

Questions for the Record
Senate Select Committee on Intelligence
Nomination Hearing

July 22, 2020 - updated on July 27, 2020 with an additional question from Senator Wyden (#15)

Questions for the Record for Mr. Patrick Hovakimian

[From Vice Chairman Warner]

You currently serve as Chief of Staff to the Deputy Attorney General, the second-highest ranking official at the Department of Justice. In your testimony, you told the Committee that you have “sight lines” into a variety of issues that come before the Deputy Attorney General and Attorney General, for whom you are a senior advisor. However, you were unable to answer several “yes” or “no” questions about the nature and extent of your involvement in a number of high-profile matters at the Department. If you are confirmed, the Committee must have trust in your candor and judgment, so I ask that you respond to the following questions again, this time in writing.

1. As Chief of Staff to the Deputy Attorney General, please explain your awareness of and/or involvement in the following matters:

Response: As an Associate Deputy Attorney General and Chief of Staff to the Deputy Attorney General, I lead and manage a team of legal professionals who provide counsel and advice to senior Department leadership on a wide range of issues addressed by the Department. To that end, I have a general awareness of a broad range of matters that come to the attention of the Deputy Attorney General and the Attorney General every day. While I may have broad awareness of many matters, the scope of my personal involvement in any particular matter varies widely, and I am personally and substantially involved in providing substantive legal advice and counsel to senior Department leaders in only a relatively small number of these matters.

- The prosecution of Roger Stone, including decisions made about sentencing recommendations and clemency.

Response: By virtue of my position in a Department management office, I was generally aware of the Department’s prosecution of Roger Stone, including the sentencing. I did not personally and substantially participate in the particulars of the matter. I was not aware of nor did I participate in the clemency decision.

- The dismissal of the prosecution of Michael Flynn, and decisions related to the provision of information to defense counsel in that case following his two guilty pleas.

Response: By virtue of my position in a Department management office, I was generally aware of the prosecution of Michael Flynn. I did not personally and substantially participate in the particulars of the matter, including the motion to dismiss or decisions relating to the provision of information to defense counsel.

- The clearing of peaceful protesters who were exercising First Amendment rights from Lafayette Square in DC on June 1, so that the President could pose for a photograph.

Response: As I responded in my answer to a Senator Wyden’s pre-hearing Question 5, and as I also stated at the hearing, I was not aware of nor did I participate in the decision pertaining to Lafayette Square on June 1.

- The termination of Geoffrey Berman as U.S. Attorney for the Southern District of New York.

Response: As I stated at the hearing, I was not aware of nor did I participate in the departure of former U.S. Attorney Geoffrey Berman from the Department.

- The deployment of federal law enforcement in American cities without the consent of or coordination with local officials, including Portland, Albuquerque, and elsewhere, or the management of those operations on the ground.

Response: By virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground.

- The handling of the IC whistleblower complaint related to Ukraine by the Department of Justice, including any investigation of the allegations in the complaint, the opinion of Office of Legal Counsel regarding the “urgent concern” provision and prompt transmittal of the complaint to Congress, or any related issue. The appointment of U.S. Attorney John Durham to investigate matters relating to the Intelligence Community’s handling of Russian interference in the 2016 U.S. elections.

Response: By virtue of my position in a Department management office, I was generally aware of the Criminal Division’s investigation of factual allegations in the complaint, which the Department has previously publicly acknowledged, and I understood OLC to be considering a legal question on the topic. As I stated at the hearing, “I am not an attorney who works in the Office of Legal Counsel. I did not inject myself into their deliberations. I did not try to steer things one way or another. And I did not try to give legal advice on what that opinion should look like.” I similarly did not inject myself into the Criminal Division’s investigation or deliberations. My response to the question about U.S. Attorney Durham is below.

- The appointment of U.S. Attorney John Durham to investigate matters relating to the Intelligence Community’s handling of Russian interference in the 2016 U.S. elections.

Response: I was not aware of nor did I participate in the appointment of U.S. Attorney John Durham to investigate matters relating to the Intelligence Community’s handling of Russian interference in the 2016 U.S. elections.

2. At any point, before, during or after these events or decisions, did you convey any concerns to any Department of Justice officials regarding the event or decision? If not, why not?

Response: I always provide my candid and frank advice and judgment when asked—and sometimes when not asked. Any specific advice that I may have given to senior Department officials on any matter before the Department must necessarily be confidential, consistent with longstanding Department practices, across Administrations. While I cannot speak to any specific advice I provided, I reiterate here, as discussed at the hearing, that my approach to advising on any question or issue must necessarily start with the Constitution, the laws of the United States, and a full understanding of the facts. As I also stated at the hearing, the only legal advice I will ever give is that which comports with the Constitution and laws of the United States. Even when it results in outcomes or advice that others may not want to hear, I have only ever—and will only ever—deliver what I consider to be lawful, objective, clear, and complete advice and counsel. My oath to the Constitution, if I am confirmed, would require it, and my professional judgment and moral compass demand it.

3. Please provide a specific example of a time, in your current role at the Department of Justice, when you “spoke truth to power” by expressing a view or providing advice that conflicted with the opinion of more senior officials.

Response: I always provide my candid and frank views and advice to more senior officials in my current role at the Department. Particularly when advising in the context of the interagency process, there have been many instances where my view or advice was that other agencies or Cabinet Departments had better arguments than did the Department or were otherwise better suited to fulfill a particular function or role. Advising, in effect, for the Department to take a more limited role or to defer to the views of a different agency is not always a popular piece of advice, particularly in the context of the interagency process where, of course, every agency is a repeat participant. As I have said in other contexts, even when it results in outcomes or advice that others may not want to hear, I have only ever—and will only ever—deliver what I consider to be lawful, objective, clear, and complete advice and counsel.

4. What law enforcement officers or other federal forces have DOJ and/or its subordinate entities deployed against ongoing protests in Portland, Albuquerque, Chicago and elsewhere?
 - Where have DOJ and/or its subordinate entities deployed those forces?
 - What additional or extraordinary authorities have DOJ and/or its subordinate entities given these forces?

- How are have DOJ and/or its subordinate entities ensuring that these forces are respecting protesters' legal and constitutional rights?

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground.

Although I do not necessarily have personal and specific knowledge of these matters, I am aware that the Attorney General addressed many of these topics in his July 28, 2020, testimony to the House Judiciary Committee, including in his written statement (available at <https://www.justice.gov/opa/speech/opening-statement-attorney-general-william-p-barr-house-judiciary-committee>). In particular, the Attorney General testified that, “in select cities where there has been an upsurge in violent crime, we are stepping up and bolstering the activities of our joint anti-crime task forces, which have been successful in the past. In those cities, we are adding experienced investigators, firearms and ballistics analysts, and experts at apprehending violent fugitives. We are also offering funding to support more police who can be assigned to these anti-crime task forces.”

In addition, the Department has released several public statements on these topics, a selection of which include the following:

<https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-launch-operation-legend>

<https://www.justice.gov/opa/pr/attorney-general-william-p-barr-joins-president-donald-j-trump-announce-expansion-operation>

<https://www.justice.gov/opa/pr/operation-legend-expanded-cleveland-detroit-and-milwaukee>

<https://www.justice.gov/opa/pr/attorney-general-william-p-barr-joins-president-donald-j-trump-announce-expansion-operation>

<https://www.justice.gov/opa/pr/operation-legend-expanded-cleveland-detroit-and-milwaukee>

[From Senator Feinstein]

1. Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with U.S. obligations under the Convention Against Torture and other treaty obligations?

Response: I understand that, during her confirmation hearing, the current Director of the Central Intelligence Agency (CIA), Gina Haspel, informed this Committee that she would not permit the CIA to restart the detention and interrogation program. I support and share Director Haspel's commitment.

While I have not conducted my own analysis of the application of various U.S. laws and treaty obligations to CIA's past practices, as I wrote in response to Question 26 of the Committee's pre-hearing questionnaire, my understanding is the law governing interrogation has evolved significantly since the CIA last employed enhanced interrogation techniques. Today the law is clear. Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 provides that any individual "in the custody or under the effective control of an officer, employee, or other agent of the United States Government" may only be interrogated (other than by federal law enforcement) using the techniques authorized by the Army Field Manual 2-22.3. I fully support this statute.

2. Do you believe there are any circumstances in which current law could be interpreted to justify the use of interrogation practices by an intelligence agency other than those listed in the U.S. Army Field Manual?

Response: No. The law is clear. Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 provides that any individual "in the custody or under the effective control of an officer, employee, or other agent of the United States Government" may only be interrogated (other than by federal law enforcement) using the techniques authorized by the Army Field Manual 2-22.3. I fully support this statute.

3. Do you understand U.S. law and existing treaty obligations to prevent the United States from transferring a detainee to the custody of another country for the purposes of that country forcibly interrogating or torturing the detainee in an effort to acquire intelligence?

Response: Yes. No element of the IC may request any person, including any foreign partner or source, to undertake activities forbidden by the Constitution, federal law, or Executive Order.

4. The McCain-Feinstein amendment to the FY16 Defense Authorization Act also required the U.S. Government to notify the International Committee of the Red Cross of any detainee in U.S. custody and to provide the ICRC with timely access to detainees. If confirmed, will you agree to ensure that all IC agencies are complying with this requirement and notify the Committee of your findings?

Response: Yes, if confirmed, I would work with the Department of Justice and the General Counsels throughout the Intelligence Community (IC) to ensure that all IC activities are carried out in strict accordance with the Constitution and applicable federal law, including section 1045 of the National Defense Authorization Act for Fiscal Year 2016, and that IC elements are meeting their obligations to keep the intelligence committees fully and currently informed.

[From Senator Heinrich]

Federal agents are being sent to Albuquerque as part of the expansion of Operation Legend. According to the Justice Department, the initiative is intended to “fight the sudden surge of violent crime.” But according to Albuquerque Police Chief Geier, homicides are down this year, and protests have been mostly peaceful in the city.

The DoJ initiative is also intended to work in conjunction with state and local law enforcement officials, and yet the mayor and chief of police were not consulted.

Please provide answers to the following questions:

1. What is the driving reason to send these agents to Albuquerque at this particular time? What are the criteria for determining which cities have a problem that raises to federal intervention?

Response: As I noted in my responses to Vice Chairman Warner’s Question One, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground.

Although I do not necessarily have personal and specific knowledge of these matters, I am aware that the Attorney General addressed many of these topics in his July 28, 2020, testimony to the House Judiciary Committee, including in his written statement (available at <https://www.justice.gov/opa/speech/opening-statement-attorney-general-william-p-barr-house-judiciary-committee>). In particular, the Attorney General testified that “in select cities where there has been an upsurge in violent crime, we are stepping up and bolstering the activities of our joint anti-crime task forces, which have been successful in the past. In those cities, we are adding experienced investigators, firearms and ballistics analysts, and experts at apprehending violent fugitives. We are also offering funding to support more police who can be assigned to these anti-crime task forces.”

In addition, the Department has released several public statements on these topics, including in relation to law enforcement initiatives in Albuquerque, a selection of which include the following:

<https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-during-operation-legend-expansion>

<https://www.justice.gov/opa/pr/attorney-general-william-p-barr-joins-president-donald-j-trump-announce-expansion-operation>

2. What authority do federal law enforcement agents have to deploy into a community?

Response: Please see my response to the previous question.

3. How is this initiative different than last year's Operation Relentless Pursuit? If merely a rebranding, why was that necessary?

Response: Please see my response to Senator Heinrich's Question One.

4. How will the Justice Department work with city officials to ensure cooperation and coordination and legal guardrails?

Response: Please see my response to Senator Heinrich's Question One. In particular, as described in the Department's public statements cited above, "federal investigators will work closely with the Albuquerque Police Department and the Bernalillo County Sheriff's Department, along with other local partners, through pre-existing task forces directed at combatting violent crimes." "[T]hese investigators will complement the work already underway by existing joint federal, state, and local task forces focused on combating violent gangs, gun crime, and drug trafficking organizations."

In addition, the Department has announced specific collaborative measures with local partners in Albuquerque. The Department has announced that it has "made available over \$1.5 million in COPS Hiring Grants to the Bernalillo County Sheriff's Department to onboard five deputies and to support additional federal task force officers committed to violent crime reduction efforts" and "made \$9.74 million available to the Albuquerque Police Department to fund the hiring of 40 officers." Finally, the Department has also announced that it has made funds available to the Bernalillo County Sheriff's Office and the Albuquerque Police Department through the Bureau of Justice Assistance and the Joint Law Enforcement Operations fund.

5. Which agencies are represented on the ground? How many of each? How will they be deployed? What are their rules of engagement?

Response: Please see my response to Senator Heinrich's Question One.

[From Senator Bennet]

1. I am concerned about the way in which the Ukraine whistleblower complaint unfolded and the ways in which that has affected the environment for future whistleblowers. I worry that some of the events in the past year have raised questions—whether true or not—about whether protections for whistleblowers are really there.
 - Would you agree that recent events might make the decision to come forward as a whistleblower more difficult for an intelligence community employee?
 - How will you work to restore confidence in the intelligence community workforce that they will be protected, should they choose to come forward, in decisions that may put their careers—or life—on the line?

- What role should the DNI General Counsel play in this dynamic?

Response: Whistleblowers serve a vital role within the IC by promoting government accountability, maintaining the integrity of the workforce, and addressing allegations of wrongdoing without improperly disclosing classified information. Whistleblowers always face a difficult decision when they choose to come forward, and they must have confidence that they will be protected as required by law. I believe strongly in the statutory provisions, including those codified in the Intelligence Community Whistleblower Protection Act (ICWPA), that encourage Federal employees and government contractors to report truthful allegations of wrongdoing in accordance with the law. I also take seriously the obligation to protect lawful whistleblowers from retaliation. If confirmed, I would work with the IC Inspector General to support efforts to educate employees and contractors within the ODNI and across the IC about their right, and their responsibility, to report allegations of waste, fraud, or abuse, and to inform the professionals of the IC of the protections they are entitled to under the law.

As I wrote in response to Question 17 of the Committee's pre-hearing questionnaire, if confirmed, I commit to ensure that every complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled. Under the ICWPA, the Director of National Intelligence (DNI) is responsible for transmitting, or directing the transmission, to Congress of complaints that fall within the statutory framework. The role of the General Counsel is to provide expert legal counsel to the DNI in the discharge of his statutory obligations. If confirmed, I would do just that, guided exclusively by the facts and the applicable law.

2. In order to ensure the independence of the intelligence community, the men and women of the intelligence community must be able to deliver objective intelligence free from political pressure. And, they need to know if they choose to report wrongdoing, they will be protected in accordance with whistleblower laws and policies.
 - If confirmed, what steps would you take to take to ensure the men and women of the intelligence community can deliver objective analysis free from political pressure, real or perceived?
 - What do you believe is the greatest threat to the independence of our intelligence community?

Response: Policymakers depend on the IC to provide timely, objective, and independent analysis based on policies and standards to ensure analytic independence. Politics has no place in the IC or the analytic process, and we should vigilantly guard against the threat of any such interference. And, as discussed in my response to the previous question, I would work tirelessly with the professionals at ODNI and throughout the IC to ensure that the professionals of the IC are apprised of their rights under the law and afforded all legal protections to which they are entitled when reporting allegations of waste, fraud, or abuse in accordance with the law.

3. In responding to this Committee's pre-hearing questions, you stated "I am not familiar with the specific intelligence underlying the January 2017 Intelligence Community Assessment or the Committee's confirmation of that assessment."

The January 2017 Intelligence Community Assessment concluded that Russia interfered in the 2016 US presidential election to benefit then-candidate Donald Trump. This committee has publicly confirmed that assessment on a bipartisan basis.

- Do you question the Intelligence Community Assessment's findings, as confirmed by this committee on a bipartisan basis? If so, please state the reason.
- What message do you think equivocation or doubt about intelligence community assessments sends to adversaries, such as Russia right now, as we are less than 4 months from the 2020 elections?

Response: As I stated at the hearing and as I wrote in response to Question 32 of the Committee's pre-hearing questionnaire, Russia engaged in unprecedented efforts to interfere in the 2016 U.S. Presidential election to sow discord and undermine faith in our democracy. In addition, as has been publicly reported and as Director Ratcliffe also communicated during his confirmation, active measures by the Russian government included successful hacking and attempts to compromise computer networks of political targets, as well as an extensive disinformation campaign through social media accounts. As I stated at the hearing, while I am not familiar with the specific intelligence underlying the January 2017 Intelligence Community Assessment, I have no reason to doubt the analysis reflected in that Assessment or the Committee's findings with respect to that analysis. If confirmed, I look forward to the opportunity to review the assessment and the intelligence on which it is based, and to render any feedback to the Committee, if requested.

[From Senator Wyden]

1. Please provide detailed information on which Department of Justice entities have deployed to Portland, Oregon, in connection with recent protests against racism and police abuses. For each such entity, please indicate:
 - The number and roles of deployed personnel.
 - Whether those entities have engaged in crowd control, arrests and detentions, facility protection, or other active law enforcement operations. For each such entity, please describe its chain of command as well as its training and safety protocols.
 - Any directives or guidance with regard to arrests and detentions.
 - Coordination with local authorities and law enforcement.

- Coordination among, and relative roles of DOJ entities and entities of the Department of Homeland Security deployed to Portland.

Response: Please see my responses above to Vice Chairman Warner's and Senator Heinrich's questions.

2. Please provide information on any federal government surveillance and other collection activities in Portland, to include:

- The federal government entities conducting the surveillance and collection.
- How the surveillance or collection has been conducted.
- The nature of the information collected.
- The authorities under which the surveillance or collection has been conducted.
- Dissemination and minimization requirements related to such surveillance or collection.
- The use of such surveillance or collection.

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground. I do not have personal and specific knowledge of the matters the question references.

If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

3. Please describe in detail any guidance from the Department of Justice related to the law enforcement operations of entities of the Department of Homeland Security in Portland. Please detail how that guidance has been implemented.

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground. I am, however, not personally aware of any such guidance.

4. Has the Office of Legal Counsel or any other element of the Department of Justice produced any opinions related to federal government law enforcement or surveillance that apply to operations in Portland? If yes, please provide.

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground. I am not in a position to provide any internal legal opinions from the Department of Justice. I am, however, not personally aware of any opinions on these subjects.

5. Under what circumstances, if any, can federal law enforcement personnel patrol and make arrests without identifying themselves or the federal entities for which they work? Please detail your statutory and constitutional analysis.

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground. I have not had occasion to conduct a detailed statutory or Constitutional analysis on this topic.

6. Under what circumstances, if any, can federal law enforcement personnel patrol and make arrests over the objections of state, local, municipal and tribal authorities, and away from federal buildings and property? Please detail your statutory and constitutional analysis.

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground. I have not had occasion to conduct a detailed statutory or Constitutional analysis on this topic.

7. Under what circumstances, if any, do federal entities have authorities to enforce non-federal laws? Do those circumstances change if state, local, municipal and tribal authorities object to federal enforcement? Please detail your statutory and constitutional analysis.

Response: As I have noted, by virtue of my position in a Department management office, I am generally aware of federal law enforcement deployments and operations in connection with instances of civil unrest around the country and in order to combat rises in violent crime in some places. I did not personally and substantially participate in decisions pertaining to such deployments nor the management of the operations on the ground. I have not had occasion to conduct a detailed statutory or Constitutional analysis on this topic.

8. Accounts in the press have described an unclassified document entitled “Job Aid: DHS Office of Intelligence and Analysis (I&A) Activities in Furtherance of Protecting American Monuments, Memorials, Statues, and Combatting Recent Criminal Violence.” Please review the document and indicate whether it is consistent with your understanding of the appropriate role of an Intelligence Community entity.

Response: I am not familiar with the specifics of this matter beyond generally what has been reported in the press. It is my understanding that IC elements’ Attorney General-approved U.S. person procedures establish the parameters under which elements may lawfully collect, retain, and disseminate information concerning U.S. persons. It is my expectation that IC elements will consult with the ODNI and the Department of Justice regarding novel or significant interpretations of their Attorney General-approved procedures, particularly when the activities in question touch on the Constitutionally-protected rights of our citizens. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law, as well as Presidential directives such as Executive Order 12333 and its implementing procedures.

9. Under what circumstances are public monuments, memorials or statues critical infrastructure for purposes of intelligence collection and analysis?

Response: My understanding is that Presidential Policy Directive 21 (PPD-21) identifies 16 critical infrastructure sectors and establishes national policy on critical infrastructure security and resilience. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

10. What limitations should apply to the various Intelligence Community entities with regard to the review, collection, analysis, and dissemination of social media of U.S. persons?

Response: It is my understanding that IC elements’ Attorney General-approved U.S. person procedures establish the parameters under which elements may lawfully collect, retain, and disseminate information concerning U.S. persons in a manner that protects privacy and civil liberties. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law, as well as Presidential directives such as Executive Order 12333 and its implementing procedures.

11. Is identification with “ANTIFA,” absent indication of intent to commit violence, protected by the First Amendment? Is such identification sufficient as a basis for collection?

Response: The Supreme Court has held that the rights guaranteed by the First Amendment include freedom of speech, freedom of association, as well the right to engage in peaceful protest and public assembly. It is my understanding that IC elements’ Attorney General-approved U.S. person procedures incorporate specific restrictions on collecting intelligence solely for the

purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or federal law. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law as well as Presidential directives such as Executive Order 12333 and its implementing procedures.

12. Is criticism of, or support for the removal of, particular public monuments, memorials or statues, absent indication of intent to commit violence, protected by the First Amendment? Is such criticism or support sufficient as a basis for collection?

Response: The Supreme Court has held that the rights guaranteed by the First Amendment include freedom of speech, freedom of association, as well the right to engage in peaceful protest and public assembly. It is my understanding that IC elements' Attorney General-approved U.S. person procedures incorporate specific restrictions on collecting intelligence solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or federal law. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law as well as Presidential directives such as Executive Order 12333 and its implementing procedures.

13. If your chain of command, to include the DNI, the Principal Deputy DNI and the President, were to lie or make a misleading or inaccurate statement to the Committee or the American people about intelligence matters in a public comment or report, what is your obligation to notify the Committee and the American people?

Response: During his confirmation hearing, Director Ratcliffe made clear that he is committed to ensuring that all information shared with the Committee and the American people is accurate and factual. I support and share that commitment. If, for some reason, he or another ODNI official inadvertently made a statement that was inaccurate, I would work with the appropriate official to inform the intelligence committees of the inaccuracy and—consistent with the requirement to protect classified information and sensitive intelligence sources and methods—to publicly correct that statement.

14. Will you commit to notifying this Committee and the American people of any such lie or misleading or inaccurate statement so that the American people will know that the Intelligence Community speaks truth to power?

Response: Please see my response to the previous question.

15. A whistleblower complaint from a Senior Department of Justice Trial Attorney at the Organized Crime and Drug Enforcement Task Forces, Mr. Mark McConnell, alleges improper use of intelligence at the Joint Interagency Task Force South in domestic drug prosecutions. You are alleged to have attended at least two meetings on the resultant discovery issues, on January 11, 2019, and January 29, 2019.

- For both meetings, please list the attendees.

- Please describe what positions you took on the matter, any direction you provided, any follow-up you engaged in, and the final disposition of the issues at hand.
- Please describe any further conversations you have had with regard to the issues described in the allegation or the treatment of the whistleblower.

Response: Along with representatives from federal agencies from the Joint Interagency Task Force South, I attended at least two relatively large interagency meetings in January 2019 relating to classified information and possible criminal discovery issues. I worked with interagency partners and senior Department officials towards addressing any issues. It is my understanding that the issues pertaining to classified information and discovery were also forwarded to the Inspectors General of the Department of Justice and the Department of Defense, and possibly others. I am unaware of what review or investigation, if any, these inspector general offices engaged in. In all contexts, I worked with senior career Department officials and the Justice Management Division’s Office of General Counsel to ensure appropriate consideration and treatment in all regards.

From Senator King:

1. How did you come to be nominated? Can you please describe the process of how and why you were put forward as the nominee?

Response: As a career civil servant, I will always put my hand up to serve my Country. Having worked on national security-related investigations and litigation strategy while at the Department, and having served as the Department’s Director of Counter-Transnational Crime, I had some experience working alongside the IC. I have tremendous respect for the work that they do. After inquiring about possible opportunities to continue public service, I was asked if I would be interested in serving in this position. I will always serve my Country when called upon, and, if confirmed, my loyalty will always be to the Constitution and to the rule of law.

2. I was unable to discern a meaningful statement in your response to prehearing questions 18, 19 and 20. Please respond again in a way that directly addresses the questions posed, rather than the vague statements previously provided.
 - 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?
 - Under what circumstances would you judge it appropriate to intercede in advancing a whistleblower complaint to Congress?
 - 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?

Response: I appreciate the opportunity to clarify my responses to these questions. Whistleblowers serve a vital role within the IC by promoting government accountability, maintaining the integrity of the workforce, and addressing allegations of waste, fraud, or abuse without improperly disclosing classified information. I believe strongly in the statutory provisions, including those codified in the Intelligence Community Whistleblower Protection Act (ICWPA) that encourage Federal employees and government contractors to report allegations of waste, fraud, or abuse in accordance with the law. As discussed in my responses to Senator Bennet's questions, if confirmed, I would work with the IC Inspector General to support efforts to educate employees and contractors within the ODNI and across the IC about their right, and their responsibility, to report allegations of waste, fraud, or abuse and to inform the professionals of the IC of the protections they are entitled to under the law.

I also take seriously the obligation to protect lawful whistleblowers from retaliation and would work very closely with ODNI leadership and the IC Inspector General to ensure that whistleblowers are afforded all legal protections to which they are entitled under the law.

I understand these questions to concern the specific role of the General Counsel in implementing the requirements of the ICWPA. Under that statute, the DNI is the official responsible for transmitting, or directing the transmission, to Congress of complaints that fall within the statutory framework. The role of the General Counsel is to provide expert legal counsel to the DNI in the discharge of his statutory obligations. If confirmed, I would work to do just that, as guided exclusively by the facts and the applicable law.