exceeded \$100. In 2017, when I was interviewing with law firms, a couple of firms took me, in one case with my spouse, to lunch and/or dinner, and it is also possible that the value of one of these meals may have exceeded \$100.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF \$1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

<u>DESCRIPTION OF PROPERTY</u>	<u>VALUE</u>	<u>METHOD OF VALUATION</u>
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Please refer to my OGE 278e.

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF \$10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

<u>NATURE OF OBLIGATION</u>	<u>NAME OF OBLIGEE</u>	<u>AMOUNT</u>
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Please refer to my OGE 278e.

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING \$200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

INFORMATION REDACTED

Note: The includes my individual income and the taxable income from all bank and investment accounts held jointly with my spouse. My spouse and I have not yet worked with our tax preparer to finalize our 2020 tax returns, so the 2020 information in the table above is preliminary, although it should be close to or at the forthcoming final totals.

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

In addition to our federal taxes, we also file returns in Virginia and California (the latter due to my Sidley partnership). I have also participated in composite returns filed by Sidley Austin LLP in multiple jurisdictions.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

In 2007, I moved to Charlottesville, VA for a clerkship while my spouse was finishing her medical residency in Boston, MA. With the assistance of a tax preparer, my spouse and I filed returns in Massachusetts and Virginia, but did not include my Virginia wages on my Massachusetts return. In 2010, Massachusetts informed us that my Virginia wages should have been included on my Massachusetts return (since I was working in Virginia as a non-resident), and we immediately corrected the return (with our tax preparer offering free assistance).

35. GIVEN YOUR ROLE AS AN ATTORNEY, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN \$200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I am currently licensed to practice in Pennsylvania and the District of Columbia. In addition, I have practiced before a number of federal courts (primarily as a government attorney when I was with the Civil Appellate Staff at the Department of Justice).

I have listed below major clients (which I am considering to be clients to whom I billed more than 50 hours since I joined Sidley Austin in November 2017):

American College of Medical Genetics and Genomics
 Angeles Investment Advisors, LLC
 Apple Inc.
 AT&T Corp.
 AT&T, Inc.
 Charter Communications, Inc.
 CUNA Mutual Insurance Society
 GCI Liberty, Inc.
 LPL Financial, LLC
 Microsoft
 Morgan Stanley
 StoneX Group, Inc.
 Twitter, Inc.
 Vitalize LLC

I have worked fewer hours for the following clients:

22C Capital LLC
 Abbott Laboratories
 Advisor Group, Inc.
 AFLAC Incorporated
 Akastor ASA
 Aledade, Inc.
 Ancient Management LP
 Altamont Capital Partners
 Alticor Inc.
 Anchorage Capital Group, LLC
 Aramark Corporation

Archer Daniels Midland Company
Argo Group US, Inc.
Ashcombe Limited
Atento SA
Atrium Health
Autodesk
Balyasny Asset Management L.P.
Banc of America Securities LLC
Bank of America
Basecamp, LLC
BDev Ventures, LLC
Best Buy Co. Inc.
Boxed Water is Better, LLC
Cadian Capital Management, LLC
Canyon Partners LLC
Capital Integration Systems, LLC
Cardiovascular Systems, Inc.
CIGNA Corporation
CIT Group, Inc.
Civis Analytics, Inc.
College of American Pathologists
Cort Business Services Corporation
D.A. Davidson & Co.
Deloitte LLP Board of Directors
DIRECTV, LLC
DW Partners, LP
Eagle Materials, Inc.
Enterprise Products Partners, L.P.
Eurazeo SE
Evercore Partners
ExodusPoint Capital Management, LP
Expanse, Inc.
Facebook, Inc.
Farallon Capital Management, LLC
First Legal Network, LLC
First Service Residential, Inc.
Freedom Financial Network, LLC
FS Brands, Inc.
Gamma Biosciences L.P.
Goldman Sachs & Co., LLC
Goldman Sachs International
Great Hill Partners
Hilltop Securities, Inc.
HMS Holdings Corp.
Hobbes Huey Holdings, LLC
Hoffman - La Roche Inc.
Home Partners of America Inc.
Hong Kong Trade Development Council
Huawei Technologies, Co. Ltd.
Husky Marketing and Supply Company
Hyundai Motor America

ICA Gruppen AB
In-Q-Tel, Inc.
Inmed Incorporated
ITRenew, Inc.
JPMorgan Chase
King Street Capital Management, L.L.C.
Kohlberg Kravis Roberts & Co. Partners LLP
Kuvare US Holdings, Inc.
Las Vegas Sands Corp.
Len the Plumber, LLC
Lone Pine Capital
Magnitude Capital, LLC
Marathon Asset Management, LP
Marlin Management Company LLC
Mastercard
McKesson Corporation
MiMedx Group, Inc.
Ministry of Commerce of the People's Republic of China
National Hockey League Players' Association
Neurohacker Collective, LLC
Nevro Corp.
New FM Acquisition Company LLC
New York Life Insurance Company
News UK & Ireland Limited
Nu Skin Enterprises, Inc.
Old Republic International Corporation
OMERS Private Equity Inc.
One Technologies LLC
Pacific Coast Manufacturing, Inc.
PagnatoKarp Partners, LLC
Palisade Capital Management, L.L.C.
Perforce Software, Inc.
Premier Performance Products
Pruco Securities, LLC
Queen's Park Equity GP Co Limited
Recorded Future
Roche Molecular Systems, Inc.
Rohrer Corporation
Safe Harbor Marinas, LLC
Seattle Genetics, Inc.
Service.com, Inc.
Sight Machine
Simon Markets LLC
Siris Capital Group, LLC
Sixth Street Partners, LLC
Spectraforce Technologies, Inc.
Spencer Foundation
Susquehanna International Group, LLP
Synchrony Financial
Taconic Capital Advisors LP
Taylor M. Hill

Tennessee Fine Wines and Spirits, LLC
 The HollyFrontier Companies
 The Incentrum Group
 The Medicines Company
 The Options Clearing Corporation
 The Western Union Company
 Thoma Bravo, LLC
 Thompson Street Capital Partners
 TodayTix, Inc.
 TowerBrook Capital Partners L.P.
 TPG Global, LLC
 Trek Bicycle Corporation
 Tricida, Inc.
 Two Sigma Investments, LP
 United Services Automobile Association
 Vector Capital Corporation
 venBio Partners LLC
 Vista Equity Partners Management
 Vital Proteins LLC
 Waterfall Asset Management, LLC
 Wexford Capital LLC
 Zingbox, Inc.
 ZMC Management, L.L.C.

In addition, I have represented one client in a non-public investigative matter whose identity I am unable to disclose because of bar ethical rules.

In 2017, before I started at Sidley Austin LLP, I also did some consulting work for Orin Kramer.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No. My financial interests consist of diversified mutual funds, bonds, and cash or cash equivalents. I will follow the advice of government ethics officials to address any potential conflicts of interest.

37. IF APPLICABLE, LIST THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE REPORTS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT. IF ASKED, WILL YOU PROVIDE A COPY OF THESE REPORTS?

I do not recall being asked to file an annual financial disclosure report during the last three years.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION,

DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PLEASE PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PLEASE PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PLEASE PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PLEASE PROVIDE DETAILS.

In 2017, the Department of Justice interviewed me as part of an investigation into an unauthorized disclosure of classified information. As far as I am aware, I am not and have never been a target of the investigation, and I have not been asked to provide any additional information since the one interview.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PLEASE PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

To the best of my knowledge, no.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

PART F - SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

No.

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE GENERAL COUNSEL FOR THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS, RESPECTIVELY, IN THE OVERSIGHT PROCESS.

Under the Constitution, the institutions of the federal government, including the Intelligence Community, are accountable to the American people. Congress, through the exercise of its oversight functions, plays a key role in ensuring this is the case, and this role is particularly important when it comes to national security and intelligence matters, which often must be conducted in secret. The Intelligence Committees have access to classified information that is not widely available, and they thus play a crucial role in reviewing the Intelligence Community's activities to ensure that they are not only lawful but also in the Nation's interest.

The General Counsel of the Office of the Director of National Intelligence (ODNI) has a key role to play in ensuring that this oversight regime is effective. Congress has enacted a number of laws that place a responsibility on the Director of National Intelligence to provide information to and work with the Congressional Intelligence Committees, most prominently a law that requires the Director to keep the Committees "fully and currently informed" of intelligence activities, including "any significant anticipated intelligence activity and any significant intelligence failure." I believe that, as ODNI's chief legal officer, the General Counsel must assist the Director in interpreting and complying with these statutory requirements, and more broadly help the Director maintain an effective relationship with Congress.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL FOR THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

By statute, the General Counsel is the "chief legal officer of the Office of the Director of National Intelligence" and "shall perform such functions as the Director of National Intelligence may prescribe."

Consistent with this text, if confirmed, I believe my primary responsibility will be advising the Director so she can carry out her duties in a lawful manner. I would also anticipate supporting her leadership of ODNI in other ways, including by assisting her in carrying out her statutory responsibility to ensure that Intelligence Community components comply with the Constitution and laws of the United States and by providing counsel on the many questions that may cross her desk where the law does not provide a determinate answer but there are relevant legal and ethical considerations.

In addition to advising the Director, my understanding is that, as ODNI's chief legal officer, the General Counsel will work with the team of attorneys in the General Counsel's office to handle the full range of legal and ethical issues before ODNI and advise and provide counsel to the Office's senior officials and other employees.

As noted above, I anticipate that a key part of the General Counsel's responsibilities to the Director and other ODNI officials and employees will be advising on their obligations to, and providing counsel on more broadly maintaining an effective relationship with, Congress.

Finally, I believe the General Counsel also has an important role to play in advancing ODNI's integration mission, working with lawyers from across the Intelligence Community to coordinate a response to cross-cutting legal questions. The General Counsel also frequently participates in interagency legal discussions beyond the Intelligence Community, ensuring that ODNI's equities are represented in those discussions and assisting other Executive Branch lawyers in thinking through any questions of broader application.

AFFIRMATION

I, CHRISTOPHER CHARLES FONZONE, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

April 1, 2021
(Date)

SIGNATURE OF CHRISTOPHER CHARLES FONZONE

SIGNATURE OF NOTARY

CHAUNCEY ERIC DEWAYNE FORBES
NOTARY PUBLIC
REGISTRATION # 357756
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
OCTOBER 31, 2021



TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be the General Counsel for the Office of the Director of National Intelligence, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

SIGNATURE OF CHRISTOPHER CHARLES FONZONE



**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Prehearing Questions for
Mr. Christopher Fonzone upon his nomination to be
General Counsel for the Office of the Director of National Intelligence**

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence (DNI) and to the heads of all departments, agencies, and other entities of the U.S. Government involved in intelligence activities. What is your understanding of the standard for meaningful compliance with this obligation by the Office of the Director of National Intelligence (ODNI) and the heads of all departments, agencies and other entities of the U.S. Government involved in intelligence activities to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities? Under what circumstances do you believe it is appropriate to brief the Chairman and Vice Chairman and not the full committee membership?

ANSWER: Section 502 of the National Security Act states that the DNI and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities “shall keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than covert actions” (which are covered in Section 503).

I am aware that DNIs have issued IC-wide directives on the subject of congressional notifications to ensure timely reporting to Congress consistent with Section 502. In particular, the publicly available Intelligence Community Directive (ICD) 112, issued by Director Coats in 2017, establishes Intelligence Community (IC) policy with respect to providing written notification to the House and Senate intelligence committees in order to keep them fully and currently informed of intelligence activities. If confirmed, I will help to ensure IC elements comply with their legal and policy requirements regarding congressional notification, including Section 502 and ICD 112.

Section 502 also provides that congressional notification must be made “[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.” Consistent with Director Haines’s statements during her confirmation process, I do not believe this provision limits the obligation to keep the intelligence committees fully informed, but I do understand it to afford the DNI a degree of latitude in deciding how she will bring extremely sensitive matters to the committees’ attention. This could mean, as Director Haines noted, that it might be appropriate to brief the Chairman and Vice Chairman of the intelligence committees on particularly sensitive matters, although such limited notification should be undertaken only in the most exceptional circumstances. Moreover, my understanding is that, where exceptional circumstances have required limited congressional notification, it has been the case that committee leadership would work with the Executive Branch to determine when to expand access to the information to the full committee.

Priorities of the Director of National Intelligence

QUESTION 2: Have you discussed with the DNI her specific expectations of you, if confirmed as General Counsel, and her expectations of the Office of the General Counsel

as a whole? If so, please describe those expectations.

ANSWER: Director Haines and I have discussed her expectation that, if confirmed as General Counsel, I would work with the career lawyers in the Office of General Counsel to provide her and other officials at ODNI with sound, timely, and relevant legal advice and ensure that the IC's activities comply with the Constitution and laws of the United States. She also expressed her view that the Office of General Counsel has an important role to play in furthering ODNI's integration mission by helping to coordinate legal issues that cut across IC components. Finally, and most importantly, she emphasized the importance she places on integrity and the rule of law—and how she wants her legal counsel to help her address the issues and challenges that cross her desk, but to be unafraid to deliver tough advice when doing so, if necessary. This is a view of the lawyer's role that I very much share.

The Office of the General Counsel

QUESTION 3: The Office of the General Counsel of the ODNI has many roles and responsibilities. What are your expectations for the Office?

- a. Do you have any preliminary observations on its responsibilities, performance, and effectiveness?
- b. If confirmed, will you seek to make changes in the numbers or qualifications of attorneys in the office, or the operations of the office?

ANSWER: By statute, the ODNI General Counsel is “the chief legal officer of the Office of the Director of National Intelligence” and “shall perform such functions as the Director of National Intelligence may prescribe.” During her confirmation process, Director Haines stated that she expects the responsibilities of the ODNI General Counsel to include ensuring that intelligence activities comply with the Constitution and laws of the United States.

If confirmed, I would expect the lawyers in ODNI's Office of the General Counsel to assist me in performing this and other responsibilities with the highest levels of professionalism and integrity. In particular, if confirmed, I would expect to work with the attorneys in the Office to advise ODNI's senior officials and other employees on the full range of legal and ethical issues before the agency; to advance ODNI's integration mission, working with lawyers from across the IC on cross-cutting legal questions; and to maintain an effective working relationship with Congress.

During my previous government service, I worked closely with lawyers from the ODNI Office of the General Counsel, and I was always impressed with their professionalism and effectiveness. My more recent and limited interactions with lawyers in the office's current management, as well as others who have worked for, or interacted with, the office, have left the same impression. If confirmed, I would thus consult with the current management and staff before determining whether changes in numbers or qualifications of attorneys in the office or the operations of the office would benefit the office, ODNI, or the broader IC.

QUESTION 4: Please describe who or what you understand to be your client or clients

in the position of General Counsel of the Office of the Director of National Intelligence (ODNI/GC). As part of your answer, please address how that will guide your relationship with and obligations to the ODNI, the DNI, the Intelligence Community (IC) as a whole, and the President.

ANSWER: Section 103C of the National Security Act states that the ODNI General Counsel is the chief legal officer of ODNI and performs such functions as the DNI may prescribe. The General Counsel's principal clients are thus the DNI and other senior ODNI officials and employees, and, if confirmed, I would anticipate working with lawyers from ODNI's Office of General Counsel to provide legal counsel to these officials in a manner consistent with the oath I would take to support and defend the Constitution.

If confirmed, I would also expect to engage cooperatively with my counterparts in the IC, other departments and agencies, and the Executive Office of the President. It is my understanding that not only does the Office of General Counsel support the DNI as she fulfills her responsibility to ensure IC elements comply with the Constitution and laws of the United States, but it also can play a key role in supporting ODNI's role in integrating the IC. In particular, I understand that the Office of General Counsel is well positioned both to identify and, where appropriate, coordinate efforts to resolve cross-cutting legal issues within the IC, and to present the IC's consensus legal positions to other parts of the Federal Government.

QUESTION 5: Please explain how you would respond to each of the following scenarios:

- a. If the President or a White House official asks you to perform an action that is in the President's interest, but contrary to the interests of the IC and/or the ODNI.
- b. If you become aware that the President or a White House official has asked the DNI to perform an action that is in the President's interest, but contrary to the interests of the IC and/or the ODNI.

ANSWER: I expect the President and the members of his national security team to perform their responsibilities with the highest levels of professionalism and integrity, while working tirelessly to protect the national security of the United States. As the principal advisor to the President and his leadership team for intelligence matters related to national security, the DNI must ensure that these senior government officials receive the best intelligence possible on which to base policy decisions that provide for the security of the nation as a whole. The DNI also has the statutory responsibility to ensure compliance with the Constitution and laws of the United States by the CIA and by other elements of the IC through the host executive departments of those elements. If confirmed, I would support the DNI in performing these vital responsibilities, working with my counterparts across the Executive Branch to do so, in a manner consistent with the oath I would take to support and defend the Constitution.

QUESTION 6: Describe your understanding of the responsibilities of the DNI and the GC/ODNI in reviewing, and providing legal advice on, the work of the Central

Intelligence Agency (CIA), including covert action undertaken by the CIA.

ANSWER: The National Security Act makes the DNI the head of the IC, states that the Director of the CIA shall report to the DNI regarding the activities of the CIA, and charges the DNI with many responsibilities relating to the IC, including the CIA. These responsibilities include ones relating to budget requests and appropriations for the National Intelligence Program, oversight of intelligence priorities and taskings, and governance of intelligence activities. In addition, the DNI has a specific mandate to ensure that the activities of CIA, including covert action, comply with the Constitution and laws of the United States. The ODNI General Counsel plays a central role in helping the DNI carry out these responsibilities and works closely with the General Counsel of the CIA to do so.

QUESTION 7: Explain your understanding of the role of the ODNI/GC in resolving conflicting legal interpretations within the IC.

ANSWER: By statute, the DNI is both the head of the IC and responsible for ensuring compliance with the Constitution and laws of the United States by the CIA and by other elements of the IC through the host executive departments of those elements. Given these dual roles, it is my understanding that ODNI – and the Office of General Counsel, in particular – is well positioned to identify cross-cutting legal issues or conflicting legal interpretations within the IC, and, where appropriate, to coordinate efforts to resolve those issues. If confirmed, I would expect to work with lawyers from the Office of General Counsel and counterparts across the Executive Branch to undertake these efforts at resolving interpretive conflicts.

Guidelines under Executive Order 12333

QUESTION 8: One of the fundamental documents governing the activities of the IC is Executive Order 12333. Under Executive Order 12333, as amended in July 2008, there are requirements for Attorney General-approved guidelines. For each of the following requirements, please update the Committee on the principal matters to be addressed by each of the required Attorney General-approved guidelines or procedures, any issues you believe need to be resolved, and your perspective on where things stand at present.

- a. Guidelines under section 1.3(a)(2) for how information or intelligence is provided to, or accessed by, and used or shared by the IC, except for information excluded by law, by the President, or by the Attorney General acting under presidential order in accordance with section 1.5(a).
- b. Procedures under section 1.3(b)(18) for implementing and monitoring responsiveness to the advisory tasking authority of the DNI for collection and analysis directed to departments and other U.S. entities that are not elements of the IC.
- c. Procedures under section 1.6(g) governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities

abroad if the elements of the IC involved have intelligence responsibilities for foreign or domestic criminal drug production and trafficking.

- d. Regulations under section 1.7(g)(1) for collection, analysis, production, and intelligence by intelligence elements of the Federal Bureau of Investigation (FBI) of foreign intelligence and counterintelligence to support national and departmental missions.
- e. Procedures under section 2.3 on the collection, retention, and dissemination of United States person information and on the dissemination of information derived from signals intelligence to enable an IC element to determine where the information is relevant to its responsibilities.
- f. Procedures under section 2.4 on the use of intelligence collection techniques to ensure that the IC uses the least intrusive techniques feasible within the U.S. or directed at U.S. persons abroad.
- g. Procedures under section 2.9 on undisclosed participation in any organization in the United States by anyone acting on behalf of an IC element.

ANSWER: It is my understanding that, since the 2008 amendments to Executive Order 12333, a number of IC elements have engaged in a process to issue new or updated procedures consistent with the requirements set forth in the Executive Order (and captured by this question). It is also my understanding that the ODNI Office of General Counsel has been substantially involved in developing these procedures and has primarily sought to ensure that their requirements are, to the greatest extent possible, consistent across the IC, while accounting for elements' unique missions and authorities. In particular, I am aware that last year the DNI issued new Attorney General-approved procedures governing the conduct of ODNI intelligence activities concerning U.S. persons. My understanding is that those procedures, which took effect in March of this year, are the first set of U.S. person procedures to apply to all ODNI directorates and centers.

If confirmed, I plan to review the approach IC elements have taken to the requirements laid out in this question and continue to make engagement in the process of developing new or updated procedures under the Executive Order a priority for the ODNI Office of General Counsel.

Foreign Intelligence Surveillance Act

QUESTION 9: The FISA Amendments Reauthorization Act of 2017 (P.L. 115-118) was enacted on January 19, 2018 (hereinafter, the Act). Under section 702, the Attorney General and the DNI may authorize jointly, for a period up to one year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. Section 702(l) also provides for semiannual or annual assessments and reviews.

- a. Describe your understanding of the matters that the Attorney General and DNI,

with the assistance of the ODNI/GC, should evaluate in order to determine whether there should be revisions in the substance or implementation of (1) targeting procedures, (2) minimization procedures, (3) querying procedures, and (4) guidelines required, to ensure both their effectiveness and their compliance with any applicable constitutional or statutory requirements.

- b. Describe how the semiannual or annual assessments and reviews required by the Act should be integrated, both in substance and timing, into the process by which the Attorney General and DNI consider whether there should be revisions for the next annual authorization or authorizations under the Act, including in applicable targeting, minimization, and querying procedures and guidelines.
- c. In addition to the matters described in the Act for semiannual or annual assessment or review, are there additional matters that should be evaluated periodically by the Attorney General or the DNI to improve and ensure the lawful and effective administration of the Act?

ANSWER: Section 702 of the Foreign Intelligence Surveillance Act (FISA) authorizes the Attorney General and the DNI to make annual certifications that allow IC elements to target non-U.S. persons reasonably believed to be located outside the United States to acquire specific categories of foreign intelligence information. By statute, these certifications must include certain representations regarding procedures and guidelines required under the statute, including that they are consistent with the requirements of the Fourth Amendment to the Constitution of the United States. In making these certifications, it is my understanding that the Attorney General and DNI rely on information they have learned through the regular and extensive oversight of the Section 702 program the Department of Justice and ODNI perform. This oversight includes the assessments made pursuant to Section 702(m) of FISA, which requires the Attorney General and the DNI to assess compliance with the procedures and guidelines adopted pursuant to the statute and submit these assessments to the Foreign Intelligence Surveillance Court (FISC) and the relevant congressional oversight committees at least once every six months.

I understand that the ODNI Office of General Counsel plays an integral role in conducting oversight of Section 702 activities, including the assessments required by subsection (m). If confirmed, I will ensure that ODNI Office of General Counsel remains closely involved in these oversight activities, consider whether any additional oversight or evaluation would improve the law and effective administration of the program, and inform the Committee if such additional oversight or evaluation would be appropriate.

QUESTION 10: The USA FREEDOM Act of 2015 (P.L. 114-53) reauthorized three national security tools – Business Records collection, Roving Surveillance, and the Lone Wolf provision – that expired on March 15, 2020.

- a. Given your experience at the Department of Justice, what concerns do you have with the expiration of these authorities?

- b. If confirmed as ODNI/GC, what efforts would you undertake to address these concerns?

ANSWER: The provisions of FISA that expired on March 15, 2020, have bipartisan support and provide tools to protect Americans while protecting their rights. Director Haines thus stated during her confirmation process that she supports reauthorization of the expired provisions, and, if confirmed, I look forward to working with Congress to this end.

Encryption

QUESTION 11: The IC has faced growing issues with encryption and the “Going Dark” problem in pursuing national security investigations.

- a. What do you see as the greatest challenge facing the IC regarding encryption and the Going Dark problem?
- b. How do you plan to work with other elements of the IC and the Department of Justice to tackle the Going Dark problem?
- c. What federal, state, and local partners do you foresee engaging in these efforts?

ANSWER: I agree with Director Haines, who stated during her confirmation process that the encryption of data is essential, that strong encryption promotes cyber security, thwarts criminals, and preserves privacy, but that encryption can present challenges for law enforcement investigations. Like Director Haines, I do not have the answer for how to approach this incredibly challenging issue, but I believe it is integral that the IC ensure that policymakers throughout the Executive Branch and in Congress have the information they need to understand the implications of encryption on privacy and national security. If confirmed, I would work with the General Counsels of the other IC elements, as well as lawyers from the Department of Justice and elsewhere in the federal government, to provide this information, as well as work with any appropriate partners to seek pragmatic and constructive approaches to the challenges posed by encryption.

Other Surveillance Matters

QUESTION 12: Section 4 of PPD-28 calls on each IC element to update or issue policies and procedures to implement principles for safeguarding all personal information collected through SIGINT. Those policies and procedures are currently posted publicly. Will you ensure that the IC continues to post these policies and procedures as well as any modifications, superseding policies and procedures, or significant interpretations?

ANSWER: If confirmed, I will seek to ensure that the IC follows all legal requirements relating to PPD-28, including its provision requiring IC elements to release publicly certain implementation policies to the maximum extent possible, consistent with classification

requirements. I believe that doing so is a critical element of the IC's transparency efforts, which, as PPD-28 recognizes, can enhance public understanding of, and public trust in, intelligence activities.

QUESTION 13: Are there any circumstances in which an element of the IC may *not* conduct a warrantless search for a U.S. person of communications that have been collected pursuant to Section 12333? If so, please describe.

ANSWER: As set forth in Section 2.3 of Executive Order 12333, IC elements are authorized to collect, retain, and disseminate information concerning U.S. persons only in accordance with Attorney General-approved procedures. These procedures set forth the circumstances when IC elements may lawfully collect, retain, and disseminate U.S. person information and the limitations on their ability to do so. If confirmed, I would work with General Counsels throughout the IC, as well as the Department of Justice, to ensure that all IC activities are carried out in accordance with these IC elements' Attorney General-approved procedures, as well as the Constitution and all other applicable federal law.

Transparency

QUESTION 14: Executive Order 13526 (December 29, 2009) provides that: "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security." Executive Order 13292 (March 25, 2003) and Executive Order 12958 (April 17, 1995) prohibited classification based on the same factors. Do you agree with the prohibitions in these Executive Orders?

ANSWER: Yes.

QUESTION 15: If, for any reason, you make a public statement that is inaccurate, do you commit to making a public statement correcting the record?

ANSWER: I intend for any public statements that I make to be entirely accurate. However, if confirmed, if I inadvertently make a public statement that is inaccurate, I would publicly correct the statement, consistent with the requirement to protect properly classified information. Moreover, if I am not able to make a public correction because of a requirement to protect such information, I will inform the intelligence committees of the inaccuracy in a classified setting.

Evaluation of Office of the Director of National Intelligence

QUESTION 16: Members of the Committee have expressed concern that the ODNI does not have all of the legal authorities necessary to fulfill congressional expectations for the office. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to a successful mission of the ODNI? If so, please

describe.

ANSWER: As Director Haines stated during her confirmation process, the Intelligence Reform and Terrorism Prevention Act of 2004, which amended the National Security Act to establish the DNI and the ODNI, provides significant authority to the DNI in the execution of her IC management role. If confirmed, I will have an opportunity to better understand how this authority is exercised in practice and evaluate its strengths and weaknesses. If, based on this evaluation, I believe additional authority may be necessary for the ODNI to carry out its mission, I pledge to inform the Committee and work with them on the matter.

QUESTION 17: Members also have expressed concerns that the ODNI's bureaucracy has resulted in inefficiencies. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to the ability of the General Counsel's office to function within the ODNI bureaucracy? If so, please describe.

ANSWER: I have not yet had a sufficient opportunity to observe the operation of the ODNI's organizational structure, or the authorities that underlie it, to form an opinion on how that structure may affect the functioning of the Office of General Counsel. If confirmed, I will consider this question and work closely with the Committee should I identify any impediments.

Intelligence Community Whistleblowers

QUESTION 18: Do you believe that IC whistleblowers currently have all the protections they need to interact directly with the congressional intelligence committees?

- a. If not, what legal authorities are required to ensure these protections?
- b. If so, what legal authorities provide the basis for those protections?

ANSWER: I agree with the views expressed by Director Haines during her confirmation process: that whistleblowers serve a vital role within the IC—and the federal government more broadly—by promoting government accountability, maintaining the integrity of the workforce, and addressing allegations of wrongdoing without improperly disclosing classified information. The Intelligence Community Whistleblower Protection Act provides IC whistleblowers the means to report to Congress complaints or information pertaining to "urgent concerns" by first reporting such complaints or information to the IC Inspector General (IG). If confirmed, I will have an opportunity to better understand both how this statute has been exercised in practice and more broadly whether existing authorities provide sufficient protections to protect whistleblowers, and I pledge to work closely with the Committee should I identify a need for additional authorities to achieve that important objective.

QUESTION 19: What is your view of the ODNI/GC's role relative to advancing an IC "whistleblower" complaint to Congress, pursuant to the Intelligence Community Whistleblower Protection Act?

ANSWER: As the chief legal officer of ODNI, the General Counsel is responsible for advising the DNI and other ODNI senior leadership on carrying out their duties consistent with the Constitution and laws of the United States. As part of this responsibility, the General Counsel must support the DNI's exercise of her responsibilities under the Intelligence Community Whistleblower Protection Act, which provides IC whistleblowers the means to report to Congress complaints or information pertaining to "urgent concerns" by first reporting such complaints or information to the IC IG. If confirmed, I commit to supporting the DNI in her exercise of her responsibilities under this statute with the utmost integrity, ensuring that every whistleblower complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled.

QUESTION 20: Under what circumstances would you judge it appropriate to intercede in advancing a whistleblower complaint to Congress?

ANSWER: As noted in the response to the last question, the General Counsel, as chief legal officer of ODNI, is responsible for advising the DNI and other ODNI senior leadership on carrying out their duties consistent with the Constitution and laws of the United States, including the Intelligence Community Whistleblower Protection Act. During her confirmation process, Director Haines committed to transmitting to Congress whistleblower complaints determined by the IC IG to be an urgent concern under that Act, and I cannot envision a plausible scenario in which it would be appropriate for the ODNI General Counsel to "intercede" to stop such a transmission. More broadly, if confirmed, I commit to ensuring that whistleblowers can bring complaints to Congress to the full extent allowed by law.

QUESTION 21: How would you address a situation in which you disagree with the IC Inspector General's determination that a whistleblower complaint qualifies as an "urgent concern," for the purposes of advancing a complaint to Congress?

ANSWER: During her confirmation process, Director Haines committed to transmitting to Congress whistleblower complaints determined by the IC IG to be an urgent concern, and I cannot envision a plausible scenario in which it would be appropriate for the ODNI General Counsel to intercede to stop such a transmission. The ODNI General Counsel is responsible for supporting the DNI in the exercise of her responsibilities under the Intelligence Community Whistleblower Protection Act, and, if confirmed, I commit to performing this responsibility with the utmost integrity and ensuring that every complaint is handled in compliance with all legal requirements.

QUESTION 22: Under what circumstances would you inform a party named in a whistleblower complaint that he or she is the subject of the complaint?

ANSWER: As Director Haines stated during her confirmation process, whether the subject of a complaint should be notified of the complaint must be decided on a case-by-case basis, while protecting the integrity of the IG mission and any investigations.

Executive Branch Oversight of Intelligence Activities

QUESTION 23: Are there improvements, in terms of resources, methodology, and

objectives that you believe should be considered for Executive Branch oversight of the intelligence activities of the United States Government?

ANSWER: As I learned during my previous government service, IC elements and their activities are subject to rigorous and multi-layered oversight to ensure compliance with applicable laws and procedures. All three branches of government play an important role in conducting this oversight, with many entities within the Executive Branch doing their part. This includes the general counsel's offices, civil liberties and privacy officials, and inspectors general of IC elements, and other entities like the Privacy and Civil Liberties Oversight Board (PCLOB). The Department of Justice also plays a key role, including by conducting oversight of activities under FISA.

If confirmed, I anticipate that oversight would be a particularly important part of my role. The DNI has a specific statutory obligation to ensure compliance with the Constitution and laws of the United States by elements of the IC, and it is my understanding that the ODNI General Counsel plays a significant role in helping the Director to carry out this obligation. If confirmed, I thus believe I will have an opportunity to better assess whether improvements to the existing oversight structure are warranted, and I pledge to work closely with the Committee should I identify a need for additional authorities, organizational changes, or other reforms.

Relationship with Other Officials

QUESTION 24: What should be the relationship of the ODNI/GC with respect to the following officers of the IC:

- a. General Counsel, CIA;

ANSWER: As stated in my response to Question 6, the DNI is specifically charged, under the National Security Act, with many responsibilities relating to the CIA. The statute thus clearly contemplates a very close working relationship between the two agencies and, by extension, their General Counsels. During my previous service in government, I observed there to be a close and collaborative relationship between the ODNI General Counsel and the General Counsel of the CIA, with the two officials working together on a range of legal issues. If confirmed, I would seek to replicate this effective working relationship.

- b. Assistant Attorney General for National Security, Department of Justice;

ANSWER: Although the National Security Division of the Department of Justice is not part of the IC, there are a number of areas where the DNI and Attorney General share responsibilities. For example, activities under Section 702 of FISA must be jointly authorized and overseen by the Attorney General and the Director and many of the procedures required by Executive Order 12333 must be approved by the Attorney General in consultation with the DNI. Given this, it is my understanding that the ODNI General Counsel and the Assistant Attorney General for National Security, and their respective offices, have traditionally maintained a close working relationship. If confirmed, I would seek to maintain this strong relationship.

- c. Inspector General, ODNI; and

ANSWER: The IC IG is among the core group of officials responsible for overseeing the activities of the ODNI and other IC elements, and by statute reports directly to the DNI. As a result, I believe the ODNI General Counsel must have a strong working relationship with the IC IG, and my understanding is that there has historically been such a relationship with both the IC IG and the IG's legal counsel. If confirmed, I would seek to continue this practice.

d. Civil Liberties and Privacy Officer, ODNI.

ANSWER: The ODNI's Civil Liberties Protection Officer heads the ODNI Office of Civil Liberties, Privacy, and Transparency, reports directly to the DNI, serves as the Chief Transparency Officer for the ODNI, and is among the core group of ODNI officials – alongside the General Counsel – responsible for overseeing the activities of the ODNI and other IC elements. This range of duties clearly implicates a number of issues with legal equities; consistent with this, during my previous service in government, I observed the Civil Liberties Protection Officer and ODNI General Counsel, and their respective offices, working collaboratively. I understand that this close working relationship has continued, and, if confirmed, I will seek to maintain it.

QUESTION 25: Do you see the ODNI/GC in a supervisory role in relation to other IC agency General Counsel?

ANSWER: No. The ODNI General Counsel does not supervise other IC agency General Counsels, although it does play a significant role in helping the DNI carry out her statutory responsibility to ensure compliance with the Constitution and laws of the United States by the CIA and by other elements of the IC through the host executive departments of those elements. In addition, I understand that the Office of General Counsel is well positioned to identify cross-cutting legal issues or conflicting legal interpretations within the IC, and, where appropriate, to coordinate efforts to resolve those issues, as well as present the consensus views of the IC legal community to the broader Federal Government.

QUESTION 26: Do you see the ODNI/GC in a supervisory role in relation to the Inspector General of the IC?

ANSWER: No. By statute, the IC IG reports directly to and is under the general supervision of the DNI.

QUESTION 27: What is your understanding of the relationship between the ODNI/GC and the White House Counsel's Office (WHCO)? When do you believe it is appropriate to include WHCO in your legal deliberations?

ANSWER: During my prior service in government, I saw how important it was for the ODNI General Counsel to have a close working relationship with the White House Counsel's Office, as the ODNI General Counsel plays an important role in, among other things, making sure that IC equities are represented during the interagency legal process and coordinating and presenting the consensus views of the IC legal community to the broader Federal Government.

If confirmed, I would endeavor to maintain close collaboration between the offices, which is critical to supporting the DNI in her roles as the head of the IC and the principal advisor to the President for intelligence matters related to the national security.

QUESTION 28: What do you believe the relationship is between the Office of General Counsel at ODNI and the Office of Legal Counsel (OLC) at the Department of Justice? Do you consider OLC opinions to be binding on the ODNI/GC? Please describe the circumstances under which you believe soliciting an opinion from OLC is appropriate.

ANSWER: By delegation from the Attorney General, OLC provides legal advice to the President and all Executive Branch agencies, and its opinions are generally understood to be binding on Executive Branch agencies. I thus believe it is essential for the ODNI General Counsel and OLC to have a strong working relationship and that collaboration between the offices is critical to supporting the DNI in fulfilling her statutory obligation to ensure compliance with the Constitution and laws of the United States by elements of the IC. Based on my prior experience in government, departments and agencies typically consult OLC on legal issues of particular complexity or importance or in situations where two or more agencies are in disagreement. If confirmed, I would plan to take a similar approach.

Recruitment to the ODNI Office of General Counsel

QUESTION 29: What are your plans to recruit and retain top talent in the Office of General Counsel at ODNI? Do you plan to offer additional detailee options at all career levels so that attorneys from other agencies can bring their expertise to ODNI and, in turn, bring ODNI experience back to their home agency?

ANSWER: During my previous government service, I worked closely with lawyers from the ODNI Office of the General Counsel and was always impressed with their professionalism and effectiveness. My more recent and limited interactions with lawyers in the office's current management, as well as others who have worked for, or interacted with, the office, have left the same impression.

While I have very positive views of the existing office, I do not have a great deal of familiarity with the specifics of its recruitment processes. If confirmed, I would thus review these processes and consult with the current management and staff about whether changes in recruitment practices or additional detailee options would benefit the office, ODNI, or the broader IC.

Executive Privilege

QUESTION 30: Please describe your understanding of Executive Privilege: its general contours; to whom it can apply; and the time period during which it may apply. Please include your understanding of when the privilege can be waived.

ANSWER: Executive privilege is a Constitutionally based privilege that protects certain confidential information within the Executive Branch against compelled disclosure. The

purpose of the privilege is to preserve the President's ability to carry out his constitutional functions, including his responsibility to take care that the law is faithfully executed. Consistent with this purpose, the information the privilege may protect includes Presidential communications, deliberative communications, and information relating to foreign relations and national security. My understanding is that there are often good-faith disagreements about the proper scope of the privilege and that Presidents only invoke it after efforts to reach an accommodation with respect to information access have failed to bring resolution.

QUESTION 31: Please define the phrase "executive branch confidentiality interests." What are "executive branch confidentiality interests" and when/how do they differ from a claim of Executive Privilege?

ANSWER: As noted in my response to the last question, my understanding is that Presidents only invoke executive privilege after efforts to reach an accommodation fail to bring resolution. Given this, my understanding is that the Executive Branch uses the phrase "executive branch confidentiality interests" during the accommodation process to refer to those confidentiality interests that might be protected by a formal invocation of the privilege.

QUESTION 32: At what point would you refer information or material to WHCO to review for executive privilege issues?

ANSWER: As noted in the responses above, my understanding is that Presidents only invoke executive privilege after efforts to reach an accommodation fail to bring resolution. Given this, when a co-equal branch of government seeks information that might implicate executive branch confidentiality interests from agencies within the Executive Branch, those agencies will seek to engage in good faith discussions with representatives of the co-equal branch in an attempt to accommodate the legitimate interests of the other branch, while safeguarding Executive Branch confidentiality interests. During this accommodation process, it is a routine practice for agencies to consult with the White House Counsel's Office, the Department of Justice, and other elements of the Executive Branch in order to ensure that they understand any confidentiality concerns and what, if any, information may ultimately be subject to a privilege invocation.

Professional Experience

QUESTION 33: For each of the following, describe specifically how your experiences will enable you to serve effectively as the ODNI/GC. Include within each response a description of issues relating to the position that you can identify based on those experiences.

- a. Deputy Assistant and Deputy Counsel to President Obama and the Legal Adviser to the National Security Council;

ANSWER: I believe my time as Legal Adviser to the National Security Council (NSC) provided a number of experiences that would help me serve effectively as the ODNI General Counsel, if I am confirmed.

First, as the Deputy Legal Adviser and then Legal Adviser to the NSC, I worked closely with lawyers from across the U.S. Government, including the ODNI and elsewhere in the IC, on a wide range of national security and intelligence-related issues. This allowed me to develop familiarity with many of the legal frameworks that govern intelligence collection and operations, such as the National Security Act, FISA, and key Presidential Directives (e.g., Executive Order 12333), as well as numerous other issues the ODNI General Counsel may have to address, such as U.S.-EU cross-border data transfers, IC transparency matters, and encryption.

Second, my work at the NSC enabled me to form relationships and gain experience working with lawyers throughout the IC and U.S. Government more broadly – relationships and experiences that would hopefully be beneficial not only in performing ODNI’s essential integrating role, but also in contributing to the interagency legal process.

Third, as the NSC Legal Adviser, I was able to lead an Executive Branch legal office, managing a team of senior U.S. Government national security lawyers and learning how to support them as they used their expertise to address the many legal issues that came before the office. I also was able to gain substantial experience counseling senior officials on pursuing their national security objectives consistent with the law, being careful to distinguish legal advice from more general counseling on risks and opportunities. I believe this experience would help me serve effectively as ODNI’s General Counsel, if I am confirmed.

b. Senior Counsel to General Counsel of the Department of Defense;

ANSWER: During my time at the Department of Defense (DOD), I worked in the General Counsel’s front office on a range of issues, including military operations, sensitive litigation matters, and personnel issues. This experience exposed me to a wide range of topics that might be relevant if I am confirmed as ODNI’s General Counsel, and, perhaps even more importantly, provided an excellent vantage point to see how DOD’s Office of General Counsel is structured and operates. Given that a large portion of the IC is part of DOD, my understanding is that lawyers from ODNI work with lawyers from DOD quite frequently. I thus believe my familiarity with the DOD Office of General Counsel will be a significant help in allowing me to hit the ground running if confirmed as ODNI’s General Counsel.

c. Department of Justice, Office of Legal Counsel;

ANSWER: OLC plays an important role providing legal advice to Executive Branch agencies, including on national security matters; and I thus believe my time in that Office would help me serve effectively if I am confirmed as ODNI General Counsel. During my time at OLC, much of my work involved the analysis of sensitive national security and intelligence issues. In addition to enhancing my substantive familiarity with such issues, that work provided me with insight into, and experience with, how OLC works with agencies on legal questions and how it approaches the legal analysis of such issues. This experience will ensure that I am able to work with career lawyers in the ODNI General Counsel’s office to communicate to OLC both ODNI’s legal views on any questions before OLC and the factual information necessary for OLC to contextualize its legal analysis, allowing OLC to provide the most informed advice possible.

d. Department of Justice, Civil Division; and

ANSWER: Since the Department of Justice generally represents ODNI before the courts, I think my experience working at the Department will be beneficial in various ways if I am confirmed as ODNI's General Counsel. During my time in the Civil Division, I served on the appellate staff, drafting briefs for cases in a number of courts of appeals, often working closely with agency counsel in doing so; participating in the Department's process for making litigation decisions, including whether to appeal adverse decisions or settle claims; and arguing a case in the District of Columbia Circuit. This knowledge of how the Department of Justice litigates cases would be beneficial if I were confirmed as ODNI's General Counsel, as it would help me work with the career lawyers in the General Counsel's office to ensure that we convey ODNI's litigation equities to the Department in an effective and timely manner.

e. Sidley Austin, LLP

ANSWER: Since leaving government, a large portion of my practice has focused on cybersecurity and other issues regarding the information economy, such as information security and compliance with cybersecurity regulations; data privacy, including cross-border data flows; and the application of established and changing legal regimes to new technologies. This experience has kept me abreast of many of the legal developments in these important areas (at least those that are unclassified) over the past few years, experience that will help me serve effectively if I am confirmed as ODNI's General Counsel.

QUESTION 34: What, if any, conflicts might arise from your private practice if you are confirmed as General Counsel, and how would you address these conflicts?

ANSWER: In the course of the nomination process, I have consulted with ODNI's Designated Ethics Official, who in turn, consulted with the Office of Government Ethics to identify potential conflicts of interest. As a result of this process, potential conflicts with Sidley Austin LLP have been identified. Those potential conflicts will be resolved in the manner required by the conflicts of interest statutes, standards of conduct, and the terms of the Ethics Agreement that I have executed and which has been provided to the Committee. For example, as noted in that Agreement, if confirmed, for a period of one year after my resignation from Sidley Austin LLP (which I would tender upon confirmation) I will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). Likewise, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

QUESTION 35: For each of your following law firm clients, describe the matters in which you represented the client; the court, administrative, and/or other legal proceedings involved in your representation, and the outcome of such representation.

- a. Huawei Technologies Co. Ltd.;**
- b. Goldman Sachs & Co., LLC;**

- c. Goldman Sachs International;
- d. Ministry of Commerce of the People's Republic of China;
- e. Hong Kong Trade Development Council;
- f. Hyundai Motor America;
- g. Apple Inc.;
- h. Facebook, Inc.;
- i. Microsoft;
- j. Twitter, Inc.;
- k. In-Q-Tel, Inc.; and
- l. Zingbox, Inc.

ANSWER: Three of the listed entities are major clients, which I am considering to be clients to whom I billed more than 50 hours since I joined Sidley Austin in November 2017:

- Apple Inc.: Since 2017, I have advised the client on a range of privacy and cybersecurity matters, including general counseling and addressing security issues, governmental inquiries, and internal policy matters. This work was not substantially related to judicial or administrative proceedings, and I am not aware that any current matter is pending before a court or agency.
- Microsoft: In 2018, I was part of a Sidley team that was advising the client on U.S. and EU legal and policy issues with respect to cross-border requests for lawful access to electronic evidence. To the best of my knowledge, there were no formal judicial or administrative proceedings involved in the representation, and I have provided no advice to the client since 2018.
- Twitter, Inc.: In 2020, I advised the client on election law provisions in numerous states. No specific judicial, administrative, and/or other legal proceedings were involved in the representation, and I have done no work on these issues since September 2020.

I worked fewer hours for the following clients listed above:

- Facebook, Inc.: In 2020, a firm colleague asked me to assist in answering a couple of privacy-related transactional and regulatory questions. I did less than ten hours of work on the questions and provided my analysis to the colleague. I have not received any follow up questions or learned anything further about the matter.
- Goldman Sachs & Co., LLC: In 2018-19, I spent less than ten hours of time providing privacy and cybersecurity advice as part of a Sidley team that advised the client on transactions involving Innovid and ZipWhip. Since those transactions were completed, I have done no further work on the matters.
- Goldman Sachs International: In 2019-20, I provided privacy and cybersecurity advice as part of a Sidley team that advised the client on its investment in LumApps SAS, a French cloud-based intranet collaboration platform with operations in France, the United States, and Japan. The investment was announced publicly in January 2020.
- Ministry of Commerce of the People's Republic of China: In 2018, Sidley Austin LLP filed an amicus brief and argued in the Supreme Court on behalf of the client in

Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd. My sole involvement was participation in a moot court to prepare other advocates for the argument. The case was argued in April 2018 and decided in June of that year.

- Hong Kong Trade Development Council: In 2019-2020, at the request of a partner, I contributed to the U.S. section of a quarterly report on global privacy developments provided to the client. My sole involvement was my contribution to these reports, and I do not recall any follow up after the submission of any of the reports.
- Huawei Technologies Co. Ltd.: In 2018, the firm asked for help in answering general questions from the client about how U.S. administrative law works – specifically in the context of a Notice of Proposed Rulemaking and the subsequent rule-making – including the mechanics of the when and how judicial review might occur. I did less than ten hours of work on the questions and provided my analysis to colleagues at the firm, and have received no follow up since.
- Hyundai Motor America: In 2018, a partner in the firm asked me to assist in answering the client’s question about a regulatory matter involving privacy law. I did less than ten hours of work on the question and provided my analysis to the partner. I have not received any follow up questions or learned anything further about the matter.
- In-Q-Tel, Inc.: In 2020, I advised the client on the privacy implications of a research project that was under development by the client’s open-source division, IQT Labs. The representation ended when I provided the client with the advice, and I have not received any follow up questions.
- Zingbox, Inc.: In 2019, I spent less than ten hours of time providing privacy and cybersecurity advice as part of a Sidley team that advised the client in connection with its purchase by Palo Alto Networks. The investment was announced publicly in September 2019.

Publications

QUESTION 36: In two of your reported publications (*Carpenter and Everything After: The Supreme Court Nudges the Fourth Amendment into the Information Age*, and *Carpenter v. United States: A Revolution in Fourth Amendment Jurisprudence?*), you emphasize that the Supreme Court’s holding as a “decidedly ‘narrow one’”, citing the Court’s statement that “our opinion does not consider other collection techniques involving foreign affairs or national security.” Your publications also maintained the clear limits on the third-party doctrine. Do your publications represent how you will conduct matters if confirmed as General Counsel of ODNI? If not, please explain.

ANSWER: The publications referenced in the question both quoted the Court’s own characterization of its decision as a “narrow one,” as well as the paragraph where the Court stated, among other things, that it was not “disturb[ing] the application” of key third-party doctrine cases or “consider[ing] other collection techniques involving foreign affairs or national security.” The primary purpose of both publications was descriptive and including those statements thus seemed integral.

However, if I am confirmed as the ODNI General Counsel, I do not believe those statements from the Court will necessarily resolve Fourth Amendment questions presented to me. Both of the

publications cited in the question emphasize that *Carpenter* constitutes a potentially important inflection point in Fourth Amendment jurisprudence, given its application of constitutional protection to information created by new technologies. Thus, as the pieces both suggest, the key interpretive questions involving the Fourth Amendment going forward will be how to apply *Carpenter*'s reasoning to new scenarios, including those explicitly reserved by the Court in *Carpenter*.

If I am confirmed as ODNI's General Counsel, I would thus look to a range of sources in trying to resolve Fourth Amendment questions – not only *Carpenter* itself, but also subsequent judicial decisions interpreting *Carpenter* and the views of experts and other lawyers from across the Government, including those from throughout the IC and the Department of Justice.

QUESTION 37: In your publication *The More Things Stay the Same: Why the Trump Administration's Counterterrorism Strategy is Surprisingly Conventional*, you recognize that “terrorist groups increasingly use the internet and encrypted mobile phone apps operationally, including for command and control.” Will you support legislation that would require providers to decrypt terrorist groups' encrypted communications?

ANSWER: The quote mentioned in the question recognizes a point law enforcement and intelligence officials have often made about the challenges posed by encryption, leading to calls for law enforcement access requirements for encryption technologies. At the same time, as Director Haines noted during her confirmation process, the encryption of data is essential, as strong encryption promotes cyber security, thwarts criminals, and preserves privacy.

Like Director Haines, I do not have the answer for how to approach this incredibly challenging issue. If confirmed, I believe my role as General Counsel would be to work with lawyers throughout the IC to understand the legal dimensions of the issue so that I can both advise the Director and other ODNI officials on these legal dimensions and support pragmatic and constructive discussion among policymakers on the way forward.

QUESTION 38: In your publication *Movement on Section 702 of the Foreign Intelligence Surveillance Act (FISA)*, you note the potential impacts on the U.S.-E.U. Privacy Shield. Given the interim events that occurred after this publication, what is your current view of the steps that the U.S. needs to take regarding our national security laws in order to maintain the free and open transfer of data with the E.U.?

ANSWER: In the publication noted in the question, which was drafted in 2018, my co-authors and I noted that the FISA Amendments Reauthorization Act of 2017 “essentially reauthorize[d] what was in effect when the European Commission approved the Privacy Shield in the first place.” Despite this, in July 2020, the Court of Justice of the European Union (CJEU) issued its *Schrems II* decision striking down the Privacy Shield based on its view that U.S. law does not provide protections that are “essentially equivalent” to those provided by EU law.

On March 25, the U.S. Secretary of Commerce and EU Commissioner for Justice issued a joint statement noting that the “U.S. Government and the European Commission have decided to intensify negotiations on an enhanced EU-U.S. Privacy Shield framework to comply with” the

CJEU's *Schrems II* decision. I do not know what, if any, changes to U.S. national security laws are being discussed during these negotiations. If confirmed, however, I would expect to work with lawyers from the IC and elsewhere in the U.S. Government, as well as the Director and other ODNI officials, to ensure that policymakers have the information they need during the negotiations, including regarding the implications of any legal changes that are contemplated; and to provide other support to the negotiations, as appropriate.

Additional Questions from Senator Wyden

Title V of FISA

QUESTION 1:

Do you believe that Section 215 of the USA PATRIOT Act should be used to collect “tangible things” if they do not pertain to:

- a. A foreign power or an agent of a foreign power;
- b. The activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or
- c. An individual in contact with, or known to, a suspected agent of a foreign power who is the subject of an authorized investigation?

If yes, under what circumstances do you believe the application for a Section 215 order could be based on the “relevance” standard without satisfying any of the above three requirements for presumptive relevance?

ANSWER: I believe it is important that the IC gather intelligence lawfully, using its authorities appropriately against valid intelligence targets. To that end, the USA PATRIOT Act of 2001 amended Title V of the FISA to authorize the government to seek a court order to acquire “tangible things” for foreign intelligence purposes—a provision that was further amended by the USA FREEDOM Act of 2015. Although these amendments expired in March 2020, I understand that they may be reauthorized. Given this, if I am confirmed, I may have an opportunity to better understand how Title V is exercised in practice, and I pledge to work with my counterparts across the Executive Branch, including at the other IC elements and at the Department of Justice, to ensure that the IC’s uses of the authority – and, indeed, all IC activities – are carried out in accordance with the Constitution and federal law.

QUESTION 2: In a November 6, 2020, letter, then-DNI Ratcliffe wrote that, “with respect to the use of Title V [of FISA] to obtain records from ISPs, the FBI does not request and obtain pursuant to Title V the content of any communication, to include search terms submitted to an online search engine.”

- a. Do you agree that internet search information constitutes content of communications and thus can only be obtained with a probable cause warrant?
- b. Does this warrant requirement apply regardless of how or from whom the

web browsing information might be obtained?

ANSWER: The USA PATRIOT Act of 2001 amended Title V of the FISA to authorize the government to seek a court order to acquire “tangible things” for foreign intelligence purposes, but these amendments, as well as the further amendments made by the USA FREEDOM Act, expired in March 2020. Nonetheless, the amendments may be reauthorized, and, if confirmed, I may have an opportunity to better understand how Title V is exercised in practice. In doing so, I would pledge to work with my counterparts across the Executive Branch, including at the other IC elements and at the Department of Justice, to ensure that the IC’s uses of the authority – and, indeed, all IC activities – are carried out in accordance with the Constitution and federal law.

QUESTION 3: On November 25, 2020, Director Ratcliffe sent a letter stating that an order pursuant to Title V of FISA had “directed the production of log entries for a single, identified U.S. web page reflecting connections from IP addresses registered in a specified country that occurred during a defined period of time.”

- a. During her confirmation process, Director Haines stated that the ODNI would brief the Committee on this collection pending the outcome of a Department of Justice review. Will you prioritize that briefing?
- b. Does the government have the authority now, or in the event of a reauthorization of Section 215 of the USA PATRIOT Act, to collect log entries for web pages reflecting connections to persons inside the United States?

ANSWER: I share Director Haines commitment to ensuring that the Committee is appropriately briefed on the incident referenced in Director Ratcliffe’s letter, pending the outcome of the Department of Justice’s review.

I am not familiar with the order mentioned in Director Ratcliffe’s letter, but, if confirmed, I will have an opportunity to better understand how Title V authorities are exercised in practice, and I pledge to work with my counterparts across the Executive Branch, including at the other IC elements and at the Department of Justice, to ensure that all IC activities are carried out in accordance with the Constitution and federal law.

Section 702 of FISA

QUESTION 4: During his confirmation process, Assistant Attorney General for National Security John Demers was asked about the prohibition on reverse targeting in Section 702 of FISA. He responded:

“As I understand it, determining whether a particular known U.S. person has been reverse targeted through the targeting of a Section 702 target

necessitates a fact specific inquiry that would involve consideration of a variety of factors. For example, as the Privacy and Civil Liberties Oversight Board noted in its 2014 report, if a Section 702 tasking resulted in substantial reporting by the Intelligence Community regarding a U.S. person, but little reporting about the Section 702 target, that might be an indication that reverse targeting may have occurred.”

How should this “fact specific inquiry” be implemented through the Section 702 nominations and querying processes of Intelligence Community entities?

ANSWER: My understanding of how IC entities make reverse-targeting determinations aligns with the view that Assistant Attorney General Demers expressed during his confirmation process – i.e., that such determinations are fact-specific and necessitate the evaluation of a variety of factors. I am not familiar with how this approach is specifically implemented through the nominations and querying processes of IC entities, but, if confirmed, I will review the matter and, if I become aware of instances of reverse targeting through ODNI’s Section 702 oversight function, I will ensure they are reported to the FISC and Congress and work with the Department of Justice to determine the cause and implement solutions to ensure the problem does not recur.

QUESTION 5: Do you believe Section 702 of FISA authorizes the collection of communications known to be entirely domestic?

ANSWER: Section 702 explicitly states that the government “may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.”

QUESTION 6: The 2018 legislation reauthorizing Section 702 of FISA codified limitations on the use of U.S. person information in criminal proceedings.

- a. Do you believe these limitations should be extended to other provisions of FISA?
- b. The limitations include an exception for “transnational crime, including transnational narcotics trafficking and transnational organized crime.” Please describe the full scope of “transnational crime” in this context.

ANSWER: I have not had occasion to consider how the 2018 legislation referenced in the question has been implemented, including how “transnational crime” has been interpreted in that context. If confirmed, I will review the implementation of the provision and consult with the Committee, as well as the Department of Justice and other IC elements’ General Counsels, on whether its limitations should be extended to other provisions of FISA or there are areas where further amendments to FISA are needed.

QUESTION 7: Under Section 702 of FISA, the government can direct an

electronic communications service provider to provide “assistance necessary to accomplish the acquisition.” Under Section 702(h)(5), if the provider does not comply with a directive, the government may seek an order from the FISA Court to compel compliance. Prior to the reauthorization of Section 702 in 2018, the government stated that it had “not to date sought an order pursuant to Section 702(h) seeking to compel an electronic communications service provider to alter the encryption afforded by a service or product it offers.”

- a. Do you believe that the government should inform the FISA Court should it issue a directive to a provider to alter the encryption afforded by a service or a product, regardless of whether the government files a motion to compel compliance?
- b. Will you commit to notifying Congress of any such directive?
- c. Do you believe the public should be informed should the facts underlying the government’s public statement related to Section 702(h)(5) change?

ANSWER: During my time in government and in private practice, I have not had occasion to consider these questions concerning the implementation of Section 702 in depth. If confirmed, however, I would work with the Department of Justice and other IC elements’ General Counsels to ensure that the government complies with its obligations under FISA and with the rules of the FISC. It would likewise be my responsibility to ensure that the DNI keeps the congressional intelligence committees fully and currently informed of all intelligence activities, consistent with the requirements of Title V of the National Security Act and other applicable federal law. And, more broadly, I believe that informing the public about the IC’s activities, consistent with protecting sources and methods, is an important part of the IC’s mission, and I would be a strong supporter of such transparency efforts if confirmed.

Other Surveillance Matters

QUESTION 8: Title 50, section 1812, provides for exclusive means by which electronic surveillance and interception of certain communications may be conducted. During her confirmation process, Director Haines stated that “the President must take care that the law be faithfully executed and Title 50, Section 1812 is no exception.” Do you agree that this provision is binding on the President?

ANSWER: I share the view expressed by Director Haines during her confirmation process: that the President must take care that the law be faithfully executed and Title 50, Section 1812 is no exception.

QUESTION 9: Do you agree that the FISA Court amici play an important role in raising significant matters of law with the Court? If yes, do you believe that granting the *amici* access to all FISA information, as provided for in Section 215 reauthorization legislation passed by both houses of Congress, helps the *amici* fulfill the role of raising issues with the Court?

ANSWER: My views are much the same as those expressed by Director Haines during her confirmation process. I believe that FISA Court amici play an important role and, if confirmed, I will work to ensure that they have access to the information necessary to allow them to perform the role envisioned for them by statute.

QUESTION 10: The Privacy and Civil Liberties Oversight Board's (PCLOB's) March 5 on Executive Order 12333 report stated that, "[a]s technology and the law evolve at an ever-faster pace, the IC's review and revision of elements' Attorney General-approved guidelines should proceed at a similar rate. Up-to-date guidelines will better safeguard U.S. persons' privacy and civil liberties and support intelligence mission needs." Do you agree to review the Attorney General-approved guidelines to ensure they are up to date with changes in law and technology?

ANSWER: Yes.

QUESTION 11: The PCLOB's March 5 on EO 12333 report stated:

"As agencies implement their new or revised Attorney General-approved guidelines, such lower-level policies likewise must be updated to reflect new privacy and civil liberties safeguards. For instance, some agencies' new or revised Attorney General-approved guidelines for the first time address 'bulk collection.' As a result, activity-specific policies that relate to such activities must be updated to address the safeguards now afforded by the revised procedures, as well as PPD-28 and other intervening developments in the law. These also may include, for example, new or revised training requirements and updated database user manuals."

Do you agree to prioritize the development of updated privacy and civil liberties safeguards, as well as policies, training, manuals and other guidance to ensure that EO 12333 collection is conducted consistent with the Attorney General-approved guidelines and the public's understanding of the legal and policy framework for such collection?

ANSWER: Yes.

QUESTION 12: The PCLOB's March 5 letter on EO 12333 also stated that IC elements should review their legal and constitutional analysis regularly and revise

them as necessary to reflect changes in the law and technology. For example, technological changes can affect the scope and nature of U.S. person information collected or how the IC queries and retains U.S. person information. Do you agree to conduct a review of IC entities' legal analysis regarding EO 12333 collection to ensure that it reflects changes in the law and technology? How will you ensure that IC entities regularly review their legal and constitutional analysis?

ANSWER: If confirmed, I would work with the General Counsels of the relevant IC elements to ensure those elements review their legal analyses to account for changes in the law and in technology. Moreover, if confirmed, I would consult with the lawyers in the Office of General Counsel on existing practices for reviewing legal analyses in order to ensure that they adequately account for legal and technological change.

QUESTION 13: According to a chart posted by the ODNI, only the Department of the Treasury Office of Intelligence and Analysis does not have finalized Attorney General approved EO 12333 procedures. During her confirmation process, Director Haines committed to prioritizing the completion and public dissemination of those procedures? Will you likewise make this a priority?

ANSWER: Yes.

QUESTION 14: The Department of Justice has published policy guidance on the use of cell-site simulator technology, often referred to as stingrays. The guidance requires law enforcement to obtain a probable cause warrant for the use of stingrays, other than in emergencies. Do you believe that the IC should obtain a FISA probable cause warrant for the domestic use of stingrays consistent with the conduct of electronic surveillance under FISA?

ANSWER: In my prior positions in government and private practice, I have not had occasion to consider this issue in depth. If confirmed, I look forward to doing so and would work with the Department of Justice and the General Counsels of the IC elements to ensure that the IC's intelligence activities are conducted in conformity with the Constitution, applicable federal law, and Executive Orders.

QUESTION 15: In June 2018, in the case of *Carpenter v. U.S.*, the U.S. Supreme Court found that the government's collection of cell-site locational records was a Fourth Amendment search. In November 2019, the government acknowledged that it was not collecting cell-site or GPS information pursuant to Section 215 of the USA PATRIOT Act, which does not require a warrant. In 2020, both houses of Congress passed legislation reauthorizing Section 215 that prohibited such collection, although the legislation was not passed into law.

- a. Do you agree that, should Section 215 be reauthorized, it should not be used to collect cell-site or GPS information?
- b. Do you agree that the constitutional principles enunciated in *Carpenter* and reflected in the government's decision with regard to collection under Section 215 applies generally to the IC's collection under other provisions of FISA and EO 12333?
- c. If confirmed, will you commit to issuing controlling guidance on the application of *Carpenter* to the IC and making that guidance public?

ANSWER: During her confirmation hearing, Director Haines committed to reviewing with IC lawyers whether guidance on the application of *Carpenter* would be useful, as well as to seeking further opportunities for transparency regarding the frameworks within which the IC collects information, while protecting sources and methods. If confirmed, I look forward to supporting DNI Haines's efforts in this area and would look specifically at the issues raised by the question in doing so. More broadly, if confirmed, I would work with the Department of Justice and other General Counsels in the IC to ensure that all intelligence activities are conducted in conformity with the law, including the Supreme Court's *Carpenter* decision.

QUESTION 16: Do you believe that the privacy interests of Americans should depend on whether their information is purchased or obtained voluntarily by the government, as opposed to compelled through legal process?

ANSWER: My views are much the same as those expressed by Director Haines during her confirmation process. I believe strongly in protecting the privacy interests of Americans. If confirmed, I will have an opportunity to better understand current methods of obtaining information and intelligence and determine whether changes are advisable.

QUESTION 17: If confirmed, will you ensure that the IC is transparent about the type of information on Americans that it purchases or obtains voluntarily and the legal basis for that collection?

ANSWER: During her confirmation process, Director Haines committed to seeking to articulate and make public a framework that would help the public understand the circumstances under which the IC purchases commercially available information and the legal basis for doing so, consistent with the protection of sensitive sources and methods. I share Director Haines's commitment to transparency, and, if confirmed, I look forward to supporting her efforts to maximize public transparency on this important topic.

QUESTION 18: NSA Director Nakasone has stated that, absent consent of the U.S. person or certain emergency situations, U.S. person queries of communications collected under Executive Order 12333 "normally must be

approved by the Attorney General on a case-by-case basis after a finding of probable cause.”

- a. To what extent should this requirement apply to other IC entities?
- b. What is the role of the IC in developing and documenting the case for probable cause in this context?
- c. Please describe any exceptions to this requirement.

ANSWER: Under Executive Order 12333, IC elements must operate in accordance with Attorney General-approved procedures that set forth the circumstances and limits under which elements may lawfully collect, retain, and disseminate information concerning U.S. persons. It is my understanding that, among other things, these guidelines were drafted in order to ensure that lawful intelligence activities are carried out in a manner that provides protection for the privacy and civil liberties of Americans. If confirmed, I would work with Department of Justice and other IC elements’ General Counsels, to ensure that IC elements comply with these Attorney General-approved procedures. In doing so, I will have the opportunity to consider how these procedures work in practice and whether any additional requirements or other changes would be appropriate.

QUESTION 19: Do you agree that no element of the IC can request that a foreign entity conduct any activity that it is not authorized to undertake itself?

ANSWER: IC elements may not request any person, including a foreign entity, to undertake activities that the Constitution, federal law, or Executive Order, including Executive Order 12333, forbid the IC elements themselves to take.

QUESTION 20: What limitations do you believe should apply to the receipt, use or dissemination of communications of U.S. persons collected by a foreign partner or source? How should those limitations address instances in which the foreign partner or source specifically targeted U.S. persons or instances in which the foreign partner or source has collected bulk communications known to include those of U.S. persons?

ANSWER: IC elements may not request any person, including a foreign entity, to undertake activities that the Constitution, federal law, or Executive Order, including Executive Order 12333, forbid the IC elements themselves to take. If foreign partners or sources collect and share information concerning U.S. persons consistent with this prohibition, IC elements are only authorized to collect, retain, or disseminate such information in accordance with procedures approved by the Attorney General consistent with Executive Order 12333. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all elements of the IC adhere to these requirements and engage with foreign partners in a manner wholly consistent with U.S. law and with robust protections for the privacy and civil liberties of U.S. persons. In doing so, I would have the opportunity to understand how those

guidelines work in practice, including with respect to the scenarios identified in the question, and determine whether it would be appropriate to consider any changes to the existing limitations.

QUESTION 21: Do you believe that communications data collected in transit are or should be treated differently than communications data at rest? Please address any distinctions as they may apply to FISA, EO 12333, PPD-28, and USSID 18.

ANSWER: All IC activities involving communications data must be carried out in accordance with the Constitution and applicable federal law, including FISA, as well as Presidential directives, such as Executive Order 12333 and PPD-28, and their applicable implementing procedures, such as USSID 18. If confirmed, I will have an opportunity to better understand current methods of obtaining information and intelligence pursuant to these authorities, including any distinctions in how those authorities treat data collected in transit and data at rest, and I pledge to work closely with the Committee should I identify the need for any changes.

QUESTION 22: In March 2019, the Department of Justice Inspector General released its “Review of the Drug Enforcement Administration’s Use of Administrative Subpoenas to Collect or Exploit Bulk Data.” Do you believe that the subpoena authorities in question, and 21 U.S.C. 876(a) in particular, allow for bulk collection?

ANSWER: I have not had occasion to consider the DEA’s use of administrative subpoenas in light of the Inspector General’s report. If confirmed, I would work with the Department of Justice and the General Counsels of the IC elements to ensure that the IC’s intelligence activities are conducted in conformity with the Constitution, applicable federal law, and Executive Orders.

Whistleblowers

QUESTION 23: The Intelligence Community Whistleblower Protection Act states that the DNI “shall” transmit to Congress any whistleblower complaint determined by the IC Inspector General to be an “urgent concern.” An October 22, 2019, letter sent by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and signed by inspectors general sixty-eight government departments and agencies, including from across the IC, confirmed that the law requires that such complaints be transmitted to Congress. During her confirmation, Director Haines committed to transmitting to Congress whistleblower complaints determined by the Inspector General to be an urgent concern. Do you agree that the DNI is required by law to transmit to Congress any whistleblower complaint determined by the IC Inspector General to be an “urgent concern”?

ANSWER: During her confirmation process, Director Haines committed to transmitting to

Congress whistleblower complaints determined by the IC IG to be an urgent concern, and I cannot envision a plausible scenario in which it would be appropriate for the ODNI General Counsel to intercede to stop such a transmission.

QUESTION 24: The law states that whistleblowers must obtain from the DNI, through the IC Inspector General, “direction on how to contact the congressional intelligence committees in accordance with appropriate security practices.” Do you agree that this provision does not permit the DNI to deny whistleblowers direct access to Congress altogether?

ANSWER: I do not understand the statute to permit the DNI to deny whistleblowers direct access to Congress, although I do believe it affords the DNI a role in deciding how to bring extremely sensitive matters to the committees’ attention in accordance with appropriate security practices.

PCLOB

QUESTION 25: Do you agree that the reports of the Privacy and Civil Liberties Oversight Board should be released to the public, including the three reports referenced in the PCLOB’s March 5, 2021, report on EO 12333?

ANSWER: While I have not had the opportunity to review the three referenced reports, I believe it is important for the IC to be transparent, consistent with the need to protect classified or otherwise sensitive information. I therefore share the view Director Haines stated during her confirmation process, that the PCLOB’s reports should be made public, consistent with the protection of sources and methods, and, if confirmed, would support efforts to provide such transparency into the PCLOB’s work.

QUESTION 26: Do you believe that the mandate of the PCLOB should be expanded beyond counterterrorism so that it can review any IC program or activity that affects the privacy and civil liberties of Americans?

ANSWER: I share the views expressed by Director Haines during her confirmation process. If confirmed, I will consult with the PCLOB about the effectiveness of its current mandate and assess whether changes to it should be requested of Congress.

QUESTION 27: Will you commit to ensuring that the PCLOB is provided full access to any information it requests?

ANSWER: I share the views expressed by Director Haines during her confirmation process regarding the importance of the PCLOB’s work. If confirmed, I will ensure that the Board has access to the information necessary to allow it to perform the role envisioned for it by statute.

Chief of Mission Authority

QUESTION 28: If a U.S. ambassador directs the Intelligence Community to cease a particular program or operation in the country where the ambassador is serving, is the Intelligence Community obligated to do so, absent or pending intervention by the President?

ANSWER: My views are much the same as those expressed by Director Haines during her confirmation process. If a U.S. ambassador directs the IC to cease certain activities within the country for which they are the U.S. representative, in my view, the IC should either elevate the issue or cease such activities. My experience has been that conflicts between departments generally can be worked out through consultation and negotiation, making it possible to avoid such scenarios.

Detention and interrogation

QUESTION 29: Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with the Detainee Treatment Act, the U.S. statutory prohibition on torture, the War Crimes Act, or U.S. obligations under the Convention Against Torture or Common Article 3 of the Geneva Convention?

ANSWER: During her confirmation process, Director Haines stated that she believed the CIA's former enhanced interrogation techniques included torture, and I believe such techniques are clearly prohibited by U.S. law.

QUESTION 30: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of any interrogation technique or approach or treatment related to interrogation not authorized by the Army Field Manual. Is this provision of law absolutely binding on the President?

ANSWER: The Constitution requires the President to take care that the law be faithfully executed, including Section 1045 of the National Defense Authorization Act for Fiscal Year 2016.

QUESTION 31: Executive Order 13491 prohibits the CIA from operating any detention facilities other than "facilities used only to hold people on a short-term transitory basis." During her confirmation process, Director Haines stated that she supported this prohibition. Do you also support this prohibition?

ANSWER: Yes.

QUESTION 32: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 requires the Secretary of Defense, in consultation with the DNI,

the Attorney General, and the Director of the FBI, to complete a “thorough review” every three years of the Army Field Manual 2-22.3 (Human Intelligence Collector Operations) (“AFM”).

- a. During her confirmation process, Director Haines agreed to advocate for a timely review of the AFM? Will you make the same commitment?

ANSWER: Yes.

- b. Do you agree that the CIA’s former enhanced interrogation techniques should be prohibited under the AFM?

ANSWER: Yes.

- c. Section 1045 requires that the High-Value Detainee Interrogation Group (HIG) submit a report on best practices for interrogation and states that the review of the AFM may include recommendations for revisions based on HIG research. After reviewing the science, the HIG concluded that, “[b]ased on the comprehensive research and field validation studies detailed in this report, it is concluded that the most effective practices for eliciting accurate information and actionable intelligence are non-coercive, rapport-based, information-gathering interviewing and interrogation methods.” During her confirmation process, Director Haines stated that she agreed that the review of the AFM should be consistent with these scientific best practices and added “even if a technique involving cruel, inhuman, or degrading treatment were determined to be effective, I would not endorse its use.” Do you agree?

ANSWER: Yes.

Lethal Authorities

QUESTION 33: Please describe your view of the legal implications of targeting or otherwise knowingly killing a U.S. person in a U.S. government lethal operation. What additional transparency do you believe would be warranted in that situation?

ANSWER: Decisions to use force are extremely serious, particularly in the rare instance when a U.S. person has taken up arms against the United States, and I believe it is essential that such operations are justified and within our legal authorities. If confirmed, I will work in partnership with my IC colleagues and lawyers from across the U.S. Government to ensure that is the case.

With respect to transparency, I believe it is important for the national security community to be transparent, consistent with the need to protect classified or otherwise sensitive information, and, if confirmed, I will thus be an advocate for maximizing public transparency regarding the Government's use of lethal force, especially in relation to U.S. persons.

QUESTION 34: On July 1, 2016, President Obama issued EO 13732, "United States Policy and Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force." Section 3 of the EO directed the DNI to publicly release an annual report on strikes undertaken by the U.S. Government against terrorist targets outside areas of active hostilities. President Trump revoked Section 3 on March 6, 2019. Section 1723 of the Fiscal Year 2020 National Defense Authorization Act included a similar reporting requirement. During her confirmation process, Director Haines committed to advocating for a new or revised Executive Order that includes reporting on strikes taken by and civilian casualties caused by all U.S. Government agencies; to ensuring compliance with Section 1723, including the requirement that the report be submitted in unclassified form; and to supporting making Section 1723 permanent. Will you make the same commitments?

ANSWER: Yes.

Transparency

QUESTION 35: Will you support the declassification and public release of any interpretation of law that provides a basis for intelligence activities but is inconsistent with the public's understanding of the law?

ANSWER: I believe it is important for the IC to be transparent, consistent with the need to protect classified or otherwise sensitive information. If confirmed, I will thus be an advocate for maximizing public transparency regarding interpretations of law that provide the basis for intelligence activities, consistent with the need to protect national security.

QUESTION 36: Executive Order 12333 procedures and guidelines, as they apply to IC entities, are publicly available. Do you commit to continuing to post these procedures and to making public any modifications, superseding policies and procedures, or significant interpretations?

ANSWER: I believe it is important for the IC to be transparent, consistent with the need to protect classified or otherwise sensitive information. If confirmed, I will be an advocate for maximizing public transparency regarding procedures and guidelines issued pursuant to Executive Order 12333, consistent with the need to protect national security.

QUESTION 37: Implementing procedures under PPD-28 for IC entities are publicly available. Do you commit to post these policies and procedures and to make public any modifications, superseding policies and procedures, or significant interpretations?

ANSWER: If confirmed, I will seek to ensure that the IC follows all legal requirements relating to PPD-28, including its provision on the public release of IC elements' implementation policies, consistent with classification requirements. I believe that doing so is a critical element of the IC's efforts to ensure transparency for the public about intelligence activities.

QUESTION 38: If you or any other individual from the Office of General Counsel were to say something pertaining to national security that was factually inaccurate in public, would you correct the public record?

ANSWER: I intend for any public statements that I make to be entirely accurate. However, if I am confirmed and I inadvertently make a public statement that is inaccurate, I would publicly correct the statement, consistent with the requirement to protect classified information. Moreover, if I am not able to make a public correction because of a requirement to protect such information, I will inform the intelligence committees of the inaccuracy in a classified setting.

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



Post-hearing Questions for

Mr. Christopher Fonzone upon his nomination to be

General Counsel of the Office of the Director of National Intelligence

[From Vice Chairman Rubio]

1. How would your prior work for clients with ties to China (such as the Ministry of Commerce, Huawei, and Apple) pose conflicts with potential work, if you are confirmed as ODNI GC?

My prior work would not impact my ability to provide objective legal advice to Director Haines or others at the Office of the Director of National Intelligence (ODNI) in support of its important national security mission. My private practice was principally focused on helping clients understand and comply with U.S. law. This includes the limited work I did for clients with ties to China, including the Ministry of Commerce and Huawei. Specifically, for the Ministry, I participated in a moot court to prepare advocates for a Supreme Court oral argument, and, for Huawei, I did less than 10 hours of work at the firm's request answering general questions about how U.S. administrative law works – specifically in the context of a Notice of Proposed Rulemaking and the subsequent rule-making – including the mechanics of when and how judicial review might occur.

Furthermore, in the course of the nomination process, I have consulted with ODNI's Designated Ethics Official, who in turn, consulted with the Office of Government Ethics to identify potential conflicts of interest, including conflicts based on my prior work for clients. If confirmed, I will continue to consult with these ethics officials to ensure that potential conflicts with any former clients will be resolved in the manner required by the conflicts of interest statutes, standards of conduct regulations, and the terms of the Ethics Agreement that I have executed and which has been provided to the Committee.

For example, as noted in that Agreement, if confirmed, for a period of one year after my resignation from Sidley Austin LLP (which I would tender upon confirmation) I will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). Likewise, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

2. Will you consider candidates for employment at ODNI GC who have worked for entities (or clients) with ties to China or other foreign adversaries?

If confirmed, I would seek to hire candidates who are committed to the ODNI's important national security mission and will enable ODNI's Office of General Counsel (OGC) to provide high quality and timely legal advice to Director Haines and all ODNI employees.

In doing so, I would also seek candidates who could complete a background investigation and be deemed eligible for access to classified information at the Top Secret//Sensitive Compartmented Information (TS//SCI) level. A candidate's foreign connections would be reviewed in the context of making this eligibility determination.

3. Do you agree that the Chinese Communist Party engages in unethical, illegal, and otherwise non-normative business practices as a matter of course in order to advance its technology acquisition objectives?

Yes. I agree with Director Haines that China has grown more authoritarian at home and more assertive abroad, and that the IC must prioritize efforts to counter the threats posed by China, both globally and to the U.S. Homeland.

I also understand that the IC's most recent Annual Threat Assessment, published on April 9, states that the Chinese Communist Party "will continue its whole-of-government efforts to spread China's influence, undercut that of the United States, drive wedges between Washington and its allies and partners, and foster new international norms that favor the authoritarian Chinese system." That assessment goes on to state, among other things, that "China's cyber-espionage operations have included compromising telecommunications firms, providers of managed services and broadly used software, and other targets potentially rich in follow-on opportunities for intelligence collection, attack, or influence operations." If confirmed, I would have access to the most recent intelligence analysis relating to the threat from China. That information will guide any legal advice I provide to Director Haines and others at the ODNI.

4. Do you agree that China's National Intelligence Law, which was enacted in 2017, obligates individuals, organizations, and institutions to assist China's security and intelligence services in carrying out intelligence activities?

Yes. The translations of the Law I have seen contain broadly worded provisions and I know that Director Wray has stated publicly that "China's laws allow its government to compel any Chinese company to provide any information it requests."

5. Do you agree that ostensibly private sector actors like Huawei are, as a function of the National Intelligence Law and their inexorable ties to the Chinese Communist Party, effectively organs of China's intelligence apparatus?

The translations of the Law I have seen contain broadly worded provisions and I know that Director Wray has stated publicly that "China's laws allow its government to compel any Chinese company to provide any information it requests." If confirmed, I expect I would have the benefit of the latest and most complete intelligence regarding how the Law is being applied to Chinese companies, which will guide any advice I provide to Director Haines and ODNI employees.

[From Senator Wyden]

1. For years, the ODNI has released to the public its Annual Statistical Transparency Report Regarding the Intelligence Community's Use of National Security Surveillance Authorities. That report includes

extensive quantitative data on the impact of FISA collection and National Security Letters on U.S. persons. Do you agree that the American public also has an interest in quantitative data related to U.S. person information collected pursuant to Executive Order 12333, including the amount of information collected; queries; disseminations, masking and unmaskings; and use in criminal proceedings?

I believe that the American public has privacy interests that are implicated by the government's collection of U.S. person information, regardless of the authority the government uses to collect it. Consistent with this, I believe informing the public about the IC's activities, consistent with protecting sources and methods, is an important part of the IC's mission, and I would be a strong supporter of such transparency efforts if confirmed.

I am not familiar with the extent to which quantitative data related to U.S. person information collected pursuant to Executive Order 12333 is compiled or what other impediments may exist with respect to making such information publicly available. If confirmed, I commit to engaging with the relevant experts at ODNI and within the IC on this issue and working with the Committee to ensure the IC is taking appropriate steps to provide the American public with transparency regarding the IC's activities, consistent with the need to protect sources and methods and the law.

2. The ODNI has stated that "given the significant constitutional and statutory issues" raised by *Carpenter v. United States*, the IC has not sought cell-site location information (CSLI) records or global

positioning system (GPS) records pursuant to the warrantless authorities of Title V of FISA. DIA has said that it does not construe *Carpenter* to require a judicial warrant to purchase or use commercially-available data for intelligence purposes. Other entities have not been transparent about their interpretation of *Carpenter*. If confirmed, will you ensure that elements of the IC are transparent about their interpretation of *Carpenter*, whether they interpret *Carpenter* to require a warrant for the collection of Americans' geolocal information, and whether that interpretation depends on the context of the collection (e.g., compelled by a FISA order or purchased under EO 12333 authorities)?

I believe informing the public about the IC's activities is an important part of the IC's mission, and, if confirmed, I would be a strong advocate for transparency about the legal basis for the IC's activities, including its interpretation of *Carpenter*, while protecting sources and methods.

Consistent with this, during her confirmation process, Director Haines committed to seeking to articulate and make public, consistent with the need to protect sources and methods, information that would help the public better understand the frameworks within which the IC collects information, including with respect to how the Supreme Court's decision in *Carpenter* is being interpreted and applied. If confirmed, I look forward to supporting these efforts.

[Additional Question from Senator Wyden at the Hearing]

3. If confirmed, will you commit to issuing controlling guidance on the application of *Carpenter* to the IC and making that guidance public?

If confirmed, I commit to doing all I can to ensure the IC is taking a consistent approach to *Carpenter* and then making that approach public, while protecting sources and methods. While I do not understand the National Security Act to authorize the ODNI General Counsel to issue controlling guidance to other departments and agencies within the Executive Branch, it does make it the chief legal officer of ODNI, who performs such functions as the Director of National Intelligence (DNI) may prescribe. Director Haines and I have discussed her expectation that, if confirmed as General Counsel, I would have an important role to play in furthering ODNI's integration mission by helping to coordinate legal issues that cut across IC components. If confirmed, I thus commit to reviewing how IC elements are interpreting and applying the Supreme Court's decision in *Carpenter*, providing the result of my review to Director Haines, and doing whatever I can, consistent with my authorities, to ensure IC elements are applying the Supreme Court's *Carpenter* decision in a consistent manner that is true to the Court's interpretation of the Constitution. Moreover, I believe informing the public about the IC's activities is an important part of the IC's mission, and, if confirmed, I would be a strong advocate for being as transparent as possible about the legal basis for the IC's activities, including its interpretation of *Carpenter*, while protecting sources and methods.

[From Senator Risch]

1. **Presidential Policy Directive (PPD) 21 on Critical Infrastructure Security and Resilience states that “it is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats.” In late April of this year, the Biden administration lifted a prohibition levied by the Trump administration on the use of equipment made by Chinese-owned companies on our electric grid.**

- a. **Do you believe equipment manufactured by China-owned entities poses a risk to the security and resiliency of our electric grid?**

I agree with Director Haines that China is a national security threat and that protecting our supply chains is necessary to ensure a reliable and resilient communications infrastructure. I understand Congress and the Executive Branch have also repeatedly and increasingly raised such concerns regarding the risk equipment manufactured by China-owned entities poses to our electric grid.

- b. **Do you support the lifting of the prohibition on use of equipment manufactured by Chinese-owned companies on our electric grid?**

I am not familiar with the rationale behind the Biden Administration’s late April action with respect to prohibitions on the use of equipment made by Chinese-owned companies on the electric grid. Consistent with President Biden’s recent Executive Order on Improving the Nation’s Cybersecurity, I believe the government must improve our efforts to identify, deter, protect against, and respond to cyber attacks, including attacks on our electric grid.

- c. **Did you lobby anyone in the U.S. government about the December 2020 DOE order, or any other federal action barring the use of the company’s products or other Chinese-owned entities products on the U.S. electric grid or communications network, while doing work for Huawei and the PRC’s Ministry of Commerce? Including the U.S. Court of Appeals for the Fifth Circuit lawsuit challenging the FCC’s determination that Huawei is a national security threat?**

No. As part of the work you reference, I did not lobby anyone in the U.S. Government on any topic, nor have I had any involvement in the Fifth Circuit lawsuit challenging the FCC’s determination that Huawei is a national security threat.

2. **In addition to performing work for Huawei and the People’s Republic of China’s Ministry of Commerce, your initial**

questionnaire provided to the Committee notes that you also performed work for the Hong Kong Trade Development Council, which is governed by an advisory council that includes Hong Kong government officials. The Council promotes China's Belt and Road initiative and its Greater Bay Area initiative.

a. Please describe the nature of your work for the Honk Kong Trade Development Council.

In 2019-2020, at the request of a law firm partner, I contributed to the U.S. section of a quarterly report on global privacy developments provided to the client. My sole involvement was my contribution to these reports, and I do not recall any follow up after the submission of any of the reports.

b. Please provide the names of the individuals with whom you worked who are employed by the Council, if any.

I do not recall ever having personal contact with anyone from the Council as part of the limited work I did for that client. The work I did was at the request of and provided solely to law firm colleagues.

c. Do you believe China's Belt and Road initiative and its Greater Bay Area initiative run counter to U.S. interests? Why, or why not?

I agree with Director Haines that China is a national security threat and understand that the IC stated in the most recent Annual Threat Assessment that "Beijing will continue to promote the Belt and Road Initiative ... to expand China's economic, political, and military presence abroad. ..." I have no reason to doubt the accuracy of the IC's assessments.

[From Senator Cotton]

Lawfare

China practices "lawfare" – the practice of projecting illiberal Communist Chinese laws, policies, and norms onto the international system or the legal codes of other countries, or manipulating the legal codes of other countries to advance Chinese Communist Party objectives.

1. During your time at the Department of Justice, National Security Council, or in private practice, have you ever observed evidence of such a campaign?

During my time in government, I did observe the Chinese Communist Party attempting to influence international law or other countries' laws in an attempt to advance their own objectives. The example I remember best is its rejection of the 2016

ruling of an independent arbitral tribunal concerning China's South China Sea claims.

2. Do you think that the Chinese Communist Party uses private companies, trade associations, or seemingly innocuous government bureaucracies to wage such a campaign?

Yes. I understand the IC's most recent Annual Threat Assessment states that the Chinese Communist Party "will continue its whole-of-government efforts to spread China's influence, undercut that of the United States, drive wedges between Washington and its allies and partners, and foster new international norms that favor the authoritarian Chinese system." I have no reason to doubt the accuracy of the IC's assessments.

3. If confirmed, how would you use your position as the DNI's General Counsel to identify and insulate the United States from such attacks?

As the principal advisor to the President and his leadership team for intelligence matters related to national security, the DNI must ensure that these senior government officials receive the best intelligence possible on which to base policy decisions that provide for the security of the nation as a whole. This would include intelligence on, as the Annual Threat Assessment states, the Chinese Communist Party's "whole-of-government efforts to spread China's influence, undercut that of the United States, drive wedges between Washington and its allies and partners, and foster new international norms that favor the authoritarian Chinese system." If confirmed as General Counsel for ODNI, I would support the DNI in performing these vital responsibilities and advancing the nation's interests, working with my counterparts across the Executive Branch to do so, in a manner consistent with the oath I would take to support and defend the Constitution.

You represented several PRC entities after you left the National Security Council.

4. As a former NSC official, how do you assess that China and other adversarial governments attempt to influence or circumvent U.S. laws and policy?

I agree with Director Haines that China has grown more authoritarian at home and more assertive abroad, and is challenging our security, prosperity, and values in significant ways that no other nation is capable of doing. Because I have been out of government for several years, I do not have the benefit of the latest and most complete intelligence regarding the counterintelligence risk posed by China or other foreign governments, including the risk raised by this question. It is clear, however, that Congress and the Executive Branch have repeatedly raised such concerns. If confirmed, I would have access to the latest intelligence and would use that intelligence to fulfill my responsibilities.

5. Are you concerned that Chinese officials use former U.S. Government officials to collect on or influence current U.S. policy?

I understand that the IC's most recent Annual Threat Assessment made clear that "[t]he Chinese Communist Party ... will continue its whole-of-government efforts to spread China's

influence” and that “China will continue expanding its global intelligence footprint to better support its growing political, economic, and security interests around the world.” I also agree with Director Haines that China has grown more authoritarian at home and more assertive abroad, and is challenging our security, prosperity, and values in significant ways that no other nation is capable of doing.

6. Did you confer with other current or former U.S. officials during your work for these companies?

I do not recall conferring with anyone outside my firm during my work for the Chinese Ministry of Commerce, Huawei, or the Hong Kong Trade Development Council, with the exception of other advocates who were at the moot court to prepare for a Supreme Court oral argument.

7. Why did you not recuse yourself from representing U.S. adversaries, considering that you previously served in sensitive national security positions?

All former government employees, and particularly those in national security positions, have a continuing obligation to the U.S. Government, including ethics requirements and the requirement to protect classified information. Prior to leaving the National Security Council, I sought government ethics guidance from designated ethics officials concerning post-government recusal obligations. I complied with such guidance and continue to comply with my ongoing obligations to protect classified information.

During your time in private practice, you represented the Ministry of Commerce of the People's Republic of China. Your firm filed an amicus brief on the Ministry's behalf arguing that U.S. courts are bound to give deference to the Ministry's interpretation of Chinese laws.

8. How might U.S. courts giving deference to the Chinese Communist Party erode the strength of U.S. laws?

I believe that the Constitution establishes the institutions and processes that create U.S. law, and that U.S. courts when interpreting those laws should not defer to any foreign government, including the CCP, in a way that erodes the strength of U.S. laws.

In *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, my firm filed an amicus brief on behalf of the Chinese Ministry of Commerce defending the Second Circuit's determination that a U.S. court is bound to defer to a foreign government's reasonable construction of its own law. I did not work on the brief and only participated in a moot court to prepare advocates for the argument.

The Supreme Court disagreed with the Second Circuit's standard and stated that U.S. courts “should accord respectful consideration,” but are “not bound to accord conclusive effect” to the foreign government's construction of its own law. The Court further stated that “[r]elevant considerations” as to whether the U.S. court should adopt the foreign government's

interpretation of its own law include “the statement’s clarity, thoroughness, and support; its context and purpose; the transparency of the foreign legal system; the role and authority of the entity or official offering the statement; and the statement’s consistency with the foreign government’s past positions.”

9. Do you think this is an example of Chinese Communist Party lawfare?

I believe that foreign governments routinely appear in U.S. courts when the U.S. court is interpreting the foreign government’s law.

10. In what other instances do you think that the United States should defer to the preferences of dictatorships?

I do not think that the United States should defer to the preferences of dictatorships.

You mentioned that you were not aware of any policies by your firm to allow you to decline work for companies that they find morally objectionable.

11. Did you consider declining work for Huawei? Why or why not?

My private practice was principally focused on helping clients understand and comply with U.S. law. This includes the limited work I did for Huawei. Specifically, I did less than 10 hours of work at the firm’s request answering questions about how U.S. administrative law works. I do not believe my prior work would impact my ability to provide objective legal advice to Director Haines or others at ODNI in support of its important national security mission.

12. Do you find Huawei’s work for the Chinese Communist Party in advancing its campaign of genocide against Uighers morally objectionable?

I understand the IC stated in the most recent Annual Threat Assessment that “China leads the world in applying surveillance systems and censorship to monitor its population and repress dissent, particularly among ethnic minorities, such as the Uyghurs.” The State Department has also stated in its most recent annual human rights report that “[g]enocide and crimes against humanity occurred during the year [2020] against the predominantly Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang.” I have no reason to doubt the accuracy of those assessments, and I find any support for genocide to be morally objectionable.

13. Do you believe that U.S. officials should be held to a higher standard when deciding whether to provide legal services to brutal dictatorships and their entities under their control?

All former government employees, and particularly those in national security positions, have a continuing obligation to the U.S. Government, including ethics requirements and the requirement to protect classified information. I would welcome the opportunity to work

with the Committee to assess whether any additional restrictions should be placed on these former employees.

14. Did you provide advice to Huawei on how to influence or circumvent any aspects of U.S. export laws or technology control regime?

No. I can assure the Committee that my legal advice in this matter was to help the company understand how U.S. administrative law works, not skirt or circumvent it.

This committee has made caring for injured intelligence officers and their families a top priority. I will soon join several of my colleagues to introduce additional legislation that ensures U.S. government officials injured in hostile attacks have immediate access to the care they need at Walter Reed, especially for brain injuries.

15. If confirmed, will you commit to ensuring that these officers and their families have the best medical care and support available, and review any IC legal guidance or policies that are currently impeding the expedient delivery of care to these individuals?

Yes.

16. Will you also commit to a full, transparent assessment of any attack on an IC officer – including the Anomalous Health Incidents often discussed by the Vice Chairman – even if such an acknowledgement could carry uncomfortable policy implications for others in the Administration?

Yes. If confirmed, I commit to working with the committee to ensure the IC is taking appropriate steps to provide the American public with maximum transparency regarding the IC's activities, consistent with the need to protect sources and methods.

[Senator Cornyn]

1. According to your official biography, you have in the past advised clients on Committee on Foreign Investments in the United States (CFIUS) matters. Did any of your work for Huawei or any entities with any ties to China or the Chinese Communist Party cover CFIUS matters in any way?

No.

2. You stated at your confirmation hearing that you did work for Huawei but did not register under the Foreign Agents Registration Act (FARA).

Could any of the work you did for either Huawei or other foreign entities be construed as such activity that would require you to register under FARA? Do you believe that your work for Huawei or other foreign entities could have or did significantly impact U.S. policy?

I have never personally registered under FARA and do not understand any of the work I did at Sidley Austin to have required registration under FARA. I also do not believe my work for foreign entities could have or did significantly impact U.S. policy.

3. Do you believe that Huawei is devoting a significant amount of time perfecting ways to circumvent CFIUS or retain the services of Americans with knowledge of or experience in government, the intelligence community, or policymaking in order to advance the goals of the Chinese Communist Party at the expense of U.S. national security?

Because I have been out of government for several years, I do not have the benefit of the latest and most complete intelligence regarding the counterintelligence risk posed by Chinese-owned entities, including Huawei, but it is clear that Congress and the Executive Branch have repeatedly and increasingly raised such concerns. If confirmed, I would have access to the most recent intelligence analysis relating to such threats from China. That information will guide any legal advice I provide to Director Haines and others at the ODNI.

[From Senator Sasse]

Huawei

1. What role do you think Huawei plays and has played in the Chinese Communist Party's genocide in Xinjiang?

I understand that the IC stated in the most recent Annual Threat Assessment, "China leads the world in applying surveillance systems and censorship to monitor its population and repress dissent, particularly among ethnic minorities, such as the Uyghurs." The State Department has also stated in its most recent annual human rights report that "[g]enocide and crimes against humanity occurred during the year [2020] against the predominantly Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang." I have no reason to doubt the accuracy of those assessments, and, if confirmed, I would have access to the most recent intelligence analysis relating to this matter, which would guide any legal advice I provide to Director Haines and others at the ODNI.

2. Do you agree with comments by Director Haines on the significant counterintelligence risk Huawei poses?

I know that Congress and the Executive Branch have expressed concerns about the counterintelligence risks posed by Huawei. I agree with Director Haines that

protecting our supply chains is necessary to ensure a reliable and resilient communications infrastructure.

3. What concerns do you have about Huawei and America's national security?

I know that Congress and the Executive Branch have expressed concerns about the counterintelligence risks posed by Huawei. I also know the U.S. Government and Congress have taken a number of steps to protect our domestic telecommunications networks, and, consistent with President Biden's recent Executive Order on Improving the Nation's Cybersecurity, I believe the government must improve our efforts to identify, deter, protect against, and respond to cyber attacks. This includes ensuring that we enhance our supply chain security to protect our critical infrastructure, including our telecommunications networks.

4. What do you understand of the Intelligence Community's extensive unclassified statements and analysis on Huawei?

I understand that, in July 2020, Director Wray stated that, if "Chinese companies like Huawei are given unfettered access to our telecommunications infrastructure, they could collect any of your information that traverses their devices or networks." If confirmed, I would support the continuing assessment of this risk by Director Haines and the ODNI team.

5. Do you think your helping Huawei with rule making helped Huawei comply better with U.S. law?

My private practice was principally focused on helping clients understand and comply with U.S. law. This includes the very limited work I did for Huawei. Specifically, I did less than 10 hours of work at the firm's request answering questions about how U.S. administrative law works.

6. What is your assessment of China's arrest of two Canadians in December 2018, nine days after the Canadians arrested Huawei's CFO? Do you agree that it demonstrates that Huawei is an arm of the Chinese Communist Party, which will go to lengths it goes to protect it?

Because I have been out of government for several years, I do not have the benefit of the latest and most complete intelligence regarding Huawei's relationship with the Chinese Communist Party, including with respect to the subject of this question. If confirmed, I would have access to the most recent intelligence analysis relating to this matter.

7. The ODNI has stated that "China increasingly is a near-competitor, challenging the United States in multiple arenas — especially economically, militarily, and technologically — and is pushing to change global norms." Please explain Huawei's role in this effort.

I know that the IC stated in the most recent Annual Threat Assessment that “[t]he Chinese Communist Party ... will continue its whole-of-government efforts to spread China’s influence, undercut that of the United States, drive wedges between Washington and its allies and partners, and foster new international norms that favor the authoritarian Chinese system.” I also know that Congress and the Executive Branch have repeatedly and increasingly – such as in July 2020 remarks made by Director Wray – expressed concerns about the counterintelligence risks posed by Huawei. If confirmed, I would have access to the most recent intelligence analysis relating to the threat from China and would support the continuing assessment of this risk by Director Haines and the ODNI team.

China

8. Do you agree that China is the preeminent national security threat? If not, please explain.

Yes. As Director Haines made clear in the Annual Threat Assessment, China is “an unparalleled priority for the Intelligence Community.”

9. Do you agree that China’s national security law compels China’s companies to share all and any information with the Chinese Communist Party?

The translations of the Law I have seen contain broadly worded provisions and I know that Director Wray has stated publicly that “China’s laws allow its government to compel any Chinese company to provide any information it requests.” If confirmed, I expect I would have the benefit of the latest and most complete intelligence regarding how the law is being applied to Chinese companies, which would guide any advice I provide to Director Haines and ODNI employees.

10. Do you agree that the Chinese Communist Party wants to become the world’s preeminent superpower and achieve first-mover advantage in the tech realm?

I understand the IC stated in the most recent Annual Threat Assessment, “[t]he Chinese Communist Party ... will continue its whole-of-government efforts to spread China’s influence, undercut that of the United States, drive wedges between Washington and its allies and partners, and foster new international norms that favor the authoritarian Chinese system.” I have no reason to doubt the accuracy of the IC’s assessment.

Ethical Government Service

11. Please describe your understanding of your post-employment restrictions upon leaving the National Security Council related to representing, aiding, and advising foreign governments, particularly the People’s Republic of China, and their national champions like Huawei.

All former government employees, and particularly those in national security positions, have a continuing obligation to the U.S. Government, including ethics requirements and the requirement to protect classified information. Prior to leaving the National Security Council, I sought government ethics guidance from designated ethics officials concerning post-government recusal obligations. I complied with such guidance and continue to comply with my ongoing obligations to protect classified information.

12. Would you commit to not take clients on behalf of the Chinese Communist Party, its tech champions like Huawei, or any other arm of the Chinese Communist Party after leaving government service?

I do not have plans for what I would do after service in government, if confirmed, but commit to following all post-government ethics rules and restrictions.

13. Do you think political appointees and senior civilian service officers who hold senior national security posts should be able to leave government service and then represent or advise the Chinese Communist Party or its national champions?

All former government employees, and particularly those in national security positions, have a continuing obligation to the U.S. Government, including ethics requirements and the requirement to protect classified information. I would welcome the opportunity to work with the Committee to assess whether any additional restrictions should be placed on these former employees.

14. Would you support a ban on National Security Council employees ever working for an entity that is subject to the jurisdiction of the Chinese Communist Party's National Security Law, an element of the People's Republic of China, or designated as substantially responsible for cyber intrusions for the purpose of theft of PII?

All former government employees, and particularly those in national security positions, have a continuing obligation to the U.S. Government, including ethics requirements and the requirement to protect classified information. I would welcome the opportunity to work with the Committee to assess whether any additional restrictions should be placed on these former employees.

15. Will you commit to working with this committee to ensure that IC employees cannot represent or advise the Chinese Government or its national champions after they leave the IC?

All former government employees, and particularly those in national security positions, have a continuing obligation to the U.S. Government, including ethics requirements and the requirement to protect classified information. I would welcome the opportunity to work with the Committee to assess whether any additional restrictions should be placed on these former employees.

16. What do you understand about current restrictions on current IC employees regarding representing foreign governments?

All IC employees have a continuing obligation to protect classified information. In addition, Section 304 of the National Security Act requires reporting of certain employment activities, including “direct employment by, representation of, or the provision of advice relating to national security to the government of a foreign country or any person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized... by any government of a foreign country.” Finally, 18 USC § 207(f) provides for post-government restrictions for senior government officials in representing a foreign entity before any officer or employee of any department or agency of the United States.

17. Did you ever decline to work on any issue during your tenure at Sidley Austin? If so, why?

Yes. Although I did not track the circumstances in which I declined work, I remember doing so because of legal conflicts of interest or ethics requirements, as well as limitations on my time due to other work requirements.

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**SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE**

**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

PART A - BIOGRAPHICAL INFORMATION

1. FULL NAME: Brett Michael Holmgren
OTHER NAMES USED: N/A
2. DATE AND PLACE OF BIRTH: June 30, 1981, in Minneapolis, Minnesota
CITIZENSHIP: United States
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: Dana A. Remus
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: N/A
6. NAMES AND AGES OF CHILDREN:

NAME

AGE

INFORMATION REDACTED

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
St. John's University (Minnesota)	09/1999 to 12/2000	None - Transferred	
University of Wisconsin-Madison	01/2001 to 12/2003	BA in Journalism & Political Science	12/2003
John's Hopkins University	09/2009 to 08/2010	MA in Global Security Studies	08/2010

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT).

<u>EMPLOYER</u>	<u>POSITION/TITLE</u>	<u>LOCATION</u>	<u>DATES</u>
PT Fund, Inc (Presidential Transition)	Deputy for Nominations	1401 Constitution Ave. Washington, DC	10/2020-Present

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Capital One Financial Corporation	Vice President for Technology Risk Management	1680 Capital One Drive McLean, VA	02/2017-10/2020
Federal Government	Special Assistant to the President and Senior Director for Intelligence Programs	1600 Pennsylvania Ave. NW	07/2015-01/2017
Federal Government	Senior Policy Advisor to the Assistant to the President for Homeland Security and Counterterrorism	1600 Pennsylvania Ave. NW	06/2014-07/2015
Federal Government	Special Assistant to the Deputy Secretary of Defense	1010 Defense Pentagon Washington, DC 22202	05/2013-06/2014
Federal Government	NSC Director for Counterterrorism	1600 Pennsylvania Ave. NW	09/2011-05/2013
Federal Government	Political Analyst (CIA)	1000 Colonial Farm Road McLean, VA	01/2006-09/2011
Federal Government	Counterterrorism Analyst (DIA)	7400 Pentagon Washington, DC 20301	06/2003-01/2006

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8).

See response to question number 8.

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

I have acquired deep expertise on the Intelligence Community (IC) and national security matters through my prior service as an analyst in the IC and as a policymaker and advisor at the White House and the Department of Defense. As an all-source intelligence analyst, first at the Defense Intelligence Agency (DIA) and then at the Central Intelligence Agency (CIA), I gained firsthand experience in all components of the intelligence cycle – from planning and collection to reporting and publishing products for policymakers. I have served in warzones and on other temporary assignments abroad, which gave me a unique appreciation of the risks and sacrifices that our warfighters, intelligence officers, and diplomats face on a daily basis. I have also authored multiple intelligence assessments, from longer strategic products to current analyses that have been included in the President's Daily Brief. My experiences as an analyst and manager taught me the importance of analytic objectivity, the various consumers the IC supports, and the need for balance between strategic and tactical intelligence collection, reporting, and analysis.

As a policymaker, I have seen firsthand how intelligence supports the policy process, while also developing knowledge on the role of the National Security Council (NSC) and the interagency policy development and coordination process. While serving on the NSC staff, I was a consumer of the IC's products and work, which gave me a richer understanding of the analysis, collection, operations, and activities across all IC agencies. Moreover, as the Special Assistant to the

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President and Senior Director for Intelligence Programs on the NSC from 2015 to 2017, I provided executive branch oversight for covert action programs and sensitive military intelligence operations, and gained a deeper appreciation for the vital role played by policymakers, diplomats, and the legislative branch in ensuring that covert action and other intelligence activities and operations are effectively supporting US foreign policy objectives.

Since leaving government in January 2017, I gained experience as an executive in the private sector at Capital One Financial Corporation, overseeing risk management for cybersecurity and technology. Among other things, my experience in industry gave me a window into how the government and the IC can engage with the private sector and other non-governmental entities (e.g., think tanks, academia) on shared threats and challenges.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT).

2017 Director of National Intelligence Superior Service Award
 2017 CIA Director's Award
 2017 Office of the Secretary of Defense Exceptional Civilian Service Award
 2014 Secretary of Defense Meritorious Civilian Service Award
 2010 CIA Hostile Action Service Medal
 2006-2011 CIA Exceptional Performance Awards (7)
 2005 Department of Defense Joint Service Accommodation Medal
 2005 Defense Intelligence Agency Civilian Expeditionary Award

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS).

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
Medical Reserve Corps of Washington, DC	Volunteer	02/2021 - Present
One World Education	Board Member	09/2017 - Present
University of Wisconsin-Madison Political Science Department Board of Visitors	Member	10/2019 - Present
Truman National Security Project	National Security Fellow	06/2014 - Present
Intelligence and National Security Alliance	Member	03/2017 - 10/2020
The Risk Management Society	Member	01/2019 - 10/2020
Council on Foreign Relations	Term Member	06/2014 - 06/2019
Stimson Study Group on U.S. Drone Policy	Study Group Member	06/2017 - 07/2018

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13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, BLOGS AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES OR REMARKS YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT, TRANSCRIPT, OR VIDEO). IF ASKED, WILL YOU PROVIDE A COPY OF EACH REQUESTED PUBLICATION, TEXT, TRANSCRIPT, OR VIDEO?

See below for all writings and remarks that I can recall, to the best of my knowledge, that are responsive to the Committee's request. I will provide a copy of any requested publication, transcript, or video.

July 16, 2020: "Trump's New Director of National Intelligence Doesn't Understand His Job." *Foreign Policy*

March 5, 2020: "A Model for Countering Foreign Disinformation and Interference in Elections." *Just Security*.

January 8, 2020: "As Conflict with Iran Intensifies, the Intelligence Community is Still Leaderless." *Just Security*

November 12, 2019: "Leaving the DNI Leaderless is Reckless and Dangerous." *Just Security*

March 30, 2016: Remarks during panel discussion on "Executive Branch Supervision and Oversight of U.S. Intelligence" at Conference on Intelligence and National Security in American Society, hosted by the University of Texas at Austin Intelligence Studies Project

Spring 2003: "Saudi Arabia's Tacit Support for Terrorism." *The American Undergraduate Journal of Politics and Government*

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE AS THE ASSISTANT SECRETARY OF STATE FOR INTELLIGENCE AND RESEARCH).

During my career as an analyst, policymaker, and manager, I have developed deep expertise on the Intelligence Community (IC), the diverse roles and responsibilities of the agencies that constitute the IC, and the myriad ways in which impartial intelligence analysis informs policy decisions and supports US foreign policy objectives. I have developed, produced, and overseen the production of all-source analysis at the strategic and tactical level for policymakers, diplomats, and warfighters.

I have also served for more than five years in policy roles at the White House and the Department of Defense. My most recent position in government, from 2015 to 2017, where I served as Special Assistant to the President and Senior Director for Intelligence Programs on the National Security Council (NSC) staff, gave me a richer understanding of the diverse and important missions, roles, responsibilities, and contributions of the entire IC, including the

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Department of State's Bureau of Intelligence and Research (INR). In my capacity as NSC Senior Director for Intelligence Programs, I also worked closely with INR on a range of issues and operations that involved diplomatic equities.

As an intelligence analyst, policy official, or executive in the private sector, I have overseen and managed budgets, have management experience, have worked closely with foreign partners on intelligence and diplomatic matters, and have a deep understanding of the capabilities and limitations of the IC.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS).

Contributions

Friends of Dan Feehan	\$250.00 (08/13/2017)
Friends of Dan Feehan	\$500.00 (05/04/2018)
Elissa Slotkin for Congress	\$250.00 (09/06/2018)
Feehan Victory Fund	\$1000.00 (10/04/2018)
Minnesota Democratic-Farmer-Labor Party	\$1000.00 (10/04/2018)
Elissa Slotkin for Congress	\$250.00 (10/20/2018)
Elissa Slotkin for Congress	\$250.00 (03/27/2019)
Biden for President	\$2800.00 (04/25/2019)
Friends of Dan Feehan	\$500.00 (10/01/2019)
ACTBLUE/Joe Kennedy for Congress	\$100.00 (10/04/2019)
Friends of Dan Feehan	\$500.00 (12/29/2019)
ACTBLUE/Kennedy for Massachusetts	\$100.00 (02/09/2020)
Elissa Slotkin for Congress	\$250.00 (02/27/2020)
Biden for President	\$2800.00 (05/06/2020)
Biden for President	\$70.76 (05/07/2020)
Friends of Dan Feehan	\$2800.00 (06/08/2020)
ACTBLUE/Kennedy for Massachusetts	\$200.00 (08/27/2020)
Friends of Dan Feehan	\$1000.00 (10/27/2020)

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In addition to the contributions noted above, on April 28, 2019, I purchased Biden for President campaign merchandise in the amount of \$37.10. This amount was later returned to me in full.

From 2019 to 2020, I served as a volunteer for the Biden for President campaign as Co-Chair of the Intelligence Policy Working Group.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE).

I have never run for public office.

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

No.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

No.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

None.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

None. My financial interests consist of diversified mutual funds, cash (or cash equivalents), and property that my wife and I own as our primary residence. I will follow the advice of government ethics officials to address any conflict of interest issues that may arise.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

I intend to continue to participate in Capital One's 401(k) plan since Capital One ceased making contributions to this plan following my separation from the company in October 2020. I have no severance pay, pension rights, stock options or deferred income arrangements with any former employer.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

None.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

Not applicable

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

Since January 20, 2021, my wife has served as the Counsel to the President of the United States.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

Not applicable.

27. LIST ALL GIFTS EXCEEDING \$100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

Capital One Financial Corporation (2020): Farewell gift certificate for \$150.00 to a restaurant.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF \$1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

<u>DESCRIPTION OF PROPERTY</u>	<u>VALUE</u>	<u>METHOD OF VALUATION</u>
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Please refer to Schedule A of my OGE 278 form.

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF \$10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

<u>NATURE OF OBLIGATION</u>	<u>NAME OF OBLIGEE</u>	<u>AMOUNT</u>
None.		
30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.		
No.		
31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING \$200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)		
INFORMATION REDACTED		
32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?		
Yes.		
33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.		
Washington D.C.		
SENSITIVE BUT UNCLASSIFIED		

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

Yes. In 2020, our tax returns for 2019 were audited by the IRS. The audit resulted in a refund to us of \$2,319.00 due to a tax overpayment for 2019.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN \$200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

Not applicable.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No. I will follow the advice of government ethics officials to address any conflict of interest issues identified.

37. IF APPLICABLE, LIST THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE REPORTS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT. IF ASKED, WILL YOU PROVIDE A COPY OF THESE REPORTS?

Not applicable.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PLEASE PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL, STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PLEASE PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PLEASE PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PLEASE PROVIDE DETAILS.

In 2017, I voluntarily participated in an interview with SSCI staff in a closed-door setting in connection with the Committee's inquiry into Russian interference in the 2016 presidential election.

In 2017, I was asked to provide information in connection with an investigation being led by the United States Attorney's Office for the District of Connecticut into unauthorized disclosures of information to reporters about a sensitive collection activity. I have no reason to believe I was a target or subject of the investigation and was not contacted again about the matter.

In 2012, I was interviewed in connection with an investigation conducted by the United States Attorney's Office for the District of Columbia into unauthorized disclosures of information provided to reporters about a foiled bomb plot in 2012 tied to al-Qa'ida in the Arabian Peninsula. A former FBI agent pled guilty in 2013 to charges of unlawfully disclosing national defense information related to this plot.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PLEASE PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

PART F - SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

Yes, I have taken polygraphs in connection with my employment with the Defense Intelligence Agency and the Central Intelligence Agency.

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE ASSISTANT SECRETARY OF STATE FOR INTELLIGENCE AND RESEARCH AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS, RESPECTIVELY, IN THE OVERSIGHT PROCESS.

As elected representatives of the American people, Congressional oversight is a vital component of oversight conducted by all three branches of government to ensure that US intelligence activities are effective and conducted in accordance with US laws and the Constitution. Importantly, Congressional oversight of US intelligence activities is necessary to hold the Executive Branch accountable. The Assistant Secretary of State for Intelligence and Research is obliged to assist the intelligence committees in carrying out their oversight duties by, among other things, keeping the committees fully and currently informed of US intelligence activities.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE ASSISTANT SECRETARY OF STATE FOR INTELLIGENCE AND RESEARCH.

The Assistant Secretary of State for Intelligence and Research serves as the principal intelligence advisor to the Secretary of State; coordinates and supervises all intelligence-related activities in the Department; oversees and directs the Department's all-source and independent research and analysis activities; serves as the primary Department representative to the Director of National Intelligence and other elements of the Intelligence Community; and provides oversight to ensure that US intelligence activities support US foreign policy priorities and are consistent with U.S. Chief of Mission authority, laws, and executive orders.

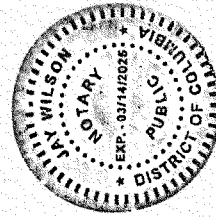
AFFIRMATION

I, **BRETT MICHAEL HOLMGREN**, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

April 20, 2021
(Date)

SIGNATURE OF BRETT MICHAEL HOLMGREN

SIGNATURE OF NOTARY



TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be the Assistant Secretary of State for Intelligence and Research, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

SIGNATURE OF BRETT MICHAEL HOLMGREN

Date: Apr. 20, 2021

Response to the Senate Select Committee on Intelligence

Additional Questions for
Brett Holmgren upon his nomination to be
Assistant Secretary of State for Intelligence and Research



May 3, 2021

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 1
Senate Select Committee on Intelligence
May 3, 2021**

Question:

What do you believe are currently the highest priority national security and foreign policy issues for INR?

Answer:

The highest priority national security and foreign policy issues for INR are the priorities of the Secretary of State and other senior national security policymakers, including the President. It is clear that the United States faces several serious threats in the coming years. These include China's push for global power, the provocative actions of Russia, Iran, and North Korea, ongoing regional conflicts, and a host of transnational issues to include terrorism, cyber, climate change, and global pandemics.

If confirmed, I look forward to reviewing INR's analysis of the most urgent national security priorities, and will work to ensure that INR continues to support the Secretary of State, the President, and senior policymakers with analysis on the highest priority national security and foreign policy issues.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 2
Senate Select Committee on Intelligence
May 3, 2021**

Question:

What unique role does INR's analysis play, as compared to the analysis produced by other IC agencies?

Answer:

INR is unique among the other all-source intelligence agencies in that its primary mission is to harness intelligence and analysis to support the Secretary of State and US diplomats and inform the conduct of US diplomacy. INR carries out these worldwide responsibilities by providing timely and insightful analysis on all countries and region-specific issues, as well as analysis focused on transnational and global issues. INR's analysis is also unique in that it provides support for policy engagements specific to the Department of State, such as bilateral meetings and multilateral conferences, facilitates reviews of sensitive intelligence activities to ensure that such activities support US foreign policy objectives, and serves as the leader in the IC for foreign public opinion research and analysis.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 3
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, how would you focus INR's resources to achieve these priorities and ensure that State Department policy makers had sufficient support in these areas?

Answer:

If confirmed, I look forward to reviewing INR's resources and will evaluate whether current resources are strategically prioritized and aligned to the highest national security priorities. I will also seek feedback from U.S. Department of State officials and other senior US policymakers to determine if INR's resources are appropriately aligned to the highest priorities and sufficient to carry out its duties. I look forward to engaging with the Department of State and the Office of the Director of National Intelligence to review the appropriations process to ensure INR has the resources necessary to support the Department and the IC.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 4
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, how would you plan to ensure that INR analysts have access to all sources of information available to the IC?

Answer:

If confirmed, I look forward to studying how INR analysts are currently granted access to intelligence reporting to understand if any current access gaps exist and whether such gaps are appropriate, taking into account the need to know principle. I understand that the IC provides opportunities for INR to coordinate on all IC products, and that INR works with the IC to arrange temporary access to intelligence to allow relevant analysts to coordinate on such products when needed. To the extent access issues exist or emerge in the future, I would work through the existing IC procedures for granting access to INR analysts and escalate the matter to the appropriate head of the IC element for resolution as warranted.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 5
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, how would you ensure that INR analysts provide independent analysis and assessments? How would you ensure that differing assessments are incorporated into final analyses?

Answer:

INR has a long history of “telling it like it is” and providing independent analysis to policymakers. If confirmed, I intend to reaffirm the vital role that INR and the broader IC play in providing objective, apolitical analysis to policymakers, regardless of whether policymakers agree with the conclusions. As a leader, it will be my highest priority to maintain and nurture a work environment and culture within INR where analysts are comfortable saying and writing what they believe to be the truth without regard to policy or politics.

Analytical dissents are a normal part of the IC coordination process. If confirmed, I will support INR analysts who offer well-grounded dissents and ensure that the relevant IC agency incorporates INR’s dissent into the final product so that policymakers are aware of alternative views.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 6
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Whom do you consider to be INR's primary customers?

Answer:

INR's primary customers are the Secretary of State, other Department of State officials, the President, and senior US policymakers. INR supports its customers through a variety of means, including standalone INR analysis, INR-authored articles in the President's Daily Briefing, other IC joint products, and regular briefings and engagements with Department of State officials and other senior US policymakers.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 7
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, how would you direct INR's analytical resources to fulfill its mission to those different customers?

Answer:

I understand that INR's Program of Analysis is developed in consultation with INR's policy clients and reflects the priorities of the Department as well as the President's Intelligence Priorities and the National Intelligence Priorities Framework. If confirmed, I look forward to engaging INR's various clients and reviewing the current allocation of INR's analytic resources to ensure that INR can effectively support its various customers.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 8
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, how do you envision utilizing INR's Office of Analytical Outreach (INR/AO), which exchanges analyses with the private sector to benefit the IC with outside expertise?

Answer:

INR plays a leading role in analytic outreach in the IC and has been designated as the outreach coordinator on behalf of the National Intelligence Council. In this capacity, INR convenes experts from the private sector, academia, think tanks, and international and nongovernmental organizations to share their research and analytic insights with IC analysts and US policy makers to inject a variety of views and new thinking to help inform intelligence analysis. All of INR's exchanges are designed for a broad U.S. government audience in an off-the-record and not-for-attribution setting to foster candid discussion with outside experts. I believe this function is vitally important to expose the IC and policymakers to diverse perspectives and guard against group think. If confirmed, I look forward to evaluating how we can further leverage these analytic exchanges to inform the IC's understanding of new and emerging threats where outside experts may have unique insights, such as global health security, emerging technologies, and cyber.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 9
Senate Select Committee on Intelligence
May 3, 2021**

Question:

What do you understand to be the obligation of the Assistant Secretary of State to keep congressional intelligence committees fully and currently informed about matters relating to compliance with the Constitution and laws?

Answer:

I fully appreciate and respect the important oversight role of Congress. I believe that some of the IC's greatest reforms and achievements have historically been driven by effective Congressional oversight. If confirmed, I will keep the committees fully and currently informed about matters relating to compliance with the Constitution and laws. I will make myself, my senior team, and INR staff available for meetings and briefings as requested.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 10
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, how would you manage and achieve INR's obligations to the Secretary of State and to the Director of National Intelligence?

Answer:

INR's mission is to ensure that timely, objective analysis informs foreign policy decisions and that intelligence and counterintelligence activities support America's foreign policy. INR is a bureau of the Department of State and operates under the Department's personnel system, budget, and guidance in a number of respects. However, pursuant to Executive Order 12333, INR is also a member of the IC and has important statutory responsibilities to collect, analyze, produce, and disseminate information, intelligence, and counterintelligence to support the DNI, IC and other departmental missions. In many ways, INR serves as the bridge between the worlds of diplomacy and intelligence, playing a role that is critical for both the Secretary of State and the DNI.

If confirmed, I will engage with the Secretary of State and the DNI to better understand how INR can most effectively support their needs and priorities.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 11
Senate Select Committee on Intelligence
May 3, 2021**

Question:

How do you view INR's role within the Department of State versus INR's support to the IC?

Answer:

I view INR's role in the worlds of diplomacy and intelligence as complementary and vital to the success of the Department of State and the IC. While INR's primary focus is to supply intelligence and analysis for the Secretary of State and other Department policymakers, INR also serves as one of the three strategic level all-source analytic agencies (in addition to CIA and DIA). As an all-source intelligence agency, INR analysts fully participate in the President's Daily Briefing and the IC production processes, regularly coordinating and collaborating with other IC elements on a wide range of analytic products intended for a broader national security community. INR intelligence coordination officers also work closely with other IC elements on collection, evaluation, and intelligence operational and policy issues.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 12
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, what would be your role in mediating any differences that should arise between the Office of the Director of National Intelligence and the Department of State regarding National Intelligence Program resource allocation?

Answer:

If confirmed, I would work with both the DNI and the Secretary of State to find a solution that would ensure that the Secretary and other policymakers continue to receive the intelligence support from INR they need. Should a collection resource issue arise that impacts INR equities, I would refer the issue to OMB to achieve a satisfactory resolution.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 13
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Please describe the role of INR in ensuring that the programs and operations of the IC are consistent with, and support, United States foreign policy.

Answer:

INR has an important policy coordination role to play in ensuring that US intelligence activities support US foreign policy objectives and do not undermine the foreign policy interests of the United States. INR's Office of Intelligence Policy and Coordination fulfills these responsibilities by coordinating with Department of State policymakers, including the Secretary of State, Chiefs of Mission, the IC, and the National Security Council staff to ensure that intelligence collection and operational activities support, are informed by, and are consistent with US foreign policy, IC policy, and the Department of State's interests. Among other things, I understand that INR officers brief Department policymakers on intelligence activities, including the likely gains and risks, so that policymakers can make informed judgments.

If confirmed, I will work with the appropriate IC agencies and the DNI to ensure that INR's coordination staff continues to have direct access to the information needed to support the Department's most senior officials, including the Secretary, so that they can make fully informed policy decisions.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 14
Senate Select Committee on Intelligence
May 3, 2021**

Question:

What role should INR play in advocating on behalf of Department of State policymakers for expanded “read in” to compartmented collection activities (and analyses derived from those activities) and covert action programs?

Answer:

As the Department of State’s primary interlocutor with the IC, I believe INR staff have a role to play in advocating on behalf of Department policymakers for access to sensitive intelligence or compartmented collection activities if policymakers need such information to perform their duties. If confirmed, I will be prepared to advocate with the relevant IC agency for such access, while taking into account the need to protect sensitive sources and methods.

With respect to covert action programs, if confirmed, I will ensure that relevant INR staff and Department policymakers are provided appropriate access to such programs, consistent with the security guidelines set forth by the National Security Council.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 15
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Do you believe that INR has the structure and resources necessary to support United States foreign policy and Department of State policymakers? Upon what factors do you base your answer?

Answer:

If confirmed, I look forward to examining closely the current structure and staffing posture of INR to ensure the organization has the resources necessary to support its mission. In doing so, I look forward to reviewing INR's resources and structure relative to the highest national security priorities.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 16
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Please describe what you believe should be INR's role in supporting United States Chiefs of Missions, in terms of analytic support and in facilitating policy guidance related to collection and covert action programs and operations.

Answer:

Pursuant to Executive Order 12333, INR has an important role to play in supporting United States Chiefs of Mission in discharging their responsibilities pursuant to law and presidential direction. INR fulfills this responsibility by ensuring that Chiefs of Mission understand their intelligence oversight authorities and responsibilities, including their responsibility to concur on sensitive intelligence activities in their respective area(s). To support Chiefs of Mission, INR provides analysis and information on the intelligence activities in question, conducts intelligence oversight training for new Chiefs of Mission and Deputy Chiefs of Mission, arranges briefings with IC elements as needed, and transmits reporting requirements and advisory taskings of the IC to Chiefs of Mission abroad.

INR staff is available on a 24/7 basis, via the INR Watch, to respond to requests for information and assistance from Chiefs of Mission.

INR also provides regular access to its analytic products, including foreign public opinion research analysis, to Chiefs of Mission and other embassy staff, as appropriate. In addition, INR analysts travel to U.S. Missions around the world to provide in-person briefings and conduct consultations.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 17
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Is the IC obligated to cease intelligence activities that do not have the concurrence of the Chief of Mission, absent presidential direction?

Answer:

Absent separate guidance from the President, the IC is obliged to suspend intelligence activities that do not have the concurrence of the Chief of Mission, with disputes escalated directly to the Secretary of State and the head of the appropriate IC element for resolution.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 18
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Is Chief of Mission concurrence required for intelligence activities, such as certain signals intelligence and cyber operations, that affect the country in question but may not be conducted by members of the U.S. mission? What should be the role of INR in ensuring that Chiefs of Mission are aware of these activities?

Answer:

Yes, Chiefs of Mission would have a role to play in reviewing and providing concurrence for certain types of signals intelligence collection or cyber operations even if the activity was not being conducted by members of the U.S. mission. When these elements are under Combatant Commander control, the Combatant Commander is responsible for coordination and gaining concurrence as well as country clearance if required.

INR's role is to ensure that policymakers in the Department and Chiefs of Mission overseas have the opportunity to provide foreign policy review and conduct a cost-benefit analysis of such activities when appropriate, with any issues escalated to the Secretary of State and the head of the appropriate element for resolution.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 19
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Should INR have a role in resolving disagreements that arise between Chiefs of Mission and the Department of Defense?

Answer:

Whether INR would have a role in resolving any disagreements between the Department of Defense and Chiefs of Mission would depend on the nature of the issue. To the extent the Department of Defense activity involves intelligence equities, INR would work with the Office of the Undersecretary of Defense for Intelligence and Security or the Defense Intelligence Agency to obtain the information needed to help resolve coordination issues and support the Chief of Mission's analysis of the activity in question.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 20
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Section 1.8 of Executive Order 12333 tasks the Secretary of State with transmitting reporting requirements and advisory taskings of the Intelligence Community to Chiefs of Mission and disseminating reports received from U.S. diplomatic and consular posts. What should INR's role be in identifying intelligence gaps that could be addressed through diplomatic reporting? What should INR's role be in ensuring that diplomatic reporting is disseminated throughout the Department of State and the Intelligence Community?

Answer:

I understand that INR works with the National HUMINT Requirements Tasking Center (NHRTC) to develop National HUMINT Collection Directives and transmits these Directives to U.S. missions overseas. NHRTC's taskings are considered advisory taskings for the Department, and INR serves as an advocate for diplomatic reporting to ensure embassy officers help fill information gaps with diplomatic reporting where possible. If confirmed, I will continue to support INR's role in ensuring that diplomatic reporting helps address IC collection gaps.

With respect to the distribution of diplomatic reporting, there are well established mechanisms in the Department and the IC to distribute the Department's diplomatic reporting through official channels. While responsibility for the distribution of diplomatic reporting lies outside of INR, if confirmed, I will work with the relevant departmental offices to address any issues with distribution in a timely manner.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 21
Senate Select Committee on Intelligence
May 3, 2021**

Question:

If confirmed, what modifications (if any) do you envision for INR personnel, in terms of hiring, structure, promotion, and retention?

Answer:

INR's greatest asset is its people. I understand INR has a highly competitive selection process associated with INR positions to ensure top quality candidates for positions in the bureau. The combination of Civil Service officers who have spent many years on the same account and Foreign Service officers who bring an overseas perspective contributes to INR's reputation for strong, independent analysis. I also understand that INR recently received Schedule B Hiring Authority from OPM for a period of 24 months. Under this authority, INR will be able to process new hires more expeditiously into the bureau. I understand INR also plans to incentivize foreign language use and proficiency by establishing a foreign language pay program. I strongly support these recent improvements and will advocate for sustaining them moving forward.

If confirmed, I will also focus heavily on increasing diversity and inclusion by ensuring that INR is tapping into a cross-sectional candidate pool representative of a broad spectrum of demographics.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 22
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Please describe any specific goals that you would have to improve INR?

Answer:

If confirmed, I will focus on supporting and enhancing the INR workforce, including by elevating diversity recruitment and retention, providing sufficient opportunities for rotational assignments and professional development, and ensuring that INR's talent and expertise can support new and emerging national security priorities.

In addition, I will focus on accelerating INR's information technology (IT) modernization effort to ensure that INR staff have the latest tools and resources to carry out their responsibilities. A successful IT modernization effort will be critical to enhancing how INR delivers its products and analytic services to its primary customers, in the United States and abroad.

I also will reassess the strategic vision and priorities for INR to ensure that INR's work is aligned with current national security priorities and that INR is prepared to address new threats and capitalize on opportunities over the horizon.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 23
Senate Select Committee on Intelligence
May 3, 2021**

Question:

How do you intend to protect whistleblowers, ensure that their complaints are treated appropriately, and that they are protected from reprisals?

Answer:

If confirmed, I will foster a culture where all staff members feel comfortable raising issues of concern, strongly support the statutory rights of whistleblowers, honor their anonymity in accordance with the law, and steadfastly protect whistleblowers from reprisal at every step in the process. I will also review the current whistleblower protections and procedures for INR personnel to determine whether any changes or updates are appropriate.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 24
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Do you plan on pursuing the use of IC authorities for INR personnel benefits?

Answer:

If confirmed, I intend to study INR's personnel benefits to understand any disparities relative to IC personnel. Should I determine the need to pursue the use of IC authorities for INR personnel, I commit to engaging closely with Congress on the matter.

**Prehearing Question Submitted to
INR Nominee Brett Holmgren
Question # 25
Senate Select Committee on Intelligence
May 3, 2021**

Question:

Please describe your past experiences and interactions with other IC all-source elements.

Answer:

Throughout my career, I have had extensive experience interacting with other IC all-source elements. As a former analyst at both the DIA and the CIA, I understand each organizations' analytic mission, roles, responsibilities, and customers, as well as the processes used to develop and produce analytic products. In these roles, I also worked closely with INR analysts by, among other things, sharing information and coordinating on analytic products.

In addition, while serving as the Special Assistant to the President and Senior Director for Intelligence Programs on the National Security Council (NSC) staff from 2015 to 2017, I was a regular consumer of the IC's all-source analytic products (DIA, CIA, INR, and various Office of the Director of National Intelligence components). In my capacity as a policymaker, I routinely provided feedback to analysts with respect to the timeliness, relevance, and impact of their work on informing and supporting NSC policy deliberations.

**Question for the Record submitted to
Assistant Secretary of State for Intelligence and Research (INR) Nominee,
Brett M. Holmgren, by
Senator Dianne Feinstein,
U. S. Senate Select Committee on Intelligence,
May 18, 2021**

Common List of Hostages/Wrongfully Detained U.S. Persons

One frustration we've had is the lack of a consolidated list of Americans held overseas consisting of hostages and wrongfully or unlawfully detained individuals. Now with the recent passage of the Levinson Act, the difficulties in developing this common list should be resolved and the IC should be able to provide a regular update on the status of such cases and any measures being taken toward their safe recovery.

Question:

Mr. Holmgren, will you commit to producing a consolidated list on the status of such cases and any measures being taken toward their safe recovery? And, can we get your commitment to provide this report on a monthly basis?

Answer:

There is no higher priority than securing the freedom and release of Americans held against their will overseas. Based on my meetings with committee members on this topic, I understand that there is a classified reporting requirement in the Intelligence Authorization Act (IAA) requiring this report. If confirmed, I will review the reporting requirement and commit to working closely with the Department of State, the Intelligence Community, and other interagency bodies, including the Hostage Recovery Fusion Cell, to ensure that the Bureau of Intelligence and Research fulfills its responsibility under the IAA requirements.