

Questions for the Record
Senate Select Committee on Intelligence
Nomination Hearing - Open Session
May 5, 2020

Questions for the Record for Representative John L. Ratcliffe

[From Senator Wyden]

1. Three times during your confirmation hearing, you testified that Russia had not been successful in "changing votes or the outcome of [the 2016 election]." While the January 2017 Intelligence Community Assessment (ICA) included a DHS assessment related to vote tallying, the Intelligence Community has made no assessment as to whether Russia's influence campaign did or did not succeed in achieving or contributing to the election of Donald Trump. The ICA stated:

"We did not make an assessment of the impact that Russian activities had on the outcome of the 2016 election. The US. Intelligence Community is charged with monitoring and assessing the intentions, capabilities, and actions of foreign actors; it does not analyze US. political processes or US. public opinion."

- **Have you seen any intelligence analyses supporting your statement that Russia did not succeed in changing the outcome of the 2016 election? If so, please provide it to the Committee. If not, on what do you base your judgment?**

Answer: Page iii of the "Key Judgements" section of the declassified *2017 Intelligence Community Assessment ICA 2017-01D* noted that "DHS assesses that the types of systems Russian actors targeted or compromised were not involved in vote tallying." I also understand that the Senate Select Committee on Intelligence's report, *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election Volume 1: Russian Efforts Against Election Infrastructure*, stated that, "In its review, the Committee has seen no indications that votes were changed, vote-tallying systems were manipulated, or that any voter registration data was altered or deleted." The report concluded with SSCI open hearing testimony from Department of Homeland Security (DHS) and Federal Bureau of Investigation (FBI) witnesses on June 21, 2017, where witnesses expressed agreement "that they had no evidence that votes themselves were changed in any way in the 2016 election."

2. **Have you had any discussions with Attorney General Barr, U.S. Attorney John Durham, or anyone other administration official concerning Mr. Durham's examination of the U.S. Government's Russia investigation? If yes, please describe those discussions.**

Answer: No.

3. During your confirmation hearing, you testified that "no one can spy or surveil outside the law." However, in your responses to written questions, you wrote that "FISA constitutes the exclusive statutory means" by which electronic surveillance may be conducted.

- **Please clarify whether your reference to "the law" was intended to limit surveillance to the FISA statutory framework, or you believe that electronic surveillance outside that statutory framework and based on an assertion of non-statutory authorities can be consistent with "the law."**

Answer: I believe this question relates to my response to Question 10 of the prehearing questionnaire. That question asked, "Do you believe that the intelligence surveillance and collection activities covered by FISA can be conducted outside the FISA framework?" My answer stated and remains, "As set forth in Section 112 of FISA, with limited exceptions, FISA constitutes the exclusive statutory means by which electronic surveillance, as defined in FISA, and the interception of domestic wire, oral, or electric communications for foreign intelligence purposes may be conducted."

4. **Do you support any legislative reforms to FISA? If so, please describe them.**

Answer: As a Congressman and a member of the House Judiciary and Intelligence Committees, I have supported past efforts to reauthorize FISA authorities that are critical to our national security and the Intelligence Community (IC) while also ensuring civil liberties are protected and proper protocols and accountability are established throughout FISA and its statutes. FISA is a vital tool for the IC to collect information on valid intelligence targets. If confirmed, I look forward to working with Congress, the Attorney General, and the IC to continue to promote legislation that ensures FISA's operational effectiveness while strengthening U.S. person privacy protections.

5. Top election cybersecurity experts, as detailed in a 2018 National Academy of Sciences report, are in universal agreement that transmitting marked ballots over the internet is dangerous and should not be done. However, in your responses to written questions, you wrote "resilience built on audits, redundancies and expertise minimizes the impact any threat can have even if using the internet to deliver some portion of ballots."

- **Please provide a fulsome and detailed explanation for how internet voting can be rendered secure from sophisticated hacking and why you disagree with the recommendations in the 2018 National Academy of Sciences report.**

Answer: I do not disagree with the recommendations of the 2018 National Academy of Sciences report. The DHS Cybersecurity and Infrastructure Security Agency (CISA), along with the FBI, serve as the Federal leads on election infrastructure security. My complete response to Question 49 of the pre-hearing questionnaire states, “The goal of our system is to be resilient. In today’s age, no system is truly invulnerable to an aggressive and capable threat. However, resilience built on audits, redundancies and expertise minimizes the impact any threat can have even if using the internet to deliver some portion of ballots. The IC will continue to support DHS and FBI in their work to support the states in their leadership role on securing elections.” This was in reference to the states who currently permit overseas and military voters to transmit their marked ballots directly to local election officials over the internet, mostly via email. My answer alludes to the fact that no system is ever completely secure, and that only by building auditability, redundancies and expertise into all systems do we minimize any threat, regardless of the manner in which that threat occurs. CISA continues to assist in advising states and localities on how to incorporate best practices that can keep their systems secure. If confirmed, I look forward to ensuring DHS and the FBI continue to receive all the IC support they need to accomplish their critical election security missions.

- **Please identify the cybersecurity experts with whom you have consulted on this topic, and specifically those who have informed you that the risks of internet voting can be sufficiently minimized through "audits, redundancies and expertise."**

Answer: As stated above, no system is ever completely secure, and if confirmed, I look forward to supporting DHS and the FBI in their work to support the states in their leadership role on securing election systems.

6. There are currently no mandatory, federal cybersecurity standards for voting systems, including the servers and technology used by local election officials in 23 states that receive marked ballots over the internet from Americans in the military and those living overseas.

- **How confident are you that these servers and the technology currently used by local election offices to receive marked ballots over the internet are sufficiently secure to protect against hacking by foreign governments?**

Answer: As it relates to election security, the role of the IC is to identify potential foreign-related threats and potential mitigating factors. I trust that our DHS and FBI partners, specifically CISA, in combination with other federal partners, will continue to develop and promulgate best practices, protocols, and tools that help inform state and local election authorities on how to enhance the security and resilience of our nation's election systems. This includes the ability to test systems, audit, and review results accordingly to maintain and strengthen states' election security needs.

7. Federal cybersecurity experts did not conduct forensic examinations in 2016 and 2018 of any of the servers used by local election offices to receive ballots over the internet.

- **How confident are you that foreign governments have not tampered with internet-returned electronic ballots in prior federal elections?**

Answer: I am not aware of any information indicating an adversary has tampered with ballots in prior federal elections. At this time and without further information, I am unable to assess a particular level of confidence in response to your question.

[From Senator Heinrich]

8. Mr. Ratcliffe, you testified in the open nomination hearing that you concur with the unanimous assessment of the 17 agencies of the Intelligence Community that Russia engaged in an effort to interfere in the 2016 elections and that Moscow will keep working to sow discord. But you hedged about the IC's assessment that Russia's aim was to bolster Donald Trump's campaign, and in other forums, you have suggested that it was Hillary Clinton's campaign that colluded with Moscow.

On that point, you stated at the hearing that you had not seen the "underlying intelligence to tell me why there is a difference of opinion" between the assessments of the IC and this Committee and the House Intelligence Committee. You committed to Vice Chairman Warner that you would come back to the Committee if you reach a different conclusion than the IC once you review the underlying intelligence. My request is a slight variation on the Vice Chairman's request:

- **Please provide a commitment that if confirmed, you will review the underlying intelligence within the first six months of your tenure as DNI and that you will brief the Committee on the conclusions you reach about the accuracy or inaccuracy of the IC's assessment and the basis for your conclusions.**

Answer: If confirmed, I will study this issue and provide my feedback to the Committee within six months of my tenure as Director of National Intelligence.

9. During a House Judiciary Committee markup of the USA FREEDOM Act in 2015, the Committee considered an amendment to end the "backdoor searches" of Americans' communications under Section 702 of the FISA Amendments Act without a warrant.

In your comments on the amendment, you stated: "In full disclosure to everyone, I am a former terrorism prosecutor that has used warrantless searches, and frankly have benefitted from them in a number of international and domestic terrorism cases."

- **Please explain how you "used warrantless searches and have benefitted from them," and to which cases you werereferring. (If necessary, you may provide a separate classified answer.)**

Answer: My comments related to the importance of Section 702 authorities generally, and were a reference to the same matters previously disclosed to the Committee in the Annex to Question 9c.

- **Do you believe that it is reasonable for the government to conduct warrantless searches of Americans' communications?**

Answer: The U.S. government should conduct warrantless searches only in accordance with the Constitution and the authorities and laws passed by Congress.

10. When you were first nominated last year for the position of Director of National Intelligence, critics on both sides of the aisle registered concerns about your lack of qualifications and about false claims you made about your record as a prosecutor. Explaining your reasons for withdrawing your nomination five days after it was first submitted, you stated: "I do not wish for a national security and intelligence debate surrounding my confirmation, however untrue, to become a purely political and partisan issue."

- **Do you believe critics were being "political and partisan" in highlighting your lack of qualifications for this position and your misrepresentations regarding your record as a prosecutor?**

Answer: Yes, I do believe some critics were being "political and partisan" in attempting to mischaracterize or inappropriately construe my records and qualifications. My experience and background stands on its own, and it is covered extensively in my responses to the Committee's prehearing questionnaire and to questions I received in the Committee's nomination hearing.

- **Please acknowledge that you misrepresented/exaggerated/lie about your past experience and explain why the Members of this Committee should have confidence that if confirmed, you will not misrepresent facts to this Committee.**

Answer: I have not misrepresented, exaggerated, or lied about my past experience to anyone. Members of this Committee should have confidence because I have provided this Committee with both documentation and testimony under oath establishing that media reports alleging a lack of national security and intelligence

experience were inaccurate and untrue. Out of all the prosecutions brought under my name, authority, and signature as U.S. Attorney from 2007-2008, I am aware of only a single case where details of my role were inaccurately stated in press and/or campaign materials, and which were immediately clarified when brought to my attention.

[From Senator King]

11. In your written statement, you mentioned having a "good rapport" with the President.

- **How did you establish your rapport with the President? Was this rapport forged during political conversations or at fundraisers?**

Answer: My reference to good rapport relates to discussing policy matters, including national security and intelligence issues, with the President when he first began considering me as a possible nominee for DNI. Since that time, and until present, we have continued to develop a good relationship during personal interactions at official events.

12. **What commitments did you make to the President or his team when he originally nominated you last summer? What commitments did you make prior to being re-nominated in March?**

Answer: In both instances, I committed to the President that, if nominated, I would lead with integrity, and at all times, act in accordance with the Constitution and the laws of the United States.

13. **Did you and the President ever discuss the Durham Investigation?**

Answer: I cannot comment on the particulars of my conversations with the President, other than to say that our discussions have been on policy matters. Please also see my response to Question 2 of the Open Hearing Questions for the Record.

14. **Will you state, unambiguously and for the public record, that you concur with the Intelligence Community' assessment that Russia engaged in an unprecedented effort to interfere in the 2016 U.S. presidential election, with the specific aim of bolstering then-candidate Donald Trump's campaign?**

Answer: I concur with the IC assessment that Russia engaged in unprecedented efforts to interfere in the 2016 U.S. presidential election to sow discord and undermine faith in our democracy. As I stated in the open hearing, the House and Senate intelligence committees reached different conclusions on whether a specific aim by Russia was to bolster then-candidate Donald Trump's campaign. I respect both committees, was not involved with the findings of either committee, and have not seen the underlying intelligence to render an informed opinion on that specific issue. As indicated above, if confirmed, I will study this issue and will provide my feedback to the Committee as expeditiously as possible.

15. On April 3, 2020, the President fired IC Inspector General Michael Atkinson.

- **Did you concur with the decision to fire the ICIG?**

Answer: As I stated in the open hearing, I do not have enough information to offer an opinion.

16. During a December 11, 2019, hearing of the House Judiciary Committee, you claimed without any evidence that the Ukraine whistleblower "got caught" and "made false statements." The next day you tweeted that "the whistleblower didn't tell the truth both verbally and in writing."

- **Do you believe it is appropriate for elected officials to defame whistleblowers who have complied with the law?**

Answer: No, I do not believe it is appropriate for anyone to defame, as used in the law, whistleblowers who have fully complied with the law.

17. As a member of HPSCI, do you make it a point to participate in every classified meeting?

Answer: I make it a point to participate in as many HPSCI activities, both classified and unclassified, as I possibly can. As one of only a few of the 435 House members, and until recently the only HPSCI member, to serve concurrently on four committees, I do my best to balance the obligations for all my committee assignments.

[From Senator Sasse]

18. Please provide an assessment of what DNI's AI strategy (Augmenting Intelligence Using Machines or AIM) has accomplished thus far, including highlighting accomplishments by agency.

- **What do you plan to do to enable more efficient progress on implementing AI technologies at the agencies?**

Answer: I have received initial briefs on the IC's AIM Initiative. As I understand it, the ODNI has been leading this initiative, and is in the early stages of seeing it implemented across the IC. Its goal is to align IC efforts and oversee IC investments in adopting Artificial Intelligence (AI). The AIM Initiative has made substantial progress organizing formerly disparate AI activities, reducing overlap and duplication, and setting in place a coordinated, long-term portfolio management approach and investment strategy. I further understand the IC is already implementing elements of the AIM initiative across the Community. If confirmed, I look forward to supporting efforts to help speed the development and application of AI technologies in critical IC mission areas like identity

intelligence, strategic indications and warning, countering foreign malign influence, confirming authenticity of information and enhancing security.

- **What do you plan to do to enable more efficient hiring and training of AI professionals - to include software engineers, data engineers and scientists, mathematicians, and machine learning experts?**

Answer: Like the rest of the Federal Government, the IC competes for the same workforce that is in high demand across the economy. The IC simply cannot compete with private sector compensation packages, and the IC's need for cleared professionals further complicates the matter. In my briefs, I learned that the AIM Initiative does have a workforce component, and its objective is to build and sustain an AI-ready workforce to shape and integrate AI solutions into IC operations, analysis, and support across the board. If confirmed, I will work to ensure the IC is working to build a deep bench of AI and machine learning expertise through targeted and innovative recruiting; training of existing staff; improved and accelerated clearance and onboarding practices as part of security clearance reform and utilizing partnerships with universities, industry, other agencies, and liaison services to augment the current workforce. I will also focus on examining what structural changes are necessary to successfully recruit and retain the best and the brightest talent.

[From Senator Feinstein]

19. During your confirmation hearing, when asked about your views on contractors, you responded that "I agree [that] contractor use . . . should be limited and [that] government employees should be doing government functions. I know there's always a look in terms of ratios and the percentages. I'm not a one-size-fits-all person. If confirmed as DNI, I'll look at where things stand right now."

- Please provide a more detailed answer, including the steps you plan to take to review the IC's use of contractors, and how you will ensure that contractor use does not encroach on inherently government functions.

Answer: Contractors play a critically important role in the success of the IC's mission. In many cases, contractors offer specialized skills and abilities that the civilian workforce, in some cases, may not possess with the required level of proficiency. In other cases, contractors can be leveraged for specialized skills to execute short-term requirements. But contractors cannot and should not be utilized for inherently governmental functions. I understand that both law and policy provide clear guidance to the IC on the appropriate use of contract personnel.

If confirmed, I will work with IC leadership to ensure compliance with both law and policy on the utilization of contractors across the Community. I will also ensure that IC elements are fully utilizing the authorities provided under the Multi-Sector Workforce Initiative to ensure the appropriate mix of contractor, civilian and military personnel to meet mission priorities.