

08 March 2017

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

The Honorable Mark R. Warner
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Chairman Burr and Vice Chairman Warner:

Thank you for your letter of 03 March 2017 in which you provided additional questions related to my nomination to be the Director of National Intelligence. Attached, please find unclassified responses to your questions.

Sincerely,

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Dan Coats

Enclosure

**QUESTIONS FOR THE RECORD
FORMER SENATOR DANIEL R. COATS**

QUESTIONS FOR THE RECORD FROM SENATOR FEINSTEIN

Enhanced Interrogation Techniques

During his campaign, President-elect Trump publicly called for U.S. forces to use torture in the War on Terror. He said he would reinstitute waterboarding, which he called a minor form of torture, and bring back “a hell of a lot worse than waterboarding.” This brought tremendous condemnation from our allies and our own intelligence and security professionals who have declared that torture is largely ineffective at getting reliable intelligence. Additionally, yesterday you highlighted the fact that as a Senator, you voted against the 2015 National Defense Authorization Act that restricted all of the US government to only those interrogation procedures authorized by the Army Field Manual. You informed the Committee that the reason you voted against the NDAA was that you believed the Army Field Manual is not fast enough in a ticking time bomb scenario.

- 1. If you were ordered by the President to restart the Intelligence Community’s use of enhanced interrogation techniques that fall outside of the Army Field Manual, would you comply?**

I will absolutely follow the current law as it has been passed by the Congress and signed into law. Under the law, interrogation techniques are limited to those in the Army Field Manual.

- 2. Do you believe that enhanced interrogation techniques, which fall outside of the Army Field Manual, are more effective than approved techniques? If so, based on what?**

Current law limits approved interrogation techniques to those found in the Army Field Manual. I do not see it as the role of the DNI to recommend a reinterpretation of the law, or advocate for legislative changes to it, based on any personal beliefs.

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- 3. Do you plan to advocate for changes to the law based on your personal beliefs that enhanced interrogation techniques, which fall outside of the Army Field Manual, are more effective than lawful techniques approved by experts in the study of interrogations?**

If confirmed as the next Director of National Intelligence, I will be responsible for providing timely, objective, and integrated intelligence to the President and his senior advisors to best inform policy decisions.

In that role, I will absolutely follow the current law. I will also ensure that the Intelligence Community as a whole follows both the Constitution and laws of the United States, as I am required to do by the National Security Act. I do not see it as the role of the DNI to recommend a reinterpretation of the law, or advocate for legislative changes to it, based on any personal beliefs.

- 4. Would you support reinterpretation of current law (rather than a change in statutes) as justified in departing from the public Army Field Manual techniques?**

I do not see it as the role of the DNI to recommend a reinterpretation of the law, or advocate for legislative changes to it, based on any personal beliefs.

- 5. If you received a legal opinion saying that the Intelligence Community could legally use, or ask another country to use, enhanced interrogation techniques that fall outside the Army Field Manual on detainees, and the president ordered you to do so, would you comply?**

If confirmed as the next Director of National Intelligence, I will be responsible for providing timely, objective, and integrated intelligence to the President and his senior advisors to best inform policy decisions. In that role, I will absolutely follow the current law in this area as it has been passed by the Congress and signed into law. I will also ensure that the Intelligence Community as a whole follows both the Constitution and laws of the United States as I am required to do by the National Security Act.

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The current Secretary of Defense, Secretary of State, Secretary of Homeland Security, Attorney General, CIA Director, and Chairman of the Joint Chiefs of Staff have all said that waterboarding and other Enhanced Interrogation Techniques are unlawful and unnecessary. Attached is a letter written to the President from 176 generals and admirals urging him to reject waterboarding and other forms of detainee abuse. The letter, which includes 33 four-star retired generals and admirals, states:

“The use of waterboarding or any so-called ‘enhanced interrogation techniques’ is unlawful under domestic and international law.”

“Torture is unnecessary. Based on our experience—and that of our nation’s top interrogators, backed by the latest science—we know that lawful, rapport-based interrogation techniques are the most effective way to elicit actionable intelligence.”

“Torture is also counterproductive because it undermines our national security. It increases the risks to our troops, hinders cooperation with allies, alienates populations whose support the United States needs in the struggle against terrorism, and provides a propaganda tool for extremists who wish to do us harm.”

6. Do you agree that waterboarding and other enhanced interrogation techniques are not only unlawful but also inappropriate for the fight against terrorism?

I believe the law is clear, interrogation techniques are limited to those in the Army Field Manual.

7. Will you commit to refraining from taking any steps to authorize or implement any plan that would bring back waterboarding or any other enhanced interrogation techniques?

Waterboarding and certain other enhanced interrogation techniques are prohibited by law, and I will take no action that is contrary to the law.

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QUESTIONS FOR THE RECORD FROM SENATOR WYDEN

Surveillance

Section 702 of the Foreign Intelligence Surveillance Act prohibits “reverse targeting” of U.S. persons.

8. What policies do you believe are necessary to guard against reverse targeting?

As the question notes, reverse targeting is already prohibited by Section 702. I understand that training is provided on this prohibition, and that prevention of reverse targeting is an important area of focus for the government personnel who implement this program and who review compliance.

If confirmed, I plan to review how Section 702 is being implemented to determine whether any changes should be made to further strengthen compliance and oversight, including with respect to the reverse targeting prohibition.

Section IV (“Processing Raw SIGINT”), paragraph (C)(2) of the Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333 states that, when raw signals intelligence is shared with IC elements, queries for communications reasonably likely to be to, from, or about a U.S. person or a person located in the United States may be conducted for purposes of targeting that person if the Attorney General determines that the person is an agent of a foreign power or an officer or employee of a foreign power and the purpose of the selection is to acquire significant foreign intelligence or counterintelligence information.

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- 9. Are there situations where IC elements can conduct queries for communications reasonably likely to be to, from, or about a U.S. person or person located in the United States for purposes *other* than targeting that person *without* an Attorney General finding that the person is an agent of a foreign power or an officer or employee of a foreign power?**

In the interests of transparency, the ODNI redacted and released a public version of the procedures, and also released a corresponding Fact Sheet. As they indicate, an IC element that receives access to raw SIGINT under these procedures may use a selection term based on the fact that the communications mention a particular person, but the element may only use a selection term associated with a U.S. person or person in the United States if: (1) the element's legal and compliance officials confirm that the selection term is associated with a U.S. person who is a current FISA target; or (2) if the selection is approved by the Attorney General, or in certain limited cases, is approved by the Director of the NSA or the head of the recipient element (or a high-level designee). It is my understanding that the committee has received the classified and unredacted version of the procedures, which describes those limited cases.

- 10. What do you see as the distinctions between queries for communications likely to be to, from, or about a U.S. person or a person located in the United States with regard to Executive Order 12333 raw signals intelligence and collection under Section 702 of FISA?**

I understand that there is a difference in the legal standard for conducting those queries. For raw SIGINT under EO 12333, the standard is set forth in Section IV of the Raw SIGINT Availability Procedures, as described in the response to Question 9. For queries under Section 702, the standard is set forth in the minimization procedures, the 2015 versions of which have been redacted and publicly released. In both cases, it is important for such queries to be conducted carefully, for authorized purposes, and in full compliance with applicable legal requirements.

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- 11. If a foreign entity offers to the Intelligence Community communications that are known to include the communications of Americans who are not suspected of anything, how should those communications be handled?**

Information about Americans – including information provided by a foreign entity – must be handled with great care, in full compliance with applicable legal requirements, including those contained in Attorney General-approved procedures under Executive Order 12333. In no event should the Intelligence Community request that a foreign entity undertake activities that the Intelligence Community is itself forbidden from undertaken.

- 12. Are there cases in which the sheer number of innocent Americans' communications involved, or in which the Americans' communications are particularly politically sensitive (for example, they include those of American politicians, political activists, or journalists), that there should be limitations on what the Intelligence Community can collect, use or retain?**

My understanding is that any IC element collecting information must do so only in accordance with EO 12333 and with specific procedures required by EO 12333 that are issued by the head of the element, in consultation with the DNI, and approved by the Attorney General. Similarly, the receiving IC element would handle the collected information in accordance with the same Attorney General-approved procedures. My understanding is that certain of those Attorney General-approved procedures include specific parameters that apply to sensitive information concerning U.S. persons, among other things.

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In your response to pre-hearing questions, you wrote that “If a foreign partner lawfully collects and shares information relating to a U.S. person, that information would be subject to the Attorney General approved guidelines discussed in response to question 6.”

- 13. Please explain what “lawfully collects and shares” means in this context. What would constitute an unlawful collection or sharing of information by a foreign partner?**

Under FISA, if the IC is interested in targeting a specific U.S. person, it must obtain a court order that meets all the applicable requirements of FISA. It would be unlawful for the IC to circumvent the law and request that a foreign partner intercept those communications on the IC’s behalf, and to then provide those communications back to the IC.

Lethal Operations

- 14. Please describe your view of the legal and policy implications of targeting or otherwise knowingly killing a U.S. person in a U.S. Government lethal operation. What additional public transparency do you believe would be warranted in that situation?**

The 2001 AUMF provides a domestic legal framework for targeting enemy forces in the context of hostilities and legal principles have long held U.S. persons that are part of an enemy force are not immunized from becoming targets of lethal operations. However, prior to targeting a U.S. person, I understand that DOJ conducts a rigorous review to ensure that lethal action may be conducted against that individual consistent with the Constitution and laws of the United States. The role of the DNI is to ensure the IC provides accurate and relevant information to assist DOJ and our operational decision-makers in the process. If confirmed, I will work with the relevant department and agency heads to assess whether additional transparency is warranted in these situations.

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The Obama Administration made a distinction between lethal strikes that are carried out in places it considers part of “areas of active hostilities,” and those that take place outside those areas.

- 15. Do you support this distinction as well as the application of the standards, requirements, and guidelines contained in the Presidential Policy Guidance (PPG)? If not, please describe any modifications you would suggest.**

At the beginning of every new Administration, it is not unusual for officials to review existing presidential policy guidance in the interest of determining whether in their present form they still address national priorities or deserve to be revisited. The most important policy objective of this office is to ensure the IC continues to provide accurate and relevant information to our operational decision-makers. If confirmed, I look forward to working with my inter-agency colleagues to ensure the intelligence informing any direct action activity consistent with American values and comport to the Law of Armed Conflict.

- 16. Do you support Executive Order 13732, which includes public reporting on “combatant” and “non-combatant” casualties for strikes that take place outside of areas of active hostilities; a commitment to review or investigate incidents involving civilian casualties and to consider information from non-governmental organizations in that review; and a commitment to provide as appropriate ex gratia payments to civilians who are injured or to the families of civilians who are killed in U.S. strikes? If not, please describe any modifications you would suggest.**

Earlier this year, the National Security Council directed ODNI, in accordance with EO 13732, to release a summary of information provided to the DNI by other agencies about both the number of strikes taken in 2016 by the U.S. Government against terrorist targets outside areas of active hostilities and the assessed number of combatant and non-combatant deaths resulting from those strikes.

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As noted in response to earlier questions, at the beginning of every new Administration, it is not unusual for officials to review existing presidential policy guidance in the interest of determining whether in their present form they still address national priorities or deserve to be revisited.

I do not yet have a view on whether changes to this Executive Order are needed. In any event, ODNI will continue to comply with EO 13732 consistent with IC practices.

Additionally, the IC does not play a role in determining the status of ex-gratia payments.

On December 2, 2015, now-President Trump stated the following: “The other thing with the terrorists is you have to take out their families, when you get these terrorists, you have to take out their families. They care about their lives, don’t kid yourself. When they say they don’t care about their lives, you have to take out their families.”

17. Do you agree that this would be a violation of international law?

The United States goes to great lengths to adhere to its international law obligations in the execution of armed conflicts. The Law of Armed Conflict prohibits intentional attacks against civilians, unless they are directly participating in hostilities. Outside armed conflict, it may be appropriate to leverage law enforcement authorities to question, detain, or prosecute those that support terrorists, to include their family members.

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Interrogation and Detention

In pre-hearing questions, you were asked about your current position with regard to the 2015 legislation that: (1) prohibited interrogation techniques not authorized by the Army Field Manual; (2) prohibited revisions to the Army Field Manual that involved the use or threat of force; (3) required that the Army Field Manual be public; and (4) required ICRC notification of and prompt access to detainees. You responded that “Current law dictates that the Army Field Manual be the standard for conducting interrogations, and if confirmed, I will ensure that the IC complies with the law.”

18. Are you fully supportive all four aspects of the 2015 legislation listed above?

If confirmed, I would comply and would ensure the IC complies with all aspects of current law.

During the hearing, you stated that you opposed the 2015 legislation because:

“I thought perhaps we ought to at least have a discussion about, what do you do in a situation when you have the necessary intelligence to know that something terrible is going to happen to the American people in a very short amount of time and you have a legitimate individual who can tell you where that radiological bomb or biological material is, and you don't have time to go through the process that the Army field manual requires.”

You stated that you will ensure that the Intelligence Community follows the law and that you do not intend to advocate for any changes. You further stated, however, that:

“But I do think that it's at least worth discussion relative to the situation that might occur, where we might have to – hopefully with some special authority -- might have to go outside that.”

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19. Are you aware of any situation similar to the one you described above in which coercive interrogation techniques thwarted an imminent terrorist attack against the American people?

In responding to the SSCI study on the interrogation program, former CIA Director Brennan stated in December 2014, “Our review indicates that interrogations of detainees on whom EITs were used did produce intelligence that helped thwart attack plans, capture terrorists, and save lives. The intelligence gained from the program was critical to our understanding of al-Qa’ida and continues to inform our counterterrorism efforts to this day.” I have no reason to dispute the conclusions of Director Brennan.

Attorney General Sessions has committed to ensuring that he and other appropriate officials are fully briefed on the Committee’s torture report, to the extent it is pertinent to the Department of Justice. CIA Director Pompeo committed to reviewing parts of the report relevant to his position and the Committee.

20. Will you make the same commitment on the part of the ODNI?

As a former member of this body, I have already been briefed on the Committee’s Study of the Central Intelligence Agency’s Detention and Interrogation Program.

Inspectors General

In your responses to pre-hearing questions, you wrote, in the context of the CIA’s Detention and Interrogation Program, “Lacking a reasonable suspicion of fraud, waste, abuse or violation of law, rule or regulation, I am not aware of any affirmative responsibility the [CIA] had to proactively involve their IG in each on-going operation.”

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- 21. If confirmed, would you encourage IC entities to inform their Inspectors General when initiating programs that pose significant new legal questions or that, by their nature, could raise new concerns about fraud, waste, abuse or violations of law, rule, or regulation?**

I believe it is the responsibility of an agency's leadership, including its legal counsel, to develop programs in a legally compliant manner that avoid potential fraud, waste, abuse, and violations of law, rule, and regulations.

If confirmed, I will encourage IC leadership to maintain proactive relationships with their Inspectors General to ensure that allegations of fraud, waste, abuse, or violations of law, rule, or regulation are quickly investigated and addressed.

Privacy and Civil Liberties Oversight Board

In your responses to pre-hearing questions, you wrote that, if confirmed, you would ensure that the Intelligence Community supports the Privacy and Civil Liberties Oversight Board in fulfilling its statutorily mandated role. In order to do that, the PCLOB needs members.

- 22. Will you advocate for the quick nomination of PCLOB members?**

I support the timely nomination of the PCLOB Members so they can provide advice on new counterterrorism policies and conduct their statutory oversight responsibilities.

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Oversight of the CIA

In your responses to pre-hearing questions, you confirmed that the DNI's statutory role includes overseeing the CIA's coordination of foreign intelligence relationships.

- 23. When the CIA decides to establish or continue a relationship with a foreign partner against which there are allegations of human rights abuses, what role should the DNI play in the oversight of that relationship?**

Current law provides that the DNI shall oversee the coordination of foreign liaison relationships, to include those conducted by the CIA. The CIA plays a vital role for the U.S. Government by managing and developing relationships with foreign liaison services, which have served as force multipliers in a broad range of endeavors, especially counterterrorism. In executing its responsibilities, the CIA has developed policies and procedures, coordinated with ODNI, on handling relationships with foreign liaison services who are alleged to have participated in human rights violations. These procedures include requirements for documenting, assessing, and reporting allegations of human rights violations. When those allegations are deemed credible, there is an established process for reviewing a relationship, making informed decisions to suspend or terminate information flows as appropriate, and keeping the congressional intelligence committees fully informed.

- 24. If a U.S. ambassador directs the CIA to cease a particular operation, is the CIA obligated to do so, absent intervention from the president?**

With few exceptions, Chiefs of Mission (COM) are responsible for the conduct of all Executive Branch personnel within their area of responsibility. If there is a disagreement between a COM and any department or agency under his or her authority, there are long-standing procedures to handle such disputes.

Declassification

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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.

25. Do you agree with the prohibitions in these Executive Orders?

Yes, I fully agree with the restrictions placed on classification of information for inappropriate reasons as laid out in the Executive Orders you cite. If confirmed, I will ensure the Intelligence Community continues to use classification only to protect information of appropriate national security concern during my tenure.

I have conveyed to you through classified channels four matters that I believe should be declassified and released to the public.

26. Do you commit to working with me in an effort to have those matters declassified?

If confirmed, I will consult with the relevant IC element heads to assess the extent to which these matters can be redacted and publicly released in a manner consistent with the need to protect classified information and other sensitive intelligence sources and methods.

Russia

27. Please disclose any meetings or conversations you have had with Russian government officials in 2016 or 2017.

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To the best of my recollection, and after reviewing my schedule, I have not had any meetings or conversations with Russian government officials in 2016 or 2017; since 2014 I have been prohibited from entering Russia by the Russian government because of my outspoken opposition to their annexation of Crimea.

QUESTIONS FOR THE RECORD FROM SENATOR COLLINS

Cyber

Senator Coats, in your statement for the record, you start with the vulnerabilities that exist in cyberspace. The danger posed to our critical infrastructure from cyber-attacks of our foreign adversaries is demonstrated most clearly by the attacks that have already taken place in the past few years:

- a significant portion of Ukraine's power grid was taken down by Russian-backed actors in 2015;
- Iranian-backed actors sought to deny online access to U.S. financial systems from 2011-2013; and
- more than 35,000 computers associated with Saudi Arabia's oil and gas sector were rendered worthless after malware destroyed data on those computers.

That is why I am grateful for your support and co-sponsorship of Section 312 of the Fiscal Year 2017 Intelligence Authorization Act. This provision would ensure that the unique expertise in the intelligence community is made available to help the most significant critical infrastructure entities in our country protect themselves from cyber threats. Our provision was adopted unanimously by the Committee, but the overall bill awaits consideration on the Senate floor, which means the Administration's anticipated Executive Order on cybersecurity could be implemented first.

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- 28. Do you continue to support the provision in our bill, and if the new Executive Order is issued before our bill passes, will you advocate for bringing to bear the unique capabilities of the Intelligence Community to assist the Section 9 entities in improving their defensive posture against nation-state level attacks as the new Executive Order is implemented?**

As I noted before the Committee, I believe that cyber threats are a principal threat to the United States including potential threats to critical infrastructure. I am aware that through DHS, various elements of the IC currently provide critical infrastructure owners and operators with intelligence products and analysis. If confirmed, I will work closely with DHS, the FBI, and the entire IC to work to provide information to Section 9 entities while protecting sensitive sources and methods.

Russia

In your statement for the record, you express your great concern regarding Russia's assertiveness in global affairs. Over the past several years, we have seen a dramatic reemergence of Russia in the Middle East. There is no doubt that Russia's entry into Syria's civil war helped turn the tide of the conflict decisively in favor of the Assad-Iran-Hezbollah axis.

- 29. Do you believe we have shared interests with Russia in the Middle East, and in Syria in particular?**

Russia's increasing assertiveness in the foreign policy realm is a concern, but there are some areas of potential bilateral cooperation. Russia has long looked to establish an international counterterrorism coalition against ISIS, and has called for stability in the Middle East as the first step toward fighting terrorism in the region, though the US and Russia may not share a common definition of terrorism. Furthermore, Russia has also worked with the Syrian Regime and pro-Regime forces to conduct devastating attacks against the Syrian Opposition and

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civilian populations and has repeatedly failed to convince the Regime to maintain ceasefires. In Iraq, Russia has sought to expand cooperation with Baghdad against ISIS, increase arms sales, and broaden diplomatic and economic ties. In Egypt and Libya, Russia is looking to expand diplomatic and economic ties and cooperate on counterterrorism initiatives. In Iran, Russia participated in the negotiations on the JCPOA nuclear deal and has publicly committed to ensuring Iranian compliance to the deal. Moscow also appears to be interested in serving as a facilitator to a revived Middle East Peace Process. However, in all of these cases, although Moscow appears interested in improved cooperation with Washington, it will seek outcomes that align with its own interests.

QUESTION FOR THE RECORD FROM SENATORS KING AND HEINRICH

Vulnerabilities Equities Process

As you know, the Vulnerabilities Equities Process (VEP) is the primary process for deciding whether a government entity must disclose to private companies information about security vulnerabilities in their products, or whether the government may withhold the information for law enforcement or intelligence purposes.

In April 2014, the Office of the Director of National Intelligence reported that the White House had “reinvigorated an interagency process for deciding when to share vulnerabilities” through the VEP. Later that month, President Barack Obama’s Cybersecurity Coordinator Michael Daniel wrote that the administration has “established a disciplined, rigorous and high-level decision-making process for vulnerability disclosure.” And in October, Senators Heinrich and King wrote a letter asking the administration to establish enduring policies governing the VEP process; including the issuance of standard criteria for reporting vulnerabilities, setting forth guidelines for making determinations, delineating clear time limits for each stage of the process, ensuring adequate participation of all relevant government agencies, and mandating regular reporting to Congress.

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30. As Director of National Intelligence, will you be willing to continue the VEP, formalize its processes, and increase transparency into the VEP?

The Vulnerability Equities Process (VEP), as it currently operates, is led and overseen by the National Security Council through the VEP Executive Review Board. The National Security Agency serves as the Executive Secretary for the overall process ensuring the vulnerability notifications received from the departments and agencies are communicated, coordinated, and disseminated in a timely manner. The Executive Secretary also provides the administrative functions for the VEP ensuring consistency in the process and maintenance of appropriate documentation. The VEP has specific formats required for all participants, time requirements, and processes that require departments and agencies to identify equity and concerns. The departments and agencies also provide subject matter expertise to discuss the impacts and concerns of the zero-day vulnerabilities, and provide recommendations for the NSC Executive Review Board decisions. The ODNI contributes to the process as a member of the Executive Review Board, and at the subject matter expert working level.

If confirmed, I will review the VEP to best understand its effectiveness and consider requests, with my interagency partners, to process adjustments.