

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



**Post-hearing Questions for
Ms. Kate Heinzelman
upon her nomination to be
General Counsel of the Central Intelligence Agency**

[From Vice Chairman Rubio]

1. How would you define a private company in China?

I understand your longstanding concerns about the People's Republic of China (PRC) government and the various means it uses to advance its objectives and appreciated the opportunity to discuss this with you in connection with my confirmation hearing. Confronting these challenges is a critical task for the Intelligence Community and a priority—as Director Burns has made clear—for the Central Intelligence Agency (CIA). If confirmed, I would work to ensure that the Office of the General Counsel is doing its part to support the agency's work in this regard.

With regard to private companies in China, foreign countries regulate (and otherwise interact with) privately held, publicly traded, and public-sector companies differently. I am not an expert on the corporate law of the PRC or Chinese law more generally. It is, however, my understanding that, even as to companies that would be characterized as private, Chinese legal requirements compel certain cooperation with PRC government entities, including in circumstances that can raise national security concerns and other risks.

2. Is WuXi App Tec Co., LTD a private company? Please provide an explanation of your answer.

Please refer to my response to Question 1. As stated during my confirmation hearing, I performed fewer than 10 hours of billable work during my time as a counsel in private practice that involved advice on compliance with U.S. privacy law to WuXi AppTec Co., LTD. I did not understand the company to be a PRC government or public-sector entity.

3. In response to pre-hearing question 57 related to your work on behalf of WuXi App Tec Co., LTD, you responded: "I was not aware during the course of the representation [of WuXi App Tec Co., LTD] or when I was filling out the standard questionnaire of any suggestion that WuXi App Tec Co., LTD is controlled by a foreign government."

- a. When did you fill out the standard questionnaire?

I completed the standard questionnaire on March 18, 2022.

- b. Are you aware that in February 2022, WuXi Biologics – a subsidiary of WuXi App Tec Co., LTD with well-known links to the CCP – had subsidiaries placed on the U.S. Commerce Department’s “Unverified List”?

I was not aware that the two companies referenced, WuXi Biologics Co., Ltd. and WuXi Biologics (Shanghai) Co., Ltd., were added to the referenced Department of Commerce list until I received these post-hearing questions.

4. You testified that you provided advice to WuXi App Tec Co., LTD on health privacy laws in the United States.

Do you assess that WuXi’s possession of Americans’ health data is exempt from the PRC’s 2017 National Security Law?

As stated during my confirmation hearing, the advice that I provided to the company pertained to U.S. law. My recollection is that the advice was about compliance with U.S. privacy laws that apply to various categories of personal data held by companies, in this case, a health-sector company. My reference to health privacy was intended to explain why partners would seek my assistance with such clients in particular.

I do not have a basis to assess this question about the application of Chinese law.

5. Do you see any meaningful distinction between Chinese state-owned entities and ostensibly “private companies” in China, given the reach of the CCP into the “private” sector, Chinese laws requiring companies to turn over information to the Chinese state, and CCP’s blurring of its military and civilian sector through the Military Civil Fusion Strategy?

As indicated in my response to Question 1, it is my understanding that, even as to companies that would be characterized as private, Chinese legal requirements compel certain cooperation with PRC government entities, including in circumstances that can raise national security concerns and other risks. I am not an expert regarding the manner in which these requirements are implemented or enforced under Chinese law. Similarly, I

am not familiar with details of China's work to advance its military capabilities through its Military Civil Fusion strategy.

6. Are "private" Chinese companies working to advance China's government policy of displacing the United States, including its Military Civil Fusion Strategy?

It is my understanding that the PRC government is "increasingly combining growing military power with its economic, technological, and diplomatic clout to strengthen CCP rule, secure what it views as its sovereign territory and regional preeminence, and pursue global influence," as the Intelligence Community assessed in its 2022 Annual Threat Assessment, and that the legal requirements discussed above, which compel certain cooperation with PRC government entities, support these objectives.

7. During your time as Chief Counselor in the Office of the Attorney General, have you become aware of any suspected microwave attacks against DOJ employees that the administration refers to by the moniker 'Anomalous Health Incidents,' or AHIs?

Addressing anomalous health incidents (AHIs) is a priority for the Department of Justice, as the health and well-being of the Department's employees and colleagues across the federal government is of utmost importance. I am aware, as has been publicly reported, that U.S. Government personnel have reported experiencing symptoms associated with AHIs. The Department of Justice is participating in the government-wide effort to address such incidents and working to ensure that any affected Department of Justice personnel have clear guidance on reporting such incidents. As I testified at my confirmation hearing, I understand this to be a priority for Director Burns, and, if confirmed, I would work to support the CIA's efforts both to ensure those affected receive appropriate care and to assess the cause of the incidents as appropriate. With regard to additional information, I would direct you to the Department's AHI Coordination Lead designated pursuant to section 6603(a)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year 2022, who I understand will be briefing relevant committees of Congress as required by the NDAA.

8. What action, if any, have you directed or otherwise supported related to AHI investigations or AHI incidents among DOJ employees?

As noted above, pursuant to recent National Defense Authorization Act requirements, the Department of Justice has designated an AHI Coordination Lead for its response to AHI. Please refer to my response to Question 7.

9. If confirmed, will you commit to reviewing the policies and procedures at CIA to ensure that affected 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. Addressing AHIs is a priority, as noted in my response to Question 7. Health and well-being are of paramount importance. If confirmed, I would work to support the CIA's efforts in this regard.

10. Will you also commit to a full, transparent assessment of any attack on an IC officer even if such an acknowledgement could carry uncomfortable policy implications for others in the Administration?

Yes, if confirmed, I will work to support the commitment made by Office of the Director of National Intelligence General Counsel Fonzzone in this regard in his responses to post-hearing questions and the CIA's efforts to assess, or assist in the assessment of, such matters, as appropriate for the CIA's General Counsel and consistent with the need to protect sensitive national security information.

11. Starting in August 2020 and into January 2021, you were Vetting Director in the Office of the General Counsel for the PT Fund, President Elect-Biden's presidential transition. You also did volunteer work for the Biden campaign in 2020. Your response to a pre-hearing question on your duties in the role was light on details and said simply that "[you] led the team that vetted potential nominees and appointees for the incoming administration."

- a. If confirmed, how will you ensure that the General Counsel's office and the CIA are free from political influence?

I believe firmly that there is no place for partisan or other inappropriate influence in intelligence work. As stated at my hearing, as a lawyer, I view it as my responsibility to give my best legal advice, based on the facts and the law, on any matter. If confirmed, this is an expectation I would have for all members of the Office of General Counsel. Director Burns has been clear, as he stated at his

confirmation hearing, that “good intelligence, delivered with honesty and integrity, is America’s first line of defense. . . . that intelligence professionals have to tell policymakers what they need to hear And . . . that politics must stop where intelligence work begins.” If confirmed, I would work to maintain and help further reinforce these principles throughout the agency, including through the provision of legal advice on relevant legal restrictions that apply to agency personnel.

- b. As Vetting Director, did you discuss the unique threat of the CCP with those you vetted?

As Vetting Director, my role was not to advise those vetted regarding national security threats.

- c. Can you assure Americans with whom you may disagree politically that your political views will not drive your advice and counsel if confirmed as CIA General Counsel?

Yes. Please refer to my response to Question 11a.

12. In your current position as Chief Counselor in the Office of the Attorney General, you have advised on a “number of national security matters—work that often involves other interagency partners.” Please respond to the following questions with a “yes” or “no.”

- a. Have you advised on immigration or border security matters?
- b. Did you advise on the termination of the Department of Justice’s China Initiative?
- c. Did you advise on any aspect of the Administration’s Afghanistan withdrawal?
- d. Have you advised on matters related to Russia’s invasion of Ukraine and the U.S. response?
- e. Did you advise on the decision to remove the FARC from the Foreign Terrorist Organization list?

- f. Did you advise on the Administration's recent engagement with the Maduro regime in Venezuela?
- g. Are you advising on the Administration's engagement on a nuclear deal with Iran?
- h. Have you advised on the Administration's efforts to close the detention center at Guantanamo Bay?

In my role as Chief Counselor in the Office of the Attorney General I have helped manage the office and advised the Attorney General, with a particular focus on national security matters.

The Attorney General has publicly addressed Departmental actions related to certain of the matters above—for instance, certain immigration-related issues, the China Initiative, and the Department's efforts to disrupt and prosecute criminal activity associated with the Russian regime.

With respect to matters that come before the Attorney General personally, I have had visibility into most such matters, and my level of involvement in any particular one may have taken a variety of forms. For example, I may have had awareness of the matter, attended related meetings or events, overseen the work of a Counsel to the Attorney General on the matter, or advised on associated Attorney General statements or actions. With respect to national security matters involving Administration policies that come before the Attorney General, for instance as part of a National Security Council process, my role has generally been to ensure that the Attorney General has appropriate preparation from subject-matter experts.

13. You noted in responses to the standard Committee questionnaire that at the White House Counsel's Office, where you served from 2013 to 2015, your portfolio "involved working closely with the National Security Council staff on legal policy issues, including matters of national security and intelligence policy." Please respond to the following questions with a "yes" or "no."
- a. Did you work on matters related to the Obama Administration's policy toward Cuba?
 - b. Did you advise on the Joint Comprehensive Plan of Action?

c. Did you advise on the Bowe Bergdahl prisoner exchange?

I worked on a range of national security matters during the years that I served in the White House Counsel's Office. For instance, in conjunction with other attorneys from the National Security Council staff and White House Counsel's Office, I worked on: advising White House clients on litigation developments; legal issues associated with the development of privacy-related policies; national security, intelligence, and law enforcement legal authorities; legal issues associated with big data; cybersecurity legislative developments; legal questions arising from proposed or enacted national security legislation; legal matters associated with Administration positions relating to intelligence, counterterrorism, and foreign relations; and a range of matters presented to deputies and principals through the National Security Council process. Because I did not serve as a lawyer on the National Security Council staff, my role was generally to assist the White House Counsel on an as-needed basis in his or her consideration of relevant legal issues, including by ensuring the office had appropriate awareness of relevant issues, and to represent the office's views on legal issues to other relevant offices.

14. At any point during your government service, have you advised on matters related to Guantanamo Bay detainees? If yes, in what capacity and when?

Yes, various matters relating to Guantanamo Bay have been recurring national security issues during my time in government and have come before principals for whom I have worked.

15. Do you support this Administration's recent decision to transfer al-Qaeda fighter and devout jihadist Mohammed al-Qahtani – often referred to as the “20th hijacker” – from the detention center at Guantanamo Bay to Saudi Arabia?

On March 7, 2022, the Department of Defense announced the repatriation of al-Qahtani following a June 2021 Periodic Review Board (PRB) determination that law of war detention was no longer necessary to protect against a continuing significant threat to the national security of the United States. I have no reason to conclude that the PRB's determination was not consistent with the process set forth in Executive Order 13567 or the law.

16. Should the detention center at Guantanamo Bay be closed?

The Administration is committed to closing the detention center at Guantanamo Bay, and the Department of Defense has described the United States' ongoing efforts toward a deliberate and thorough process focused on responsibly reducing the detainee population and ultimately closing the facility.

17. What are the counterterrorism or other implications for U.S. national security due to the nature and circumstances surrounding the U.S. withdrawal from Afghanistan?

I would look to the Intelligence Community to make any such assessment. As indicated by the Intelligence Community's 2022 Annual Threat Assessment, the Intelligence Community has been engaged in assessing the impact of the Taliban takeover of Afghanistan.

18. Is the homeland more or less safe following the U.S. withdrawal from Afghanistan?

Please refer to my response to Question 17.

19. It is well known to the public, due to the Declassification Act of 2000, that between 1950 and 1976, Air America was an entity managed by the CIA, Department of Defense, and Department of State to carry out humanitarian and covert missions. During this time, Air America operated externally as a commercial entity. Air America employees served the U.S. government in a covert capacity to achieve foreign policy objectives throughout the Cold War, Korean War, and Vietnam War. Over 131 Americans employed by Air America died, many due to job-related incidents, and others went missing in action. Chairman Warner and I have introduced the Air America Act most recently in February 2021. Our bill would qualify the service of Air America employees as creditable for retirement benefits under the Civil Service Retirement System. The Senate Homeland Security and Governmental Affairs Committee reported the bill (as amended) favorably on February 2, 2022. We provided the bill text to you with our prehearing questions.

- a. Do you support providing Air America employees with retirement benefits?

As a general matter, I support providing Americans who have served their country all appropriate benefits. I do not have sufficient familiarity with the facts surrounding Air America—including any benefits for which Air America personnel or their survivors may have been or may be entitled under existing law and policy, or the precedent for extending Civil Service Retirement System benefits in analogous circumstances—and therefore do not have an informed position on the bill as drafted. If confirmed, I would want to look into this issue.

- b. If the bill is enacted, will you support its execution in providing Air America employees with retirement benefits?

Yes.

20. The following statement appears on the CIA's public website: "Air America, an airline secretly owned by the CIA, was a vital component in the Agency's operations in Laos."

- a. Do you agree with this statement?

I am not familiar with the full history of Air America and do not have a basis to dispute the accuracy of this statement.

21. The following statement also appears on the CIA's public website: "During the Vietnam War, Air America, a CIA proprietary airline, flew a variety of missions in the Far East. These missions ranged from undercover CIA operations to overt air transportation. The Republic of Vietnam and various US Government agencies contracted with Air America."

- a. Do you agree with this statement?

I am not familiar with the full history of Air America and do not have a basis to dispute the accuracy of this statement.

22. In additional pre-hearing question 47, you were asked if you interpret the term "intelligence" to include anything beyond "foreign intelligence" or "counterintelligence." You were then asked what other kinds of intelligence you believe might fall under the term "intelligence." In your answer, you told the Committee that, "the National Security Act makes clear that the

term 'intelligence' in the statute includes both foreign intelligence and counter intelligence." The Committee is familiar with the statutory definition and seeks to understand how you, as the nominee to serve as General Counsel of the CIA, interpret the definition of "intelligence."

- a. Do you interpret the term "intelligence" to include *only* "foreign intelligence" and "counterintelligence?"
- b. Do you believe the use of the term "includes" in the statute leaves the door open for "intelligence" to include information other than foreign intelligence and counterintelligence? Please be specific.

It is important to note at the outset that the practical implications of this interpretation may differ by agency, as departments and agencies have different missions and authorities. Other legal and policy restrictions will further limit the activities that agencies may conduct. For instance, under the National Security Act of 1947, the Director of the CIA "shall have no police, subpoena, or law enforcement powers or internal security functions." 50 U.S.C. § 3036(d)(1); *see also* Executive Order 12333 § 1.7(a).

As the question notes, the National Security Act of 1947 provides a definition of the term "intelligence," though the questions posed require further interpretation, particularly in light of the use of the term "includes." *See* 50 U.S.C. § 3003(1). The fact that the Intelligence Reform and Terrorism Prevention Act of 2004 revised the definition of "national intelligence" in the National Security Act, but did not replace the preexisting definition of "intelligence" when doing so, must also factor into the analysis.

Before reaching a conclusion on the proper interpretation of the term "intelligence" in this portion of the National Security Act of 1947, I would want to consult with subject-matter expert attorneys and analyze the text, context, and structure of the Act as a whole. I would also want to have the benefit of the views of the other departments and agencies that have applied this language to their own missions over time. This is particularly important in this context given the potential implications of the question for other departments and agencies that operate pursuant to different authorities.

If confirmed, I would seek to work closely with agency and Executive Branch counterparts, and with this Committee, to ensure that CIA's

activities comport with the law, and that the agency has the authorities it needs to accomplish its critical mission.

23. In additional pre-hearing question 47, you were also asked your view on the differences, if any, between “intelligence” and “national intelligence,” as defined in Title 50, Section 3003. You were further asked to provide examples of what you consider to be “intelligence” that is not “national intelligence.” Your response to the Committee was that “all ‘national intelligence’ ... would seem to fall within the colloquial definitions of ‘intelligence,’ in the sense of ‘information.’”

- a. What are the “colloquial definitions” of intelligence? Are they different from what is defined in statute?

While there are, generally speaking, various definitions of the term “intelligence” in other contexts, as the question highlights, the relevant question here is how to interpret the term in the context of this particular statute. Please refer to my response to Question 22.

- b. If confirmed, will you abide by the colloquial definitions of intelligence, or the statutory definition?

When interpreting a statutory term, I would apply the statutory definition.

- c. What is the difference between “intelligence” and “information,” as referenced in your response?

Please refer to my response to Question 22.

- d. Is “national intelligence” a subset of “intelligence?”

As I understand the definitions in 50 U.S.C. § 3003(5), “national intelligence” refers to information that meets the criteria specified in Section 3003(5)(A)-(B). Intelligence that does not meet these criteria would not qualify. As noted above, how broadly to interpret the term “intelligence” as it appears in 50 U.S.C. § 3003(1) depends on a more complete analysis of the statute.

24. The definition of “national intelligence” was changed in the 2004 Intelligence Reform and Terrorism Prevention Act to enable law enforcement to share its information with the Intelligence Community, and to enable the Intelligence Community to share its intelligence with law enforcement.

- a. Do you believe that intelligence shared by the Intelligence Community with law enforcement has to have a foreign intelligence or counterintelligence nexus?

As noted in response to Question 22, the CIA has a foreign intelligence and counterintelligence mission. Its activities with respect to U.S. persons, and in the United States, in particular, are circumscribed by applicable law and policy. With regard to intelligence sharing, the National Security Act of 1947 provides that the Director of the CIA shall “correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence.” 50 U.S.C. § 3036(d)(2). The CIA’s Attorney General Guidelines issued pursuant to Executive Order 12333 provide that the agency may, among other things, disseminate information concerning U.S. persons needed to protect the safety of any persons or organizations and incidentally obtained information that may indicate involvement in activities that may violate federal, state, local, or foreign laws, provided such sharing is otherwise consistent with the law. If confirmed, I would support the CIA’s compliance with these important provisions of law.

25. During your confirmation hearing, you discussed Section 702 of the Foreign Intelligence Surveillance Act (FISA), which authorizes the government to collect intelligence on non-U.S. persons located outside of the United States to detect, identify, and disrupt terrorist and other national security threats. The current FISA Title VII authorities (including Section 702) expire on December 31, 2023, unless reauthorized. Prior to past reauthorizations, in 2012, Attorney General Holder and Director of National Intelligence Clapper wrote a joint letter to Congress supporting a clean reauthorization of these authorities. Subsequently, in 2017, Attorney General Sessions and Director of National Intelligence Coats wrote a joint letter to Congress supporting a clean reauthorization of these authorities. Your questionnaire submission also states that you published an article on these specific Section 702 authorities.

- a. Do you support a clean reauthorization of these FISA Title VII authorities? Please answer yes or no. If no, please explain why not, and please include classified information as necessary.
- b. If confirmed, what specific actions would you take regarding FISA Title VII reauthorization? Please be specific, and please include classified information as necessary.

I strongly support reauthorizing Title VII of FISA, which has been reauthorized by Congress twice since 2008 in a bipartisan manner. If confirmed, I would work to support efforts to reauthorize these tools, including by making myself available to this Committee and Executive Branch colleagues to assist in Congress's and the Administration's reauthorization efforts. As Director Haines indicated during her confirmation proceedings, I would, if confirmed, work with others in the Executive Branch and the Congress to support efforts to determine whether any changes can be made that would improve the protection of privacy and civil liberties without compromising national security. Further, I would support the Intelligence Community's efforts to provide Congress with the information it needs to evaluate the important role that Title VII plays in protecting U.S. national security.

[From Senator Wyden]

1. The Intelligence Community has become more transparent with regard to compliance incidents associated with the Foreign Intelligence Surveillance Act (FISA). For example, the DNI and the Department of Justice produce semiannual assessments of compliance with the procedures and guidelines issued pursuant to Section 702 of FISA and release those assessments to the public. The IC has also declassified and released FISA Court opinions that detail compliance problems. Would you support a framework whereby the CIA would release to the public information on incidents in which the Agency did not comply with the Attorney General-approved guidelines that govern its activities under Executive Order 12333?

If confirmed, I would take seriously any failures to comply with the Attorney General-approved guidelines issued pursuant to Executive Order 12333; would consider how such compliance issues should be reported; and would work with others at the CIA, including the Privacy and Civil Liberties Officer, and in the Intelligence Community to support Director Burns's

review of CIA activities under Executive Order 12333 for compliance and transparency.

[From Senator Cotton]

1. When you previously served as a counsel in the Department of Justice's National Security Division, it was publicly reported that then-Assistant Attorney General Lisa Monaco was involved in meetings regarding whether to try terrorism suspects held at Guantanamo Bay in military commissions or in the U.S. civilian courts. It was also publicly reported that the National Security Division was involved in assigning prosecutors to pending cases against those terrorism suspects. Please describe your involvement, if any, in policy discussions or prosecutions relating to Guantanamo Bay detainees when you were a counsel at the National Security Division.

As Counsel to the Assistant Attorney General for National Security, I assisted the Assistant Attorney General in her daily duties and worked on a range of matters within the purview of the Department's National Security Division. I provided assistance, along with other attorneys from the Division and U.S. Attorneys' offices, on certain counterterrorism-related matters handled by the Division at the time, of which matters relating to Guantanamo Bay would have been a part. My role would generally have been to provide as-needed assistance.

2. Please describe the policy portfolio to which you were assigned when you were a counsel in the Department of Justice's National Security Division, including the matters you handled which you consider to be the most notable of your time there.

I do not recall being assigned a discrete portfolio of issues during my time at the National Security Division, given the nature of my job. As a Counsel to the Assistant Attorney General for National Security, I assisted the Assistant Attorney General in her daily duties and worked on a range of matters within the purview of the Department's National Security Division. For instance, in conjunction with other attorneys in the National Security Division's front office and throughout the Division, I worked on: prosecution-related legal issues; the establishment of the National Security Cyber Specialists' Network and the application of cybersecurity-related authorities; interagency discussions about national security roles and responsibilities; the application of the Foreign Intelligence Surveillance Act; Attorney General guidelines

issued pursuant to Executive Order 12333; and the Division's management of matters before the Committee on Foreign Investment in the United States. More generally, I assisted in the Assistant Attorney General's management of matters assigned to the Division and in communicating about those issues to the Department's leadership offices. I also assisted the Assistant Attorney General and other Department officials in their work on a range of matters arising through the National Security Council process.

3. Please describe your involvement, if any, in litigation conducted by the Department of Justice's National Security Division when you were a counsel there. If you ever filed a notice of appearance in a case conducted by the National Security Division during that time, please also provide the docket number and case caption.

In addition to working on certain counterterrorism-related matters at the National Security Division, I believe that I supported the Division's work on certain civil litigation-related matters and assisted in certain matters before the Foreign Intelligence Surveillance Court. In 2012, I filed a notice of appearance in appellate proceedings in *United States v. Chi Tong Kuok*, No. 10-50444 (9th Cir.), a case involving charges of conspiracy and attempt to export defense articles without a license, money laundering, and conspiracy and attempt to smuggle goods from the United States.

4. When you served as a counsel in the Department of Justice's National Security Division, were you ever involved in requesting opinions from the Office of Legal Counsel on matters such as electronic surveillance, physical searches, or interrogation of terrorism suspects detained by the United States? If so, please describe your involvement.

As a Counsel in the National Security Division I worked with the Office of Legal Counsel (OLC) but do not specifically remember being involved in requesting formal OLC opinions.

5. In your materials submitted to the Committee, you described your portfolio while working at the White House Counsel's Office from 2013 to 2015 as "including matters of national security and intelligence policy." Please approximate what percentage of your work in the White House Counsel's Office concerned national security and intelligence policy, and provide the Committee with a description of the key matters on which you were

involved.

Over time, my portfolio at the White House Counsel's Office expanded to include matters beyond national security-related matters. I do not presently have a basis to identify the percentage of my work that was non-national security matters at any given time, but I believe that national security matters were a consistent part of my portfolio. These matters included working, for instance, in conjunction with other attorneys from the National Security Council staff and White House Counsel's Office, on: advising White House clients on litigation developments; legal issues associated with the development of privacy-related policies; national security, intelligence, and law enforcement legal authorities; legal issues associated with big data; cybersecurity legislative developments; legal questions arising from proposed or enacted national security legislation; legal matters associated with Administration positions relating to intelligence, counterterrorism, and foreign relations; and a range of matters presented to deputies and principals through the National Security Council process.

6. During your confirmation hearing, you said that, in "most matters" under the purview of the Attorney General, you have at least "some visibility," although your involvement varies. Please describe your involvement, if any, in matters involving the National Security Division, the FBI's Intelligence Branch, the FBI's Counterintelligence Division, or any Department of Justice work before the Foreign Intelligence Surveillance Court (FISC).

In my role as Chief Counselor in the Office of the Attorney General, I have helped manage the office and advised the Attorney General, with a particular focus on national security matters. This has regularly involved matters with the National Security Division and the FBI, including matters related to the Department of Justice's work involving the Foreign Intelligence Surveillance Court that have come to the office's attention.

7. The Attorney General and the Director of National Intelligence jointly submit a semiannual assessment of compliance with procedures and guidelines issued pursuant to Section 702 of the Foreign Intelligence Surveillance Act. On March 14, ODNI publicly released a redacted form of the 22nd such semiannual assessment. In your role as Chief Counsel to the Attorney General, have you been involved in the oversight of the government's compliance with Section 702 procedures? If so, please

describe your involvement.

I have assisted the Attorney General in his work relating to national security matters, including matters involving the Department of Justice's role with respect to the Foreign Intelligence Surveillance Act.

8. Were you involved in the decision of Assistant Attorney General Matthew Olsen to end the Department of Justice's "China Initiative"? If so, please describe your involvement.

As noted in response to Question 6, and in my response to Question 12 from the Vice Chairman, in my role at the Department of Justice I have assisted the Attorney General in his work relating to national security matters in particular, including matters arising from the National Security Division. The Attorney General has commented publicly on the China Initiative, and as I noted in my testimony, Assistant Attorney General (AAG) Olsen recently announced the results of the review he conducted. In doing so, AAG Olsen made clear that the Department of Justice "will continue to prioritize and aggressively counter the actions of the PRC government that harm our people and our institutions," and that it will be "relentless in defending our country from China."

9. FBI Director Wray has previously testified that the FBI has over 1,000 investigations into Chinese theft of our intellectual property. Since the Department announced the end of the China Initiative, have investigations and prosecutions of Chinese theft of our intellectual property increased, or decreased?

I do not know the number of investigations and prosecutions that the Department of Justice may currently be conducting into such matters. However, since AAG Olsen's February 23, 2022 announcement regarding the China Initiative, the Department of Justice has made several public announcements related to charges against or prosecutions of PRC-government-associated individuals. As noted above, AAG Olsen has also been clear about the fact that "the government of China has . . . used espionage tools and tactics against U.S. companies and American workers to steal critical and emerging technologies."

10. How many active investigations is the Department of Justice currently conducting into Chinese theft of American intellectual property?

I do not know the number of investigations that the Department of Justice may currently be conducting into such matters. Please refer to my responses to Questions 8 and 9 regarding the Department's efforts to counter threats from the PRC government.

11. How many active prosecutions is the Department of Justice currently conducting related to Chinese theft of American intellectual property?

I do not know the number of prosecutions that the Department of Justice may currently be conducting into such matters. Please refer to my responses to Questions 8 and 9 regarding the Department's efforts to counter threats from the PRC government.

12. The Chinese Communist Party is arming itself with technology that it acquires from our labs and research universities. It is well-established that the CCP sends PRC nationals to collect or steal cutting-edge intellectual property from our campuses. Please explain your views on whether tightening STEM student visas to Chinese nationals would affect the CCP's ability to conduct economic espionage against the United States.

I appreciate the seriousness of the threat posed by economic espionage against U.S. entities and am aware that the Intelligence Community has assessed that "China will remain the top threat to U.S. technological competitiveness as Beijing targets key sectors and proprietary commercial and military technology from U.S. and allied companies and institutions" through a variety of tools in its 2022 Annual Threat Assessment. I do not have a sufficient factual basis at present to have an informed view on how tightening STEM student visas might affect Chinese Communist Party economic espionage efforts specifically.

13. During your confirmation hearing, I asked whether you were involved in the creation of Attorney General Garland's October 4, 2021, memorandum regarding school boards. You said that, in your current role, in "most matters that came before the Attorney General," you would have "some visibility," and that your involvement could include "a variety of things," which you said "could range from setting up a meeting, attending a meeting, [or] advising him on associated statements or actions."

- a. For this specific matter, what was your involvement?

- b. Did you set up meetings? If so, with whom?
- c. Did you attend meetings on the memo? If so, when were those meetings?
- d. Did you advise Attorney General Garland on the decision to issue the memorandum?
- e. Did you advise Attorney General Garland on associated statements or actions that accompanied or were subsequent to that memorandum? If so, please list each such statement or action on which you provided advice.

As noted in my response to Question 12 from the Vice Chairman and in my testimony, with respect to matters that come before the Attorney General personally, I have had visibility into most such matters in my role as Chief Counselor, and my involvement in any particular one may have taken a variety of forms. At my confirmation hearing I described the nature and constraints of my role and noted the Attorney General's statements, including in testimony before Congress, about the October 4, 2021 memorandum. In addition to addressing questions about the memorandum, the Attorney General has subsequently addressed the Department's work to prevent and address violence and threats of violence in remarks on January 5, 2022, in which he noted that "Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence."

14. Since the Attorney General issued his October 4, 2021, memorandum regarding school boards, have you received updates on whether and how often individuals have been reported to the FBI or other law enforcement agencies for the types of conduct described in that memorandum?

In my testimony, I noted the Attorney General's statements, including in testimony before Congress, about the October 4, 2021 memorandum. In addition to addressing questions about the memorandum, the Attorney General has subsequently addressed the Department's work to prevent and address violence and threats of violence in remarks on January 5, 2022, in which he noted that "Americans who serve and interact with the public at

every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence.”

15. As Chief Counsel to the Attorney General, you had the opportunity to recommend that he advocate for timely, comprehensive intelligence sharing directly with Ukraine in the Principals’ Committee and National Security Council. Did you do so? Why or why not?

As the Attorney General has noted in responding to questions posed to him in testimony about other matters, I am not able to address internal Justice Department deliberations. With regard to Ukraine more generally, however, Director Burns made clear in his recent remarks at Georgia Tech the United States’ commitment to rapid and effective intelligence sharing with the United States’ Ukrainian partners and with our allies. If confirmed, I would work to support the Intelligence Community’s efforts with respect to Ukraine as appropriate.

16. You also had the opportunity to recommend last fall that the Attorney General advocate in the PC and NSC for the delivery of any and all arms with which Ukrainians could defend themselves. Did you do so? Why or why not?

Please refer to my response to Question 15.

17. Did you conduct reviews on options to provide Ukraine with weapons? What conclusions did you reach?

Please refer to my response to Question 15.

18. How did your experience in the White House during the crises in Syria and Yemen inform your policy recommendations with regard to Ukraine?

As a general matter, I draw upon and seek to learn from the experiences I have had working in and observing the national security environment over the course of my career. With regard to any particular policy recommendations, please refer to my response to Question 15.

19. What do you assess are the risks of issuing overly prescriptive guidelines or micromanaging international security operations from Washington?

As a general matter, I believe that good management strikes an appropriate balance—specific to a particular operational environment and mission—between centralization and decentralization. As relevant to the CIA General Counsel specifically, I believe that effective legal advice and compliance guidance provides operators in the field the information that they need to accomplish their missions consistent with applicable law and policies without giving rise to unwarranted restrictions or confusion that can impede or interfere with operations. As I noted in my statement for the record, I value giving legal advice that is designed to be actionable.

20. Last year, the administration released a domestic terrorism strategy asserting that, among other things, “conditions related to the COVID-19 pandemic...will almost certainly spur some DVEs to try to engage in violence this year.” How many domestic terrorist attacks have been committed by U.S. persons opposed to COVID lock-downs?

I do not know.

21. Do you believe that it is appropriate for our foreign intelligence agencies to conduct domestic law enforcement activities that have no foreign nexus?

As Director Burns emphasized in his recent remarks at Georgia Tech, domestic law enforcement is the business of other agencies. The CIA has a foreign intelligence and counterintelligence mission. In Executive Order 12333, the President charged the Director of the CIA with collecting, analyzing, producing, and disseminating “foreign intelligence and counterintelligence.”

There are, moreover, several specific legal limitations on CIA’s activities in the United States. For instance, the National Security Act of 1947 states that the Director of the CIA “shall have no police, subpoena, or law enforcement powers or internal security functions.” 50 U.S.C. § 3036(d)(1). Executive Order 12333 further states that the Director of the CIA shall conduct counterintelligence “without assuming or performing any internal security functions within the United States.” Executive Order 12333 § 1.7(a).

As Director Burns explained in his responses to the Committee’s additional prehearing questions, the “law enforcement proviso” in the National Security Act of 1947 described above does not preclude certain types of CIA

assistance to U.S. law enforcement agencies. Where otherwise consistent with applicable law, the CIA may provide assistance to law enforcement or other civil authorities in accordance with Section 2.6 of Executive Order 12333. Further, consistent with section 15 of the CIA Act of 1949, the CIA has certain security authorities focused in and around agency facilities. Of course, in all circumstances, any CIA activity must comply with all applicable laws and policies.

22. Do you believe that it is legal or appropriate to use National Intelligence Program funding to conduct domestic law enforcement activities that have no foreign nexus?

Please refer to my response to Question 21. The CIA is only permitted to utilize National Intelligence Program (NIP) funding for lawful activities for which appropriated funds are available. As noted above, the CIA operates under a variety of legal and policy limitations. To advise on whether NIP funding is available for particular CIA activities, I would consult with appropriate Office of General Counsel attorneys, among others, if confirmed.

23. Do you see any risks by reallocating resources – collection or analytic – from a foreign intelligence mission that only the CIA and IC can execute effectively, to a law enforcement mission where the FBI, DOJ, and others have a track record of success? Please answer yes or no, and please explain the basis for your answer.

As a general matter, I believe it is important that Executive Branch departments and agencies act in a coordinated fashion that makes lawful, appropriate, and best use of their respective tools, expertise, and authorities. I do not know enough presently about the specific reallocation of resources, or the contemplated law enforcement activities, to which the question refers to comment on particular resource allocations.

24. Did you work on the 2013 “Presidential Policy Guidance” on CT operations? Please describe your role in the policy process for formulating this guidance. What effect do you assess this policy had on military activities against al-Qa’ida and other terrorist groups?

As a Counsel to the Assistant Attorney General for National Security, I assisted the Assistant Attorney General in her daily duties and worked on a

range of matters within the purview of the Department's National Security Division. With regard to my role in the National Security Division, please refer to my response to Question 2. While I am familiar with the guidance referenced, I do not have an adequate basis for characterizing the impact it has had on military activities against al-Qa'ida and other terrorist groups.

25. What role do you assess that changes in pressure on terrorist groups played in the rise of ISIS?

I would look to the Intelligence Community to make any such assessment. In its 2022 Annual Threat Assessment, the Intelligence Community assessed, for instance, that "[c]onsistent U.S. and allied counterterrorism pressure has degraded the external attack capabilities of ISIS and al-Qa'ida, but they still aspire to conduct attacks in the United States."

26. Please describe your role in any policy deliberations regarding the uprising of the Syrian people against the dictator Bashar al-Assad. How do you assess that what has widely been reported as a policy of limited engagement affected the duration of the conflict, Syria's humanitarian crisis, or the appeal of ISIS?

I would look to the Intelligence Community to make any such assessment.

With regard to my role in the National Security Division and White House Counsel's Office, please refer to my responses to Question 2 above and Question 13 from the Vice Chairman.

27. Did you work on the Joint Comprehensive Plan of Action? Please describe your role in the policy process that led to negotiating and ratifying this agreement. Do you assess that Iran's terrorist and ballistic missile activities increased or decreased since the agreement was signed? Is it your assessment that the Iranian regime benefited financially from the deal?

I would look to the Intelligence Community to make any such assessment.

With regard to my role as a lawyer in the White House Counsel's Office, please refer to my response to Question 13 from the Vice Chairman.

28. Following the JCPOA, did the Iranian regime begin supplying ballistic and cruise missiles to proxies and partners in the Middle East?

I would look to the Intelligence Community to make any such assessment.

29. Were you aware in 2015 that the Chairman of the Joint Chiefs of Staff reported that Iran was directly responsible for the deaths of at least 500 U.S. service members—later confirmed to be 603—in Iraq?

I do not recall if I was specifically aware of the Chairman's statement in 2015.

30. Please describe your role in any policy process surrounding President Obama's January 2014 announcement that he was unilaterally ending some and curtailing other signals intelligence collection programs. Do you assess that this resulted in a reduction of foreign intelligence collection?

At the White House Counsel's Office I worked on a range of national security matters in conjunction with other attorneys from the National Security Council staff and the White House Counsel's Office. My role was generally to assist the White House Counsel on an as-needed basis in his or her consideration of relevant legal issues, including by ensuring the office had appropriate awareness of relevant issues, and to represent the office's views on legal issues to other relevant offices. The Administration's responses to intelligence disclosures beginning in 2013 were a recurring national security issue during the period that I worked on these issues at the White House. I do not have a basis for assessing the impact the January 2014 announcement had on U.S. foreign intelligence collection.

31. In your prehearing questionnaire, you note that you have never represented "a foreign government or an entity controlled by a foreign government." Is it your assessment that a company can be based in the PRC and subject to China's 2017 National Security Law but not controlled by the PRC?

It is my understanding that, even as to companies that would be characterized as private, Chinese legal requirements compel certain cooperation with PRC government entities, including in circumstances that can raise national security concerns and other risks. I am not an expert regarding these requirements under Chinese law or how they are implemented and enforced. Please refer to my responses to Questions 1 and 2 from the Vice Chairman.

32. How do you assess that biotechnology fits into communist China's Civil-Military Fusion plans?

I am not familiar with the Chinese Communist Party's specific aspirations regarding the manner in which biotechnology fits into the Military Civil Fusion strategy, though my understanding is that the strategy's aim is to help advance the Chinese military's technological capabilities.

33. What risks would the provision of biotechnology equipment, expertise, or data to the People's Republic of China pose to the national security of the United States?

Providing sensitive biotechnologies to foreign countries, particularly in circumstances that do not comply with applicable U.S. law, may give rise to a variety of risks. I would look to the Intelligence Community to make any such assessment as relates to specific countries or technologies in particular. If confirmed, I would work to support any Intelligence Community efforts on these issues with appropriate legal advice.

34. Do you think that former national security officials have any obligations to the United States after they leave government? Why would it be appropriate for a former official to profit from their previous service by representing America's adversaries?

Former government officials have important obligations after they leave government. These obligations reflect that public service is a public trust. National security officials, in particular, must continue to safeguard sensitive information with which they were entrusted. Post-employment restrictions and obligations based in statute, regulation, and executive order also apply and restrict, among other things, former officials' activities as they relate to representing, aiding, or advising foreign governments and others. I am committed to honoring these obligations and, if confirmed, to providing advice to departing CIA personnel on compliance with these important obligations.

35. During your time at the Department of Justice, the White House, or in private practice, have you ever observed evidence of a campaign by the People's Republic of China to project illiberal Communist Chinese laws, policies, and norms onto the international system or the legal codes of other

countries, or manipulate the legal codes of other countries to advance CCP objectives?

While I cannot recall a specific example of a matter in which I observed such behavior first-hand in my work, I am generally familiar with the PRC government's efforts in this regard and with the threat posed by the PRC government's transnational repression efforts more broadly. As noted in the 2022 Intelligence Community Annual Threat Assessment, "Beijing is intensifying efforts to mold U.S. public discourse, pressure perceived political opponents, and muffle criticism on such issues as religious freedom, suppression of democracy in Hong Kong, and oppression of the Uyghurs as well as other minorities."

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

Yes, please refer to my response to Question 35. I would look to the Intelligence Community to assess the extent to which the Chinese Communist Party uses particular means to achieve its objectives. The Intelligence Community's 2022 Annual Threat Assessment notes that the Chinese Communist Party will work to "undercut U.S. influence, drive wedges between Washington and its partners, and foster some norms that favor its authoritarian system."

[From Senator Sasse]

1. If confirmed, will you commit that you will not perform work for any PRC-controlled entity after leaving government service?

I have no intention of working for any entity that I know to be PRC-government-controlled and, if confirmed, will not perform work for any client that is inconsistent with my legal responsibilities, ethical commitments, or personal standards, including by performing work that threatens U.S. national security. Of course, I will also comply with all applicable post-employment restrictions. These include those set forth in Executive Order 13989 and federal post-employment restrictions laws and regulations, including the recently enacted section 308 of the Fiscal Year 2022 Intelligence Authorization Act and the provisions of 18 U.S.C. § 207.