

**NOMINATION OF KATE E. HEINZELMAN
TO BE GENERAL COUNSEL OF
THE CENTRAL INTELLIGENCE AGENCY**

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

APRIL 6, 2022

Printed for the use of the Select Committee on Intelligence



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

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[Established by S. Res. 400, 94th Cong., 2d Sess.]

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WEDNESDAY, APRIL 6, 2022

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

The Committee met, pursuant to notice, at 10 a.m., in Room SH-216 in the Hart Senate Office Building, Hon. Mark R. Warner (Chairman of the Committee) presiding.

Present: Senators Warner, Rubio, Wyden, Heinrich, King, Bennet, Casey, Burr, Collins, Blunt, Cotton, and Cornyn.

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

Chairman WARNER. I'm going to call this hearing to order.

I want to welcome our witness, Kate Heinzelman, the President's nominee to be General Counsel to the CIA. We want to welcome you and your family. I think you've got a number of members. I hope you will introduce them in your opening statement.

I also want to thank my friend Senator Bennet who, when I'm done with my opening and Senator Rubio is done with his, is going to introduce the witness.

We look forward to your testimony.

Ms. Heinzelman comes to this position with a very impressive background. She is currently Chief Counselor in the Office of the Attorney General and has previously been Deputy General Counsel to the Department of Health and Human Services, as well as Special Assistant and Associate General Counsel to President Obama. She has also been counsel to the Assistant Attorney General for National Security.

The General Counsel is the CIA's chief legal officer and plays a critical role in ensuring that the Agency's intelligence operations and collection adhere to the law, and ensuring that the rights and liberties of Americans are protected. The GC is also the principal legal advisor to the Director of the CIA.

Ms. Heinzelman, should you be confirmed you'll need to provide both sound legal analysis and good judgment. As the CIA's top legal officer you would be responsible for ensuring that CIA operations, including covert operations, are both within the letter and the spirit of the law.

The Director will often turn to your advice on difficult decisions that may involve, candidly, life and death and must be made expe-

ditionously. I'd like to hear from you today about how you would go about providing such critical advice.

The Agency has not confirmed a General Counsel for over a year, and it is vital that there be a confirmed GC in place. Looking at recent headlines, it seems as if global security and stability are increasingly in peril. I think every one of us on this Committee has been shocked by the Russian actions in Ukraine.

I heard General Milley saying it may be some of the most dangerous times we have faced since World War II. We see some of these Russian actions, from the President on down and leaders all over the world, condemning Putin for war crimes. I mean, again that brings its own legal definition.

But the truth is, as we've seen from the recent worldwide threats hearing, threats faced by the United States go well beyond Ukraine-Russia. Increasingly we've seen enormous competition. And all of us on this Committee have taken the lead on calling out the competition we face with China, especially in the area of technology.

Iran and North Korea continue to pursue malign activities. And terrorist groups still present a formidable threat. And of course we all know the threat of cyberattacks, including against our critical infrastructure as well as misinformation and disinformation, continue to present serious concerns.

The CIA and our other intelligence agencies have been critical in providing warning on these threats. I for one think that, frankly, the forward-leaning aspect of the community has really not only kept Vladimir Putin off guard in terms of being willing to declassify information in a timely manner, but also helped build the alliance.

The Agency operates around the world in difficult and dangerous places. The CIA must also operate in strict compliance with United States law, including the Constitution, Acts of Congress, and treaties made under the authority of the United States.

The General Counsel serves to ensure that compliance regardless of the particular situation or pressures that may be faced at that moment in time. This Committee, in performing its oversight function, relies on you to keep us fully and currently—and that currently is particularly important at this point—informed at all times. And to come forward without prompting to report any issues that could be a serious concern.

We've seen over the years the importance of legal determinations in ensuring that the Agency's actions stay within the bounds of law, from ensuring that detainees are treated in a humane and legal manner, to ensuring that privacy and the civil liberties of Americans are protected.

In the previous Administration, we know that a whistleblower came forward to the General Counsel to report wrongdoing. But instead of investigating that person's allegations, the then-GC instead contacted the White House. And I will need your assurance that should you ever be placed a similar situation, you would ensure that such concerns are addressed promptly in a way that also protects the whistleblower's identity.

In sum, my colleagues and I who serve on this Committee see every day that we live in an obviously very dangerous world. And

the CIA is clearly the point of the spear in terms of our Intelligence Community. Truth is, you've got to make sure you would do your job, should you be confirmed, with no pressure.

So congratulations again on your nomination. Thank you for agreeing to step forward to serve our country.

Now after the Vice Chairman has given his opening statement, I will call on Senator Bennet to make a formal introduction. We will then swear you in. We will go by seniority for the questioning. I ask all Members to observe the five minute limit.

With that I look forward to the remarks of the distinguished Vice Chairman.

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

Vice Chairman RUBIO. Well thank you, Chairman Warner.

And thank you Ms. Heinzelman for being here. Welcome to your family. Thanks for the chance yesterday to meet and to discuss your nomination.

As I discussed with you, the General Counsel at the CIA is an important role given the work the Agency does on behalf of our country. The CIA can't execute its worldwide mission in accordance with the authorities provided to it without a General Counsel who provides both policy and legal advice to the Director. No agency in American government is above the law, certainly not the CIA. And it's important that their activities always be within the law.

This Committee was created to provide oversight of the CIA and the entire Intelligence Community. And that said, it is important that counsels at the same time do not impede the operations of the Agency when working under Presidential authority and with congressional support through authorization and funding. And so the role of the General Counsel is to make sure they're following the law, but also not to become an unnecessary impediment to the very difficult work of acting on behalf of the national interest of our country.

I do want to make a broader editorial point which, while related to this nomination, is not a direct statement about you, who I'm interested to learn more about—you and your background and so forth. But it really is more of an editorial statement about an ongoing pattern that we've seen of some of the nominees in this Administration, particularly in the Intelligence Community. I think what it reflects is both the difficulty of dealing with the holistic threat that's posed by the Chinese Communist Party and at the same—the holistic threat that it actually is as well.

So since the President took office, we've now processed a number of nominees—by the way not just to the Intelligence Community but other agencies—who have at some point done work on behalf of either the Chinese Communist Party, or generally Chinese entities directly linked to the Chinese State. I understand people don't like it to be characterized as such, but it is what it is. And anyone who understands the nature of the threat posed by China understands that's what it is.

And here's how the pattern generally has gone. These are highly credentialed folks, there's no doubt about it. And they begin their work in a position of trust and national security in the Executive

Branch. They leave. They're even more highly credentialed, and they go work for an international corporate law firm. At that firm, despite having held positions in government which he or she should have known the true nature of the threat from China and all the ways they seek to influence American policy, they end up representing or doing work on behalf of some state-controlled entity in China, representing them generally on matters such as helping them understand U.S. law, right?

And now, forth, this increasingly credentialed person who has worked in the Executive Branch, has worked outside of government, seeks to come back into government service at the highest levels in which trust and judgment are paramount. And then that individual is nominated for a position.

So this pattern, the reason why I pointed it out is, I think, two things are at play here. The first is how difficult it's become to find highly qualified and credentialed individuals to serve, who haven't at some point in the private sector interacted with Chinese Communist Party-linked entities, because that's just the nature of the challenge that we face from China.

I think the other—as a broader editorial, I really hope the Administration is more sensitive about this in the months to come and in the future nominations that await, because this is really a commentary on the U.S., and on our internationally based law firms and how their business model in many ways is now enabling and supporting the soft power and the subversive efforts of CCP-controlled entities.

So look, this doesn't make any of these people who have been nominated in the past bad people. It doesn't even disqualify them from important or rewarding work on behalf of the government. But I think it begins to demonstrate for us two things, again—as I've already pointed out—how hard it is to find people that are in a position to serve who haven't at some point rubbed up against the influence efforts of the Chinese government. And I think it also potentially reflects how some are diminishing, how pervasive this has become, and what a difficult challenge this China threat has become for us.

So with that said, obviously I look forward to learning more about you, your background, your qualifications, your views, and your role, should you be confirmed. As I said, the General Counsel position is a really important one, as we discussed yesterday. Yes, it's about making sure the CIA is following the law, but it's also about providing advice and counsel on options that exist to serve the national interest of our country, within the framework of what the Agency is authorized to do. I think that's just as important in this role.

So thank you for your willingness to serve. And we look forward to hearing your testimony.

Chairman WARNER. Thank you, Senator Rubio.

I'm now going to ask our colleague on the Committee, Senator Bennet, to make a formal introduction of the nominee.

Senator Bennet?

**OPENING STATEMENT OF HON. MICHAEL F. BENNET,
A U.S. SENATOR FROM COLORADO**

Senator BENNET. Thank you to the Chairman and the Vice Chairman for allowing me to introduce Kate Heinzelman, President Biden's nominee to serve as General Counsel of the Central Intelligence Agency.

This Committee needs no reminder that we're at a crossroads for American national security. This moment, perhaps more than any in our lifetimes, challenges America to advance our national security while upholding our deepest values, including our commitment to the rule of law.

Ms. Heinzelman has a rigorous combination of legal and national security experience to meet this moment. In one way, this nomination brings Ms. Heinzelman back to where she began.

In 2003, she joined the CIA as an intern analyst. Today, she sits before this Committee having had nearly 20 years of experience in law and national security at the highest levels across both Republican and Democratic administrations. She graduated from Yale Law School and clerked for Merrick Garland on the D.C. Circuit, and for Chief Justice Roberts on the Supreme Court. Ms. Heinzelman's national security experience includes time serving on the WMD Commission, which was charged with examining the intelligence failures in the lead-up to the Iraq war. She also served with Ambassador Negroponte in his role as the first Director of National Intelligence and as Counsel in the National Security Division at the Department of Justice. She has since worked in other critical roles in the Federal Government, from Associate Counsel to the President, to Deputy General Counsel at HHS, to her current role as Chief Counselor for Attorney General Garland. She was a partner at Sidley Austin, where she worked on cybersecurity and privacy matters.

Her colleagues, Mr. Chairman, say she's brilliant, generous with her time, and deeply patriotic. I had the good fortune of working with Merrick Garland many years ago at the Department of Justice and there are few people I hold in higher regard. I can tell you that Ms. Heinzelman has proven herself to be a much better lawyer than I ever was, but I also can say that it speaks volumes about her intellect and character that the Attorney General asked her to work with him for a second time.

This Committee appreciates the challenging times ahead for our national security and for the Intelligence Community in particular. And at a time when democracy and the rule of law have come under attack, not only in Ukraine but across the globe, we know that defending our security and our values goes hand in hand. In this difficult time, I am confident that Ms. Heinzelman is up to the challenge.

And I want to just close by thanking her for stepping forward to serve our country again. And I want to thank her husband Jonathan and their two children, Penelope and August, for supporting her in the days ahead.

Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator Bennet.

Will the witness please stand and raise her right hand?

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

Ms. HEINZELMAN. I do.

Chairman WARNER. Please be seated.

Before moving to your opening statement, I will ask you to answer the following five standard questions the Committee poses to each nominee who appears before us. They require a simple yes or no for the record.

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

Ms. HEINZELMAN. Yes.

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

Ms. HEINZELMAN. Yes.

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

Ms. HEINZELMAN. Yes.

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

Ms. HEINZELMAN. Yes.

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

Ms. HEINZELMAN. Yes.

Chairman WARNER. Thank you very much.

We'll now proceed to your opening statement after which I'll recognize Members again by seniority for up to five minutes each.

Ms. Heinzelman?

STATEMENT OF KATE E. HEINZELMAN, NOMINEE TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY

Ms. HEINZELMAN. Mr. Chairman, Mr. Vice Chairman, Members of the Committee, thank you for the opportunity to appear before you today.

Senator Bennet, thank you for that generous introduction.

I'm deeply honored by the President's nomination and by the trust that he, Director Burns, and Deputy Director Cohen have placed in me.

Throughout my years in public service, I've been blessed to have had extraordinary mentors. These individuals, who have served across administrations, have taught me about the national security challenges we face and how to be a rigorous lawyer and effective partner.

I believe this is a critical moment for the Intelligence Community. Intelligence is key to helping decisionmakers, and can serve as the country's best first-line of defense. Ensuring that CIA conducts its mission at all times within the bounds of the law is integral to that defense and an example to the world about rule of law in America. It would be a great privilege to serve as CIA's General Counsel.

I first came to the Intelligence Community as a summer intern analyst at the Agency. That experience opened a window for me into the professionalism and dedication of CIA officers. It had a lasting impact. After graduating college, I joined the staff of President Bush's WMD Commission, which was charged with investigating the intelligence failures about Iraq's WMD program and recommending a path forward. I then served in the office of the first Director of National Intelligence.

Following law school and two clerkships where I had the chance to see national security issues from another vantage point, I worked in the National Security Division at the Department of Justice, the creation of which had been one of the WMD Commission's recommendations.

I then went to the White House Counsel's Office and later served as a Deputy General Counsel at the U.S. Department of Health and Human Services, where I helped lead an office of hundreds of lawyers.

In 2017, I joined the law firm Sidley Austin, where my practice focused on cybersecurity and privacy issues. Since January 2021, I've been honored to serve as the Chief Counselor in the Office of the Attorney General at the Department of Justice.

If I am fortunate enough to be confirmed, I will bring each of these experiences to bear in helping the CIA navigate the challenges from nation-state and non-state actors we face today; among these are Russia's invasion of Ukraine, China's efforts to expand its power worldwide, cyber threats against networks of all types, terrorist threats, and a multitude of others.

Director Burns has established his priorities for the Agency: China, Technology, People, and Partnerships. The General Counsel's Office can play a critical role in enabling the CIA to do its vital work and implement its priorities in a manner that is fully consistent with the law. To this end, the first objective of the General Counsel's Office should, in my view, be to provide clear and accurate legal advice on the full range of legal matters confronted by the Agency. Just as we seek rigor and timeliness in intelligence, so too should we demand these things from the talented and dedicated lawyers at the Agency.

Second, the Office should be an important contributor to the Agency's compliance work. I believe that lawyers should not just give advice on the law but that they should make sure their advice is actionable, and that they should anticipate to the extent possible what lies around the next corner.

Third, the Office of the General Counsel should help maintain public trust and reinforce accountability to the American people. This includes working closely with this Committee to help enable the congressional intelligence committees' critical oversight work and helping to provide appropriate transparency about the basis for CIA's actions.

This is particularly indispensable at the CIA, given that the Agency's activities are generally conducted outside the public view.

To achieve these objectives, the General Counsel must maintain an office that invests in workforce and partnerships, two of Director Burns' priorities. If confirmed, I would view these two as foundational priorities.

To provide top-notch legal counsel in this operational environment requires not only that lawyers have subject matter expertise and close relationships with their clients, but also the independence that enables them to deliver advice that at times clients may not want to hear.

I am here, as I noted at the outset, because I have had the chance to learn from extraordinary public servants. I am also here because of the friends, teachers, and family who have supported me. My husband is the rock of our family; there are not words enough to thank him. And our children, with a third due to arrive any day, are a daily reminder of what we work as public servants to protect.

I've brought my children with me here today in the hopes that seeing these halls and the great American tradition that these proceedings represent, will leave as indelible an impression on them as my encounters with the great institutions of our government have left on me.

Thank you for considering my nomination and for holding this hearing today. I look forward to answering your questions.

[The prepared statement of Ms. Heinzelman follows:]

**Statement for the Record
Senate Select Committee on Intelligence**

CIA General Counsel Nominee Kate Heinzelman
April 6, 2022

Mr. Chairman, Mr. Vice Chairman, Members of the Committee, thank you for the opportunity to appear before you today. Senator Bennet, thank you for the generous introduction. I am deeply honored by the President's nomination and by the trust that he, Director Burns, and Deputy Director Cohen have placed in me.

Throughout my years in public service, I have been blessed to have extraordinary mentors. These individuals—who have served with distinction across administrations—have taught me about the national security issues we face and how to be a rigorous lawyer and effective partner.

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Following law school, and two clerkships where I had the chance to see national security issues from another vantage point, I worked in the National Security Division at the Department of Justice—the creation of which had been one of the WMD Commission's recommendations.

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Thank you for considering my nomination and for holding this hearing today. I look forward to answering your questions.

Chairman WARNER. Well, thank you very much for that testimony.

And my hope is that this hearing will not speed up the delivery of your future daughter.

I want to make one comment. I think Senator Rubio's comments raise a bigger issue because we have seen a number of nominees come before this Committee who worked at big corporate firms. And I don't know if there are many corporate firms around that probably didn't have some clients at some point that touched China.

This Committee took a real lead. In 2018 we did the first of what we call our classified roadshows with bipartisan presentations, where we met with business after business who candidly told us the government had done a pretty crummy job of explaining this threat. I remember once in Texas where one of the college presidents said, I thought when a student visa came in, the government had done their background screening.

I do think we ought to rethink relationships with China. I think the CCP is one of our most major threats. But I do think the notion that even if you're a lawyer in a corporation, we need some guidance on this. And the vast majority of the Fortune 500 unfortunately still do business with China. I think they all candidly kowtow to the leadership of the CCP because they always say, "It's too big a market to move past." And frankly, they turn a blind eye, whether it's human rights abuses in Hong Kong or the Uyghurs in China. But I do hope we would roll out a consistent policy on that on a going-forward basis.

I want to go to a couple of my quick questions here.

The CIA GC has been a job that's been unfilled over the last year. It's a large group of lawyers. How would you go in? And I know you've had some management experience, but how would you go in and reassert the role of the General Counsel and, frankly, make sure that you've got appropriate management principles in place?

Ms. HEINZELMAN. Thank you, Chairman, for the question.

You know, there is clearly a lot on the plate of the incoming General Counsel at CIA. As I mentioned in my opening statement, we are at a critical moment for the Intelligence Community. You don't have to look very far in the news to see the full array of both near-term and credibly pressing priorities, and some of the longer-term challenges like how the Agency deals with the many issues that new technologies are posing both as an intelligence matter, and as an internal management matter. So I have no doubt that the incoming GC has a very full calendar.

I have had experience, as we've discussed Chairman—I appreciated the opportunity to meet with you the other day—coming into a General Counsel's office operation at HHS, a considerable one, and figuring out how to be effective upon entering an organization that is already functioning without you. And I have every confidence that the acting leadership of the CIA General Counsel has been doing a terrific job in the meantime. But I would bring some of the lessons that I learned from that experience to bear here. I would have open ears and be observant. And I would want to take

my first several weeks to really look at and assess what the Office needs.

Chairman WARNER. Thank you.

My last question is that this Committee had to wrestle firsthand with the CIA whistleblower who came forward, went to the GC in the previous Administration. The GC then, rather than following traditional procedures, went to the DOJ and the White House. And many of us believe appropriate procedures were not followed. How do we, how do you, make sure that we protect whistleblowers? Have a culture that says, if you're going to come forward, there's not going to be retribution. That we try to protect your anonymity. This is something that I just think, on a going-forward basis, we need to make sure that those individuals are protected. But I'd like you to comment on that.

Ms. HEINZELMAN. Chairman, I couldn't agree more with you about the importance of ensuring that we follow all of the laws and internal procedures that we have for appropriately protecting whistleblowers.

I think that the way that the IC handles whistleblower complaints, and making sure that we are doing so in accordance with all of our procedures—appropriately protecting them, making sure that information is appropriately protected in the process, is a critical part of that goal of fostering and continually re-earning trust, both the trust of the American people, the trust of this Committee as a partner, and internally the trust of the workforce.

So that will certainly be a priority of mine, if confirmed to the position.

Chairman WARNER. Thank you so much.
Senator Rubio?

Vice Chairman RUBIO. Thank you.

Well, I wanted to cut to the chase, because I thought we would talk about this today, and I want to give you an opportunity to describe the work you did when you were Counsel at the firm—to WuXi. Just for the information of everybody, WuXi Biologics—the Chinese State media has dubbed it as the “Huawei of China’s pharma sector.” So clearly, it has deep connections to China’s Communist Party and the State.

So I want you to describe it basically. At the time you were not a partner; you were of Counsel at the firm?

Ms. HEINZELMAN. That’s correct.

Vice Chairman RUBIO. Okay. So just if you could walk us through. I’m familiar with it, but maybe not everybody is. How does that happen internally? How did you get the work? Who gave you the work? What was it? What did it entail? How much was it? That kind of thing.

Ms. HEINZELMAN. Absolutely. Thank you, Mr. Vice Chairman. And thank you for the opportunity to meet and speak yesterday.

To the best of my recollection, the matter that you are referring to came to me through a partner at the firm who asked me to work on it—I was a counsel at the time—who asked me to give the kind of advice to this company that I gave to a whole range of companies for whom I did work for while at the firm, which was privacy-compliance advice. In short—how to comply with the U.S. Federal and state privacy laws, the purpose of which is to protect U.S. con-

sumer data. I did that work in particular for companies that handled health data, given a specialization that I developed in our statutes, our State and Federal laws that protect health data.

And so that was the kind of advice that I gave to this company on this one matter. I don't think I had any other interactions with the company.

Vice Chairman RUBIO. So this was somebody else at the firm, some partner's client and they—because of your previous work—they asked you to help advise the client on how to comply with privacy laws in the United States, regarding healthcare information?

Ms. HEINZELMAN. That's correct.

Vice Chairman RUBIO. How many hours did you bill on that?

Ms. HEINZELMAN. This was under 10 hours. I believe it was 7 hours, 7.1.

Vice Chairman RUBIO. Okay.

We did ask you about, in your prehearing questionnaire, questions related to the current ODNI General Counsel's private sector representation of Huawei. You confirmed that you did not bill any hours or contribution to that representation while at the firm, but noted that out of an abundance of caution that you may have been part of an internal discussion related to a newer potential engagement for the company.

Like I said, I appreciate your candor in mentioning it. Do you recall your contribution to that discussion?

Ms. HEINZELMAN. I'm sorry, Mr. Vice Chair. Can you just repeat the end of your question?

Vice Chairman RUBIO. Yes.

So basically we asked you a question in the prehearing process about the General Counsel at the ODNI, when he was at the same firm, representing Huawei. And you noted that you did not represent that client but that you said that out of an abundance of caution that you may have been part of some internal discussions related to a new or potential engagement for the company.

Do you have anything further that at this point? I appreciate you mentioning that proactively in the questionnaire. I'm just curious whether you have any followup on whether that actually happened or what—for Huawei?

Ms. HEINZELMAN. That's correct.

Mr. Vice Chairman, I tried to provide as much information as possible knowing, understanding this Committee's interest. But consistent with my recollection, the firm records that I've consulted show that I never billed any time to that matter.

Vice Chairman RUBIO. Okay.

One final question that I have is you've been acting or you've been serving as Chief Counsel to the Office of the Attorney General since the beginning of this Administration. During your time in this position, have you been involved at all in any of the investigations into what's called Anomalous Health Incidents that have impacted Department of Justice individual employees? Talking about Anomalous Health Incidents that have occurred abroad.

Ms. HEINZELMAN. So I am familiar with the issue, of course, of Anomalous Health Incidents, or AHIs, and how they have affected public servants across the government at a high level. And I know that this is a priority for Director Burns, for DNI Haines, and that

they are pursuing concurrently efforts to both attribute and understand the cause of the attacks, and to ensure that employees get the healthcare and the services that they need. And that would be a priority of mine if confirmed to this position as General Counsel.

Vice Chairman RUBIO. Have you conducted or overseen any of the investigative efforts on it? Has that been part of your portfolio?

Ms. HEINZELMAN. Mr. Vice Chairman, in my role as Chief Counselor, I advise the Attorney General on a range of matters with a particular focus on national security issues. And you know, I'm afraid I can't get into specific matters more than that.

Vice Chairman RUBIO. Okay.

Well, we'll followup in the appropriate setting. But again I'm not asking for the details of the matter. I'm simply asking if you have been involved in those in overseeing any of the efforts on that matter. It's—it's a matter of public record that the Department of Justice is interested in the matter.

Ms. HEINZELMAN. Yes. Mr. Vice Chairman, if I can just answer that question. It is a matter of public record that the Department has taken its own action to ensure that it complies with directives to appoint people internal to the Department to handle complaints appropriately. But, Sir, I don't have much more to say about the Department's own handling of AHI matters. I'm not aware of further action that it's taken publicly on that.

Chairman WARNER. Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman. Ms. Heinzelman welcome. I very much enjoyed our conversation. I want to pick up on this issue of privacy for a moment; we talked a bit about this in the office.

In the office we talked about the Supreme Court's *Carpenter* case which essentially lays out that access to a person's historical cell site records is a Fourth Amendment search because it would otherwise violate somebody's expectation of privacy when you're talking about physical movements. Now the *Carpenter* case really changed Americans' understanding of their Fourth Amendment rights. This was a significant development. And yet as far as I can tell, the public really has never been told whether it applies to the Intelligence Community.

So my question is, if you're confirmed would you ensure that Americans are informed about whether and to what extent *Carpenter* applies to the Intelligence Community or the CIA?

Ms. HEINZELMAN. Thank you, Senator Wyden. And thank you for taking the time to meet with me the other day.

If I'm confirmed to the position, I would be very happy to look into whether the CIA has guidance on *Carpenter*, to determine whether or not it needs any guidance that it doesn't have. And to work with you on seeing what can be done to make public any significant interpretations, legal frameworks, about significant issues.

As we discussed, I believe that's an important part of the CIA's accountability. And I would look forward to working on that issue more generally.

Senator WYDEN. What possible argument would there be to this major Supreme Court case laying out significant new privacy law? What argument would there be for it not applying to the Intelligence Community?

Ms. HEINZELMAN. Senator, the Carpenter decision is in some ways, as self-described, a narrow ruling about CSLI or cell site location information data. It's been interpreted in other courts since, so one of the things I would want to look at, if I'm confirmed to the position, is not just Carpenter but also other subsequent Fourth Amendment case law interpreting Carpenter in the lower courts. And unfortunately I don't know enough, not being at the Agency now, about the potential relevance to CIA's particular activities.

Senator WYDEN. But you're not in fundamental disagreement with where the court is taking our country.

Ms. HEINZELMAN. No, Senator. I don't have a—no.

Senator WYDEN. Good.

One last question, if I might.

Earlier this year CIA released a portion of the report from the Privacy and Civil Liberties Oversight Board. And this was dealing with how to reform the CIA's activities under Executive Order 12333.

And as we talked about, I've been very concerned about this because we have two statutes out. The Foreign Intelligence Surveillance Act, pretty specific, fair amount of details. I'm certainly interested in some reforms but there's a fair amount of roadmap on how it works. Executive Order 12333, we're basically in a very barren area. There's virtually few guidelines and rules. And I and Senator Heinrich would like to change that.

Now Director Burns, to his credit, said at our recent open hearing that he would address one of those key recommendations of the Privacy Board ensuring that when the CIA conducts searches for Americans' information, it documents a justification, so we have a real record. If the government is looking into people's records, we're going to have some documentation.

Now the Privacy Board makes a number of other recommendations that I think are very important.

And so my question is, would you make it a priority to make sure you review all of the Privacy Board's recommendations and let us know when and how they could be implemented?

Ms. HEINZELMAN. Senator Wyden, I appreciate and understand your concern about this issue and would make it a priority to review the PCLOB's full reports and be in touch with you about it.

Senator WYDEN. I'll wrap up with this. Would it be acceptable to you, if confirmed—I hope you will be confirmed—to report within six months of starting work on the status of those other Privacy Board recommendations so we can take that incomprehensible-to-the-public area, Executive Order 12333, and begin to get some transparency. Can we get a report within six months of your starting work?

Ms. HEINZELMAN. Senator, I know that you and Director Burns have discussed undertaking a review and that I believe he and you set a six month deadline for that and I'm looking forward to supporting that effort and will—

Senator WYDEN. My time is up.

Just so you know, I think Director Burns is off to a strong start with respect to privacy and some new accountability. I'd like to see you build on it. Thank you.

Thank you, Mr. Chairman.

Chairman WARNER. Senator Burr.

Senator BURR. Thank you, Mr. Chairman. Kate welcome. Mr. Chairman, I hope we'll move this as expeditiously as we can.

What do you see as the most important function of General Counsel at the Agency?

Ms. HEINZELMAN. Senator Burr, thank you for the question. Thank you for meeting with me the other day. I enjoyed our opportunity to speak.

I think the first obligation of the General Counsel's Office is to provide accurate, clear, rigorous, and timely legal advice to enable CIA's mission. Given the importance of all the work that CIA does, I think that is the first thing that the Agency should ask of its lawyers and they should view that as their first obligation.

Senator BURR. And if the Director of the Agency disagrees with you, what do you do?

Ms. HEINZELMAN. If the Director were to disagree—well I will say first that I welcome robust and rigorous discussion. And I welcome being challenged on legal views. I think that's one thing that clients and lawyers sometimes do for each other. But if I were to be confirmed as the Chief Legal Officer of the CIA, if it was my view that something was not lawful, and I so advised the Director, and he nonetheless proceeded to disregard my advice, I would have to consider of course resigning and taking other action.

Senator BURR. So let's say that there's a gray area. And your recommendation is: brief the Committee. And the Agency or the Director chooses not to do that. Do you believe it's the role of the General Counsel if you felt strongly enough to come directly to the Committee?

Ms. HEINZELMAN. Senator, yes. I think that the General Counsel has significant obligations under Sections 502 and 503 of the National Security Act, and under the CIA Act, to inform this Committee, timely, of significant intelligence developments and the legal basis for them. So I can see a circumstance like the one you're describing that would certainly fall within those obligations.

To address the questions more generally, I think the fact that there's a lot of gray area in the law makes it all the more important that agency counsel be very clear with clients about areas where there are legal risks, and what those risks are, versus questions about legal permissibility and impermissibility. And one of the guiding principles that I have used throughout my career is to be very clear about the distinction between those two, to help enable clients to make the best decisions on the basis of my legal advice.

Senator BURR. Well, thank you for today's testimony. I thank the Chair.

Chairman WARNER. Senator King.

Senator KING. I want to follow that series of questions. A secret agency is an anomaly in a democracy. And our government is built upon an elaborate set of checks and balances, many of which don't necessarily apply to a secret agency. And the law is one of those checks that does. And so to follow Senator Burr's questions and to go back to the very beginning of this hearing, you answered yes to

the Chairman's questions about making information readily available on a timely basis to this Committee.

I think that's critically important. And I hope—right now—I'd like to give you an opportunity to renew that commitment that you made earlier today, and that you just made to Senator Burr.

Ms. HEINZELMAN. Yes, Senator King.

And thank you for taking the opportunity to speak with me this week as well.

I think the obligations that the CIA Director, that the General Counsel, are under to ensure that this Committee is fully and timely informed are critical. As I mentioned in my opening statement, I believe this is particularly critical at an agency like the CIA that necessarily has to conduct a lot of its work outside of the public view. And I will always do my utmost to comply with those obligations. And to bring matters to this Committee consistent with all obligations to protect sensitive information, because I view a partnership with this Committee as being absolutely essential to the success of the Agency's mission overall.

Senator KING. And it's part of the checks and balances in our system that this Committee has this responsibility. This isn't like the Department of Agriculture or the Department of Commerce that has outside commentators and newsletters and the press and all of those kinds of things. We're it. And that's why our relationship with you is so important.

Lawyers, in these situations have two roles. The first is counsel to your client. And generally your job is to tell your client how to do legally what they want to do. But at some point, you have to say no.

And my question is, are you willing to say no to the Director of the CIA, and the President of the United States, when you're in the Oval Office and the President says, We've got to do this in order to protect national security even though it's in violation of the law. Are you willing to say no in that situation?

Ms. HEINZELMAN. Absolutely, Senator.

Senator KING. And at some point, report that to this Committee.

One of the areas that it seems to me that we're going to have to be thinking about is that we've had this clear distinction in our intelligence laws and in our law enforcement between U.S. and abroad. The CIA doesn't operate in the United States. The FBI does. NSA doesn't operate with regard to U.S. persons.

Here's the problem. We're entering an area where that line is harder to draw. For example, in the area of Cyber, there may be a cyberattack that originates in Russia or China but goes through servers in New Jersey or California. And the question is, is that a domestic issue or a foreign issue? Give me some thoughts about how we maintain the fencing-in, if you will, of our intelligence agencies with regard to Americans, and yet at the same time effectively respond to threats that are more complex and the lines are harder to draw?

Ms. HEINZELMAN. Thank you, Senator King.

That issue, particularly when it comes to technology, is as you note increasingly complex. And the CIA and the Intelligence Community have several tools to help them work through those issues. But fundamentally, a lot of those questions are our legal questions,

or questions on which lawyers give guidance. And there are some of the types of issues that I think are the most challenging. It's one of the reasons why I think it is a huge advantage to have lawyers who really understand technology. You know, sometimes generalists—knowledge is not enough to help us answer those types of questions.

I think that working with the Intelligence Community, writ large, as a community to figure out which agencies are best suited, consistent with their authorities, consistent with Executive Order 12333 guidelines, to be the lead on given issues, is one of the most important features of our community system of intelligence.

Senator KING. And to one final point. I hope that as you encounter gray areas or areas of indistinct legal distinction—legal rules—that you'll come to the Committee and suggest this is a place where legislation might be necessary to clarify this issue.

Again, we're all on the same team here. And to the extent you can advise us as to changes in authorities or other areas where legislation can help to clarify and deal with these difficult issues, I'd appreciate it if you would do so.

Thank you.

Thank you, Mr. Chairman.

Chairman WARNER. Senator Collins.

Senator COLLINS. Thank you.

First of all let me welcome you.

I want to followup on questions that my colleagues have asked about when it is appropriate for you not to disclose the information to the Committee, because I'm a little bit concerned about your response to the first prehearing question in which you assert the CIA's obligation to keep the congressional intelligence committees fully and currently informed pursuant to the National Security Act, but say that that can be impeded on the grounds for protecting from unauthorized disclosure. And I realize that's in a clause in the same law. So your interpretation is really important.

I want to go to the 2014 report from this Committee on the CIA's use of enhanced interrogation techniques. And I filed additional views in which I expressed my concern that Congress was only informed about the RDI program to the bare minimum. Later former CIA General Counsel, John Rizzo, reflected that, quote, "The decision in 2002 to limit congressional knowledge of the EITs to the "Gang of Eight," and to stick to that position for four long years, as the prevailing political winds were increasingly howling in the other direction was foolish and feckless."

So my question to you is, how do you intend to draw the line on informing Congress on critical issues such as this one, particularly if they may be embarrassing to the Administration?

Ms. HEINZELMAN. Thank you, Senator Collins, for that question, and for raising this issue that is so fundamental to the whole role of the Intelligence Community writ large.

As we've been discussing here this morning, the CIA unlike other parts of our government has particular obligations to be forthcoming with the intelligence committees to ensure that these committees can carry out their functions. And Section 502 of the National Security Act of 1947, is a critical part of that. So I want to be very clear about the way that I interpret it.

I'd like to start by saying that I would like to get to the Agency and—if confirmed, really understand how it's been applied historically. But the only exception—and it's not an exception—the only qualifier, I should say, that I see in that language about keeping the committees fully and currently informed is simply the admonition that the CIA must do that consistent with due regard for the protection from unauthorized disclosure of sensitive intelligence information.

And I understand that language to be more of a question about the manner in which information is conveyed and not so much about the overall obligation, which is very clear from the text of both sections 502 and 503, to keep the committees fully and currently informed.

Senator COLLINS. Thank you.

Let me switch to a different issue. You went to the White House beginning in May, 2013. That happens to be right around the time that Edward Snowden illegally disclosed highly sensitive information and fled to Russia. Were you asked to go to the White House to work on the Administration's response to the many unauthorized disclosures by Mr. Snowden?

Ms. HEINZELMAN. No.

Senator COLLINS. And did you work on this issue while you were there?

Ms. HEINZELMAN. Senator, as an Associate Counsel in the White House Counsel's Office, my portfolio included a broad range of national security issues. And as you note, I was there—I think my start date coincided just a couple of days or weeks before those disclosures. And so I did work on those issues for the White House Counsel.

Senator COLLINS. Thank you.

Chairman WARNER. Senator Casey.

Senator CASEY. Thanks very much.

And Ms. Heinzelman, grateful for your presence here today, and your willingness to serve again, to serve the Nation at a difficult time especially in this position.

I want to ask you about the balance that you'll have to strike I guess on most days between legal advice and the engagement you have with the policy staff in matters of policy. Tell me how you'd manage those different responsibilities as General Counsel?

Ms. HEINZELMAN. Thank you, Senator, for that question.

I have been—as I think about the position and the extraordinary responsibility, I've been thinking about this question about how you balance all the priorities of the General Counsel, in particular how to balance being responsive to Agency leadership, and the amount of time that they need from the General Counsel, as well as effectively manage the office.

But to address your question specifically, you know, I view the primary role of the General Counsel to advise on legal issues—but also the General Counsel can at times provide a non-legal counsel. And I view that principally as being counsel about risk, the kinds of things that are within the competence of a lawyer.

But I do want to say in response to your question that the CIA is an intelligence agency, and they generally don't weigh in on matters of pure policy. And I think that's an important part of the

ethos of the place. And as a lawyer, one of my reigning philosophies from the very first days when I was working as a junior staffer for judges, is to be very clear about my areas of competence and only advising within those areas. So even when giving non-legal counsel, I would be careful about ensuring that I am advising within my core areas of competence and not straying outside of them.

Senator CASEY. Thank you.

And I know that when you serve as General Counsel, especially at a high level you've got to be a jack of all trades. And unlike the common understanding of that, you have to be a master of all. And it's difficult to do that when you're providing a range of advice on a wide array of topics or practice areas.

But if this is in essence a job interview when you come before this Committee, tell us about what areas of your experience—which is substantial I believe—prepares you best to be able to provide that kind of broad-based advice on a range of legal issues and in difficult concepts for, I think, any General Counsel.

Ms. HEINZELMAN. Thank you, Senator.

I think there are three things—three features—of the experiences that I've had both in the public sector and the private sector that helped prepare me for this job in particular.

The first is that I've had a series of positions over quite a considerable period of time in our Intelligence Community around our broader national security community. And from that I've taken away areas of specialization, particularly my work at the WMD Commission, at ODNI, and at Justice, on the domestic-focused authorities, law enforcement authorities, as they pertain to our national security community, but also more broadly as I've touched on other areas. So the first is the focus on national security issues specifically.

The second is that I've been fortunate enough to be able to spend time at a variety of government entities. I've been on a commission that looked at intelligence failures. In a 20/20 hindsight kind of way, I've been able to think about what it means that the Intelligence Community is so often asked to act quickly in the moment, to respond to something, and then steps back and has time to look at what were the lessons learned. I think that's an important, very healthy but also difficult feature of being in our national security community.

I've had the opportunity to be at a very large General Counsel's Office operation at HHS. I've had the opportunity to see these issues from a variety of perspectives, and across a variety of Federal practice areas. And I think that has enhanced my understanding of what it is to be the sort of jack-of-all-trades type General Counsel that you were mentioning.

And the third feature of my experience that I think is important here is that throughout most of my career, I have spent time on technology and privacy issues, and often from a national security vantage point but sometimes not.

My work at HHS was not national-security focused, but I had privacy-related responsibilities there. I think that broad understanding, both in the private sector and in the public sector, of privacy issues and technology issues is something that I would very much hope to bring to the Agency with me. And to think critically

about how we can further strengthen the work that the Agency's lawyers are doing on those subjects.

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

Chairman WARNER. Senator Blunt?

Senator BLUNT. Ms. Heinzelman, glad to have you here today. And glad that new baby didn't prevent you from being here. But hope the baby's here quickly and healthy.

On your questionnaire, there was one area I wondered about that I think is particularly important that you said you hadn't had time to think about. The Presidential Memorandum of Notification really authorizes the scope of the CIA activity, and it can change and does change, I assume with frequency as new activities become available are more important than they have been before.

If confirmed, do you commit to keep the Committee fully and currently informed on developments regarding these notifications and how they relate to CIA activities?

Ms. HEINZELMAN. Yes, Senator Blunt. Consistent with the law, and I think the provisions of Section 503 which speak to, as you're describing, keeping the committees informed as programs evolve, is obviously of critical importance.

Senator BLUNT. Now, I'm not sure exactly what provision you cited there, but at what stage of the process do you think it would be your responsibility to let the Committee know that there was a new definition of scope of activity?

Ms. HEINZELMAN. Senator, I don't have the text in front of me, but I believe that Section 503 speaks about notifying the committees before an action is undertaken and the obligation to keep the Committee fully and currently informed. That currently part is an integral part of the obligation and one that I would take seriously.

Senator BLUNT. All right, good.

On another area that you have thought about, Section 702—I think you've actually published an article on 702, which is the Foreign Intelligence Surveillance Act, known as FISA. It authorizes the government to collect intelligence on non-U.S. persons located outside the United States, as this particular definition of what—how that Act can be applied. The authority expires at the end of 2023. In 2012, when it was about to expire, Attorney General Holder and the Director of Intelligence Clapper wrote a joint letter to Congress supporting a clean reauthorization. In 2017, the DIA and Attorney General Sessions did the same thing. Having looked at this, do you support a clean reauthorization of the FISA authorities?

Ms. HEINZELMAN. Senator, I understand Section 702 to be a critical intelligence tool. And I would look forward to working with this Committee on reauthorization of Title 7 of FISA, and would also be happy to work with this Committee, as Director Haines committed, to discuss any modifications that would enhance privacy and civil liberties without diminishing our national security. But I strongly support reauthorization.

Senator BLUNT. What do you see as the CIA's role in using the FISA authorities?

Ms. HEINZELMAN. Senator, as you know, the CIA has minimization procedures that allow it to use FISA information that's been

collected as part of its operations, and it has a robust and multi-layered oversight system for ensuring that the Agency does so consistent with the law and with the FISC approved minimization procedures and other internal agency guidance. And I would look forward, if confirmed, to helping to advise the Agency on that whole compliance framework.

Senator BLUNT. All right. Thank you, Chairman.

Vice Chairman RUBIO. Senator Cotton.

Senator COTTON. Ms. Heinzelman, on September 29th, the National School Board Association sent the Biden administration a letter asking it to target, using law enforcement resources, parents who were protesting at school boards, not just for violence or threats of violence, but for what it said or for what the Attorney General, just five days later said, were other forms of intimidation and harassment. That memo was sent to the FBI, U.S. Attorneys' offices, the National Security Division, the Criminal Division, and the Civil Rights Division.

Were you involved in creating the October 4th memorandum from the Attorney General directing law enforcement to target parents at school boards?

Ms. HEINZELMAN. Thank you, Senator Cotton.

The October 4th memorandum that your question refers to was, as the Attorney General has said, about violence and threats of violence against school workers—

Senator COTTON. Ms. Heinzelman, our time is limited here and I asked a simple question. I know what the memorandum says. It also talks about intimidation, harassment. Were you involved in creating that memorandum?

Ms. HEINZELMAN. Senator, in my role as chief counsel to the Attorney General, with regard to matters that came before the Attorney General, I generally had visibility into most matters that came before the Attorney General. This, as the Attorney General has said, was a memo that he issued. This is his memo.

Senator COTTON. So, where are you personally involved in that matter or not? You gave a general answer. I want a specific answer about this memo.

Ms. HEINZELMAN. Senator, I want to be as forthcoming with you as I can be. When matters come before the Attorney General, my role—

Senator COTTON. I'm not talking about matters. I'm talking about this matter, this specific memo. Were you involved in creating this memo with your boss, Merrick Garland?

Ms. HEINZELMAN. Generally, my role in matters that came before the Attorney General is to do any of our variety of things. I might sit in on—

Senator COTTON. So I take it you're not going to give me an answer to that question then, since you've not answered it now repeatedly.

Ms. HEINZELMAN. Senator, I would like to be as transparent with you as possible. But I hope you'll understand—

Senator COTTON. But there's no reason that you can't—I mean, I'm not asking you what advice you gave. I'm not—this is not a legal case, is a policy decision. You were a counselor to the Attorney General and you don't want to answer it.

Ms. HEINZELMAN. Senator, with regard to matters that came before the Attorney General, most matters that came before the Attorney General, I would have visibility on it. That could range from setting up a meeting, attending a meeting, advising him on associated statements or actions. And I hope you'll understand the need for the Attorney General to receive confidential advice. But with regard to most matters that the AG was personally involved in and, and in this matter, he certainly was. This was his memo. I would have some visibility into it at a minimum.

Senator COTTON. What about the U.S. Marshals in Portland? The courthouse in Portland the summer of 2020 was under attack by left-wing street militias. Now left-wing activist groups have been suing the marshals who bravely defended it. The Department has hung out to dry four Deputy U.S. Marshals. They're not paying to represent them in those lawsuits. Were you involved in the decision not to represent those Marshals and those lawsuits?

Ms. HEINZELMAN. Senator, I understand your concern about this matter. The Department of Justice has as a core value that it works through its Civil Division and the U.S. Attorneys' offices to defend officers who are acting within the scope of their duties. My understanding is that the Department is defending many officers—

Senator COTTON. They're defending 70, but I didn't ask about the 70, I asked about the four. I assume you're familiar with the parable of the lost sheep. The shepherd left 99 to go get the one because he wanted to save the one. I'm worried about four. I'm not worried about 70.

Ms. HEINZELMAN. I understand Senator. My understanding is that generally these decisions about representation, either having the Justice Department represent or pay for representation, they are made pursuant to Departmental regulations and the division that primarily works on those matters is the Civil Division or the U.S. Attorneys' offices who are the subject matter experts on those matters.

Senator COTTON. Okay. So no answer on that one, either. I assume we're not going to get an answer if you were involved in the cancellation of the China Initiative.

Ms. HEINZELMAN. Senator, one of the areas that I've focused on in particular for the Attorney General is national security matters. I would advise him on national security matters. With regard to the China Initiative, the Department's position on that is public and Attorney General Olson has made his decision on that matter clear. I'm happy to address it in more detail.

Senator COTTON. Okay. So that's the third case in which we won't get an answer on that.

My time's up. I just want to observe, I disagree with what Senator Burr and Senator King said: that you, in this role or your office is going to be this mythical, heroic lawyer telling rogue officers and directors that they cannot take action that is illegal. I think it's much more likely that senior leadership and the CIA or the National Security Council will ask you to provide legal cover for actions they don't want to take that are perfectly legal. So they probed it. Would you stand up to someone and say, this is illegal? I want to know if an action or policy is legal, but you've been told

that the Agency or the Administration doesn't want to take it, will you give your best legal advice that it is illegal? You're making a policy decision.

Ms. HEINZELMAN. Senator, as a lawyer, I view it as my primary responsibility to give my best legal advice—my most candid, forthright, legal advice—based on the facts and the law on any matter. That is what I've done in my current job, in my past jobs, and that is what I would do if confirmed to this position.

Senator COTTON. Even if you know that superiors at the CIA or the NSC do not want to pursue that course of action, will you still give them the advice that that course of action is legal if they choose to pursue it?

Ms. HEINZELMAN. Senator, I would always give my best legal advice regardless of what a client—what outcome I believe the client wants to get to, if I'm understanding the question correctly. I view it as my duty to give them my straight view on the law and on the facts of a given matter.

Senator COTTON. Well, I mean, my concern—I mean, there's some people on the front lines in the Agency or for that matter in other departments, like Department of Defense, think that lawyers are always looking for a way to get to no, especially if it's an aggressive operation or policy. I'm as concerned that lawyers are being directed to get to no by policymakers about them. But my time is up.

Chairman WARNER. I think the witness said—I apologize having to step out briefly for a meeting. I heard when asked questions about seeing something illegal, will you point it out? If you see something that's legal and you're being told it's not, you won't reach another opinion. You've got to give them your best answer. And I think that's why I believe you were nominated in by the Administration. That's, I think, reflected in your background.

Senator CORNYN.

Senator CORNYN. Ms. Heinzelman, giving legal advice is not like a chemistry test, is it? There's no if you stick a piece of litmus paper in a liquid substance that it turns blue or pink. Giving legal advice isn't like that, is it?

Ms. HEINZELMAN. Senator, in the sense that giving legal advice doesn't always end up with a straight yes-or-no-this-is-clear answer, absolutely. I agree with that. There are lots of gray areas.

Senator CORNYN. Right. Well, and in your experience when it comes to intelligence matters, like you'll be advising on at the CIA, there are different types of risks. You've talked about legal risk, but there are also operational risks that the Agency has to consider, correct?

Ms. HEINZELMAN. Correct.

Senator CORNYN. You and I talked about the book that General Hayden, the former Director of the CIA, had written called "*Playing to the Edge*." And we talked about the fact that I hope that in rendering your legal advice, you will play to the edge. I don't want you going over the line, but I do want you to going up to the line of the legal authorities given to our Intelligence Community.

But we also discussed the hypocrisy associated with some of that advice, in that when nothing bad happens, somebody usually on this side of the dais will come back and ask questions and say,

“Well why were you so aggressive? Why didn’t you look at this? Why didn’t you look at that?” And of course, long after the threat or the danger has subsided or gone away, at least from people’s memory, that’s been an experience of the Nation, particularly in the war on terror and the aggressive role that we’ve asked our IC to play to protect American lives.

So, I guess this is a little bit of a segue from Senator Cotton’s questions. Do you consider it your obligation to try to tell your client, if you want to do this, this is how you can do it legally? Is that how you approach the job? I share some concern that it’s too easy for lawyers to say, no, you can’t do it, because it does entail some risks. But everything, all the advice that you’re going to be rendering, will entail some risk. Correct?

Ms. HEINZELMAN. Thank you, Senator Cornyn.

As you and I discussed the other day, I think that really good lawyers do a number of things for their clients when they’re giving advice. They advise them not only on where the outer limits are—that white line that you talked about—and make sure that their clients stay within those lines to protect their clients. They also advise their clients on what we were just talking about as being all the gray. They help their clients understand risks. They help their clients understand better courses of action. And I think that’s where the really creative and challenging lawyering comes into play. Helping your clients get to yes when there can be a yes. Right? And helping your clients figure out all the tools they have available to them so they can use them most effectively.

And so, I really see it not just as being about defining the outer bounds of the law, but also about enabling decisionmakers to make smarter choices. So I fully agree with the sentiment that you expressed about that.

Senator CORNYN. Who is your client? As General Counsel of the CIA, who is your client?

Ms. HEINZELMAN. I believe the client of the CIA’s General Counsel is the Director, the Agency, and ultimately the American people.

Senator CORNYN. When it comes to disclosing classified information, is the President the final word on who information will be disclosed to?

Ms. HEINZELMAN. My understanding, Senator, is that a number of government officials qualify as original classification authorities and can determine to declassify information consistent with the law. The President, I believe, has those authorities and is one of those classification authorities.

Senator CORNYN. But the President himself as head of the Executive Branch has the final word, does he not?

Ms. HEINZELMAN. Consistent with the law, the President, I believe, has considerable classification authorities.

Senator CORNYN. Well, it seems to me like that sets up a real tension between the obligation for the Intelligence Community to share with oversight committees like this one, and perhaps a decision made at the highest levels of the Executive Branch, not to share certain information. I think I’m remembering this correctly, that when Harry Truman became President of the United States, he was not aware that the Manhattan Project existed and we were

working on an atomic bomb. And in that case, obviously, President Roosevelt decided not to tell even his Vice President. So that's what has prompted my question.

But do you see any potential conflict or any potential problem with doing what Senator King and others have talked about in terms of sharing information with this Committee? And the President's role and the Executive Branch's role in deciding how widely to share classified information?

Ms. HEINZELMAN. Senator, I think it's the obligation of the General Counsel's office at CIA to advise clients on some of the legal issues associated with classification, including the proper interpretation of Executive Order 13256 on classification standards. I would carry out that role, faithful to the law—the law that binds both the CIA and the White House on issues of how to properly classify and declassify information.

Senator CORNYN. Well, that's an important point because you would be giving legal advice. You wouldn't be making the ultimate decision on how widely the information would be shared.

Ms. HEINZELMAN. That's correct, that I would be giving the legal advice to decisionmakers as CIA General Counsel. However, there's an independent obligation, which I'll just mention because I think it's an important one, to share information about the legal basis for CIA's actions, and that's an independent obligation specifically placed on the General Counsel. So, in that regard, I would have a very direct obligation to this Committee, as well.

Senator CORNYN. Thank you.

Chairman WARNER. I believe Senator King has a followup.

Senator KING. Yes. You've talked about technology. Through the miracle of technology, I've reviewed Section 502 and 503 and they couldn't be more explicit. One of the most explicit statutes:

"To the extent consistent with due regard for the protection from unauthorized disclosure of classified information, relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence and the heads of all departments, agencies, or other entities of the U.S. Government involved in intelligence activities shall keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action."

And there's Section 503 that covers covert action, and it says almost essentially the same—that there's an obligation to disclose to the congressional intelligence committees. And that's the bedrock of this responsibility. The only issue is not revealing sources and methods. And of course, that can be done through processes that we have of only the "Gang of Eight," for example, or the full Committee. But I think this is a case where the responsibility of the Intelligence Community to keep us fully informed of activities, including covert action, is absolutely explicit in the law. And I appreciate your commitment to that principle, which you've stated to us today. Is that correct?

Ms. HEINZELMAN. Thank you, Senator King.

Yes. I was trying to answer the question—what I took to be a separate question—about compliance with determinations about what is properly classified under the law and what is not. I think it's a separate question whether—

Senator KING. But you wouldn't interpret that statute to say just because it's classified, you can't share it with us.

Ms. HEINZELMAN. Certainly not.

Senator KING. Thank you, Mr. Chairman.

Chairman WARNER. Senator Cotton, do you have a—? My understanding is you want to make a request to go into closed session? Could you—?

Senator COTTON. I think we should. We didn't get any answers in a public setting to what I asked, even though they're not classified. But I have classified questions. I know we typically don't do that with nominees, but Ms. Heinzelman is a current U.S. Government employee with a security clearance. And she's worked in this field in the past. I think there are issues that we should explore about her role in Obama administration decisions.

Chairman WARNER. Well, listen, I'm going to try to honor the Senator's request and, obviously, I'd say we, we could see if we could make her available at a different time. Although I think we may be back into that close time and her change in status. I'm not sure—

Senator COTTON. I mean, if no one else was prepared to have one and we're not prepared to have one, we can look at it another time.

Chairman WARNER. Well, I'm just concerned that I think she's about to go on maternity leave. I want to try to accommodate you. I'm not sure whether her answers about what she was doing as a legal—and I didn't hear all your line of questions, so I apologize.

But if they're going to be questions about her when she was acting as a legal counselor in the current Administration or in a past Administration, like most lawyers, they may simply say, I'm not going to weigh in on that. But if it would feel better to ask those questions, ask her if there's going to be a different response in a closed setting—

Senator COTTON. Well, that's half of it. But the other half is—as Susan Collins talked about her experience working on the Edward Snowden matter. She was at the White House, there was a lot of other stuff going on then as well. There was the Presidential Decision Directive 39: U.S. Policy on Counterterrorism. There was the Presidential Policy Directive 28: Signals Intelligence Activities. There's Syria. There was the Iran nuclear deal.

Again, I know that normally we don't get to explore these questions with nominees because they're not active U.S. Government employees with security clearances, but they are here. Again, we don't have to go have a formal hearing right now, but I would like a chance to explore them with her at some point. So I'm fine not going to close setting right now.

Chairman WARNER. I was asking the staff. Is there a way that you could ask those questions for the record in a classified manner, or do you want to have a back and forth with her?

Senator COTTON. We can. Look, I think we could probably start there. Let's start there.

Chairman WARNER. I want to try to accommodate, but I also recognize that I wasn't just sure that some of her answers may be that much different, but I do want to make sure.

Senator COTTON. All of our peers are already gone off to an early lunch.

Chairman WARNER. Well Senator King and I are still here.

Senator COTTON. Senator King's only here cause like me, he always waits till the end, but now, why don't we try to start there we'll see if that works.

Chairman WARNER. All right. Well, I also want to make sure that you don't raise objections if tomorrow she delivers a baby and say, one more of this Biden administration's—trying to avoid my questions that way.

Senator COTTON. All right.

Chairman WARNER. So we'll try.

Senator COTTON. I wish you the very best and especially big brother and sister who are going to have to deal with another one coming along. The very best as well.

Chairman WARNER. Well, I appreciate Senator Cotton. But I do want the witness to recognize that there will be additional questions. And again, how you answered them is up to you. But I want to, I do want to find, make sure you get to—

Well, I appreciate your presence. I appreciate your family all being here. I appreciate your willingness to serve. I look forward to trying to move this nomination as quickly as possible. I think it's really important that the Agency gets a General Counsel. I think there's a critically important role. Candidly, I think both Senator Cotton's right, and some of the Members on this side, that this job is so important that not only do you have to point out illegal activities, but I think the points raised by Senator Cotton that if any Administration says, hey, we don't want you to do this, but it's perfectly legal, maybe they'll make a policy decision on that, but it shouldn't be based on legal opinion.

I think, truthfully, you have the experience, the expertise and the knowledge to make those kinds of judgments. It is a critically important role. And again, I appreciate your presence here and good luck in the coming hours, days, and weeks.

Senator KING. Mr. Chairman, I'd like to note the role of Yale Law School in this hearing. The nominee is a graduate. I'm sure she would say that Yale had a lot to do with her getting where she is, as it did with me—when Yale Law School rejected my application. I dedicated my life to making them regret the decision and hence my position on this side of the dais. Thank you.

Chairman WARNER. I'm not sure I've shared this with the Committee, but I also ended up at that law school in Cambridge because the one in New Haven rejected me as well.

Senator KING. [Off-Mic. Inaudible.]

Chairman WARNER. I'm not sure I'm going to go there, but I do want to make sure, at least for staff that any, if any members of the Committee wish to submit questions for the record after today's hearing, please do so by 5 p.m. on Friday, April 8th.

And with that good luck going forward and best of luck to your family. They all should be very, very proud of you.

Hearing adjourned.

Ms. HEINZELMAN. Thank you.

[Whereupon the hearing was adjourned at 11:28 a.m.]

Supplemental Material

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES

**SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE**

**QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES**

PART A - BIOGRAPHICAL INFORMATION

1. FULL NAME: Kate Elizabeth Heinzelman
OTHER NAMES USED: Kate Cooper
2. DATE AND PLACE OF BIRTH: October 28, 1981; New York City.
CITIZENSHIP: United States
3. MARITAL STATUS: Married
4. SPOUSE'S NAME: Jonathan G. Cooper
5. SPOUSE'S MAIDEN NAME IF APPLICABLE: N/A
6. NAMES AND AGES OF CHILDREN:

INFORMATION REDACTED

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
Yale University	2000-2004	B.A.	2004
Yale Law School	2006-2009	J.D.	2009

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

<u>EMPLOYER</u>	<u>POSITION/TITLE</u>	<u>LOCATION</u>	<u>DATES</u>
U.S. Department of Justice; Chief Counselor, Office of the Attorney General;		Washington, DC;	Jan. 2021 – Present
PT Fund, Inc. (Presidential Transition); Vetting Director, Office of General Counsel;		Washington, DC;	Aug. 2020 – Jan. 2021
Sidley Austin LLP; Counsel then Partner;		Washington, DC;	Sept. 2017 – July 2020

U.S. Department of Health & Human Services; Deputy General Counsel; Washington, DC; Dec. 2015 – Jan. 2017

White House Counsel's Office; Associate Counsel then Special Assistant to the President and Associate Counsel to the President; Washington, DC; May 2013 – Dec. 2015

U.S. Department of Justice; Counsel to the Assistant Attorney General for National Security; Washington, DC; Jan. 2012 – May 2013

U.S. Supreme Court; Law Clerk to Chief Justice John G. Roberts, Jr.; Washington, DC; July 2010 – July 2011

U.S. Court of Appeals for the D.C. Circuit; Law Clerk to Judge Merrick B. Garland; Washington, DC; Aug. 2009 – July 2010

Wachtell, Lipton, Rosen & Katz; Summer Associate; New York, NY; June – July 2008

Yale Law School; Research Assistant to Professors Kate Stith and Peter Schuck (part-time); New Haven, CT; 2007 – 2008 (approx.)

Supreme Court Senior Advocate, Ashok Desai; Legal Intern; Delhi, India; Aug. 2007

U.S. Attorney's Office for the Southern District of New York; Legal Intern; New York, NY; May – July 2007 (approx.)

Office of the Director of National Intelligence; Special Assistant to the Chief of Staff; Washington, DC; June 2005 – June 2006

Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction; Special Assistant to the General Counsel; Arlington, VA; Aug. 2004 – June 2005

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

Please see response to question 8.

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

Throughout my government service, I have had the opportunity to work on national security matters. I have served in both legal and non-legal national security roles and worked with members of the U.S. Intelligence Community on a broad variety of national security legal and policy issues.

My introduction to the Intelligence Community was during the summer of 2003, when I served as an intern at the Central Intelligence Agency as an analyst.

From 2004 to 2005, I worked at the President's Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. In that role, I assisted in the Commission's investigation and drafting the Commission's final report about the Intelligence Community's capabilities and efforts to respond to the development and transfer of knowledge, expertise, technologies, materials, and resources associated with the proliferation of weapons of mass destruction, related means of delivery, and other related threats of the 21st century and their employment by foreign powers.

Following the Commission, I joined the Office of the Director of National Intelligence (ODNI) to help establish the office during its first year in operation under Ambassador John D. Negroponte, the first DNI.

After serving twice as a federal court law clerk, I joined the Department of Justice to serve as Counsel to the Assistant Attorney General for National Security. In that role I provided legal advice to the Department and interagency partners on national security matters affecting the law enforcement and intelligence communities.

At the White House Counsel's Office, where I served from 2013 to 2015, my portfolio involved working closely with the National Security Council staff on legal policy issues, including matters of national security and intelligence policy.

Finally, in my position in the Office of the Attorney General, I have served as an adviser on a number of national security matters—work that often involves other interagency partners.

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

Since high school, I have received the following honors, awards, scholarships, and fellowships:

Yale College:

Summa cum laude, 2004
Phi Beta Kappa, 2003
Wrexham Prize, 2004
Wright Memorial Prize, 2004
Riggs Prize, 2001
Leitner Summer Award in International Political Economy, 2003
Ethics, Politics and Economics fellowship for senior paper research, 2003

Yale Law School:

Thomas Swan Barristers' Union Semifinalist, 2009

Post-clerkship:

Temple Bar Scholarship, 2011

Department of Justice:

Assistant Attorney General Award for Outstanding New Initiative, 2013

Department of Health and Human Services:

Office of the National Coordinator for Health Information Technology Honorary Award, 2016

Sidley Austin:

Vincent F. Prada Pro Bono Award, 2017 and 2018

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

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
Adas Israel Congregation	Member	2010 – present
American Bar Association (ABA)	Member	2017 – 2020 ¹
District of Columbia Bar	Member	2016 – present
Friends of the National Zoo	Member	c. 2017 – present
Liaison Neighbors Committee ²	Member	2016 – present
National Aquarium	Member	c. 2020 – 2021

¹ As part of my ABA membership, I also temporarily served on an ABA Antitrust Section task force on artificial intelligence and machine learning.

² This is a committee created by a neighborhood cooperation agreement between the Phillips Collection museum, Advisory Neighborhood Commission 2B, and the neighbors of the Phillips Collection.

New York Bar	Member	2009 – present
Phillips Collection	Member	2010 – present

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

I have sought to identify each of the published writings I have personally authored and public remarks I have given within the last ten years. I have not identified all writings for school newspapers that I authored prior to 2005. I would be happy to provide to the Committee copies of any of the publications or speeches that I can locate. For remarks, there are several instances in which I don't have a text, transcript, or video.

Sidley Austin "Data Matters" Blog

SAMHSA Releases Final 42 CFR Part 2 Revised Rule (July 27, 2020) (with Megan Svedman), available at <https://datamatters.sidley.com/samhsa-releases-final-42-cfr-part-2-revised-rule#page=1>.

The Return of the Mac: CCPA 2.0 Qualifies for California's November 2020 Ballot and Could Usher in Sweeping Changes for CCPA (June 26, 2020) (with Colleen Theresa Brown, Alan Charles Raul, Sheri Porath Rockwell, Christopher D. Joyce), available at <https://datamatters.sidley.com/the-return-of-the-mac-ccpa-2-0-qualifies-for-californias-november-2020-ballot-and-could-usher-in-sweeping-changes-to-ccpa>.

CCPA Enforcement Date Rapidly Approaching: California Attorney General Proposes Regulations for Final Review With July 1, 2020 Less Than One Month Away (June 4, 2020) (with Colleen Theresa Brown, Christopher Fonzone, Alan Charles Raul, Sheri Porath Rockwell, Michael R. Roberts), available at <https://datamatters.sidley.com/ccpa-enforcement-date-rapidly-approaching-california-attorney-general-proposes-regulations-for-final-review-with-july-1-2020-less-than-one-month-away#page=1>.

COVID-19 - Privacy and Cybersecurity: An Action Plan for Business (May 11, 2020) (with Colleen Theresa Brown, Christopher Fonzone, William RM Long, Alan Charles Raul), available at <https://datamatters.sidley.com/covid-19-privacy-and-cybersecurity-an-action-plan-for-business#page=1>.

In Midst of COVID-19 Pandemic, Senators Propose Privacy Bill Aimed At Businesses' Use of Consumer Data (May 7, 2020) (with Colleen Theresa Brown, Christopher Fonzone, Michael R. Roberts), available at <https://datamatters.sidley.com/in-midst-of-covid-19-pandemic-senators-propose-privacy-bill-aimed-at-businesses-use-of-consumer-data#page=1>.

HHS Announces Exercise of Enforcement Discretion for Entities Engaged in COVID-19 Relief Efforts (May 5, 2020) (with Megan Svedman), available at <https://datamatters.sidley.com/hhs-announces-exercise-of-enforcement-discretion-for-entities-engaged-in-covid-19-relief-efforts#page=1>.

Returning to Work: Employer COVID-19 Testing (May 4, 2020) (with Jaclyn G. Fonteyne, Abigail Hudson, Coleen Klasmeier, Wendy M. Lazerson), available at <https://www.sidley.com/en/insights/newsupdates/2020/05/returning-to-work-employer-covid-19-testing>.

CCPA Marches On: California Attorney General Proposes Further Revisions to CCPA Regulations, Industry Pleads for Enforcement Delay Amid COVID-19 Crisis (April 10, 2020) (with Colleen Theresa Brown, Christopher Fonzone, Alan Charles Raul, Michael R. Roberts, Sheri Porath Rockwell), available at <https://datamatters.sidley.com/ccpa-marches-on-california-attorney-general-proposes-further-revisions-to-ccpa-regulations-industry-pleads-for-enforcement-delay-amid-covid-19-crisis#page=1>.

HHS Issues Limited Waiver of Certain HIPAA Privacy Rule Obligations and Exercises Enforcement Discretion with Respect to Telehealth Services In Light of COVID Public Health Emergency (March 18, 2020), available at <https://datamatters.sidley.com/hhs-issues-limited-waiver-of-certain-hipaa-privacy-rule-obligations>.

and-exercises-enforcement-discretion-with-respect-to-telehealth-services-in-light-of-covid-public-health-emergency#page=1.

HHS Secretary Azar Announces Certain Protections From Liability For Covered Medical Countermeasures to Combat COVID-19 (March 16, 2020) (with Erika Maley and Rebecca Wood), available at <https://www.sidley.com/en/insights/newsupdates/2020/03/hhs-secretary-azar-announces-certain-protections-from-liability-for-covered>.

Coronavirus Risks - U.S. and European Employment and Privacy Law Issues (March 5, 2020) (with Colleen Theresa Brown, Susan Fanning, Christopher Fonzone, Wendy M. Lazerson, John G. Levi, William RM Long, Alan Charles Raul, Katherine A. Roberts), available at <https://datamatters.sidley.com/coronavirus-risks-u-s-and-european-employment-and-privacy-law-issues#page=1>.

Coronavirus Risks - U.S. and European Employment and Privacy Law Issues (March 4, 2020) (with Susan Fanning, Wendy Lazerson, John G. Levi, Katherine A. Roberts, Colleen Theresa Brown, William RM Long), available at <https://www.sidley.com/en/insights/newsupdates/2020/03/coronavirus-risks-us-and-european-employment-and-privacy-law-issues>.

A February 2020 Surprise: California Attorney General Proposes Significant Revisions to CCPA Regulations (February 12, 2020) (with Colleen Theresa Brown, Christopher Fonzone, Alan Charles Raul, Michael R. Roberts, Sheri Porath Rockwell), available at <https://datamatters.sidley.com/a-february-2020-surprise-california-attorney-general-proposes-significant-revisions-to-ccpa-regulations#page=1>.

Attorney General Issues Draft California Consumer Privacy Act Regulations, Prompting New Compliance Needs Before Effective Date (October 29, 2019) (with Colleen Theresa Brown, Christopher Fonzone, Clayton G. Northouse, Alan Charles Raul, Sheri Porath Rockwell), available at <https://www.sidley.com/en/insights/newsupdates/2019/10/attorney-general-issues-draft-california-consumer-privacy-act-regulations-prompting-new-compliance>.

Part 2 Proposed Rule Seeks to Reduce Barriers to Coordination of Care for Substance Use Disorders (October 2, 2019) (with Britney Garr), available at <https://datamatters.sidley.com/part-2-proposed-rule-seeks-to-reduce-barriers-to-coordination-of-care-for-substance-use-disorders#page=1>.

OCR Reduces HIPAA Penalties and Clarifies Liability for Transferring ePHI to Third-Party Health Apps (April 30, 2019) (with Meenakshi Datta, Rina Mady, Britney Alexandra Garr), available at <https://datamatters.sidley.com/ocr-reduces-hipaa-penalties-and-clarifies-liability-for-transferring-ephi-to-third-party-health-apps#page=1>.

Health Sector Council Released Cybersecurity Recommendations for Medical Devices and Health IT (February 14, 2019) (with Nancy Stade), available at <https://datamatters.sidley.com/health-sector-council-released-cybersecurity-recommendations-for-medical-devices-and-health-it#page=1>.

HHS Releases Cybersecurity Guidance for Healthcare Organizations (January 8, 2019) (with Meenakshi Datta and Rina Mady), available at <https://datamatters.sidley.com/hhs-releases-cybersecurity-guidance-for-healthcare-organizations#page=1>.

HHS Requests Feedback on HIPAA Changes Designed to Improve Care Coordination (December 14, 2018) (with Meenakshi Datta and Corbin Santo), available at <https://datamatters.sidley.com/hhs-requests-feedback-on-hipaa-changes-designed-to-improve-care-coordination#page=1>.

Proposed Changes to Federal Health Privacy Regulations Now at OMB for Review (November 19, 2018) (with Meenakshi Datta and Britney Garr), available at <https://datamatters.sidley.com/proposed-changes-to-federal-health-privacy-regulations-now-at-omb-for-review#page=1>.

Clean-Up Bill Advances to Amend the New California Consumer Privacy Act (September 5, 2018) (with Alan Charles Raul, Colleen Theresa Brown, Christopher Fonzone, Sheri Porath Rockwell), available at <https://datamatters.sidley.com/clean-up-bill-advances-to-amend-the-new-california-consumer-privacy-act>.

HHS Secretary Azar Signals Future Changes to Federal Health Privacy Regulations (August 6, 2018) (with Meenakshi Datta and Corbin Santo), available at <https://www.sidley.com/en/insights/newsupdates/2018/08/hhs-secretary-azar-signals-future-changes-to-federal-health-privacy-regulations>.

Movement on Section 702 of the Foreign Intelligence Surveillance Act (FISA) (January 22, 2018) (with Christopher Fonzone, Cameron F. Kerry, Alan Charles Raul), available at <https://datamatters.sidley.com/movement-section-702-foreign-intelligence-surveillance-act-fisa#page=1>.

Sidley Updates

U.S. Department of Transportation Issues Third Round of Guidance on Automated Vehicles (November 5, 2018) (with Colleen Theresa Brown, Christopher Fonzone, Michael Mallow, Edward R. McNicholas, Matthew J. Warren, Elizabeth Macgill, Rachel Straus), available at <https://www.sidley.com/en/insights/newsupdates/2018/11/us-department-of-transportation-issues-third-round-of-guidance-on-automated-vehicles>.

Federal Judge Invalidates U.S. Health and Human Services' Approval of Changes to Kentucky Medicaid Program (July 5, 2018) (with Meenakshi Datta and Meredith Toole Reiter), available at <https://www.sidley.com/en/insights/newsupdates/2018/07/federal-judge-invalidates-us-health-and-human-services-approval-of-changes>.

(Sidley Austin would occasionally send client updates. These are the ones that I have been able to identify, but there may have been others that I co-authored.)

Other Publications

COVID-19: Employment Law Update and Guidance for Employers, BenefitsPRO (April 16, 2020) (with Marketa Lindt and Kate Roberts), available at <https://web.archive.org/web/20210302234629/https://www.benefitspro.com/2020/04/16/covid-19-employment-law-update-and-guidance-for-employers/>.

American Bar Association Section of Antitrust, *Artificial Intelligence & Machine Learning: Emerging Legal and Self-Regulatory Considerations*, Part I (September 30, 2019) (authored with contributions from task force members, of which I was one), available at https://www.americanbar.org/content/dam/aba/administrative/antitrust_law/comments/october-2019/clean-antitrust-ai-report-pt1-093019.pdf.

Carpenter and Everything After: The Supreme Court Nudges the Fourth Amendment into the Information Age, American Bar Association Infrastructure and Regulated Industries Journal (Summer 2019) (with Christopher Fonzone and Michael R. Roberts), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/infrastr58&div=22&id=&page=>.

Carpenter v. United States: A Revolution in Fourth Amendment Jurisprudence?, Pratt's Privacy & Cybersecurity Law Report (November/December 2018) (with Christopher Fonzone and Michael R. Roberts), available at https://lawsdocbox.com/Legal_Issues/124903812-Privacy-cybersecurity-law.html.

After LabMD, Questions Remain for the Healthcare Sector, Digital Health Legal (August 15, 2018) (with Christopher Fonzone).

Life Sciences and the AI Revolution, Chambers and Partners (June 2018) (with Christopher Fonzone).

What Congress's First Steps Into AI Legislation Portend, Bloomberg Law (May 8, 2018) (with Christopher Fonzone), available at <https://news.bloomberglaw.com/tnsiness-and-practice/what-congress-first-steps-into-ai-legislation-portend>.

Should the Government Regulate Artificial Intelligence? It Already Is, The Hill (February 26, 2018) (with Christopher Fonzone), available at [http://thehill.com/technology/3756\(Xi-should-the-governmnt-regulateartificial-intelligence-it-already-is](http://thehill.com/technology/3756(Xi-should-the-governmnt-regulateartificial-intelligence-it-already-is).

When and How Cos. Should Address Cyber Legal Compliance, Law360 (October 24, 2017) (with Alan Raul).

2011 Temple Bar Scholar Report, American Inns of Court, available at https://home.innocourt.org/AIC/Awards_and_Scholarships/Temple_Bar_Scholarships/Temple_Bar_Scholarship_Reports/2011_Kate_Heinzelman.aspx?WebsiteKey=bdf4f35a-b610-4343-a37e-4aed911e9abc.

Introduction: Essays in Honor of W. Michael Reisman, Yale Journal of International Law (2009) (with Jeffrey Sandberg), available at <https://digitalcommons.law.yale.edu/yjil/vol34/iss2/6>.

Note, *Towards Common Interests and Responsibilities: The U.S.-India Civil Nuclear Deal and the International Nonproliferation Regime*, Yale Journal of International Law (2008).

Intelligence Reform Crossroads, Editorial, Washington Times (January 18, 2007) (with Elbridge Colby).

Job Search Begins for Worried Seniors, Yale Daily News (September 16, 2002), available at <https://yaledailynews.com/blog/2002/09/16/job-search-begins-for-worried-seniors/>.

Out of the Yale Gates, Yale Daily News (June 30, 2002), available at <https://yaledailynews.com/blog/2002/06/30/out-of-the-yale-gates/>.

Yale's First Classes of Women Look Back, Yale Daily News (February 20, 2002), available at <https://yaledailynews.com/blog/2002/02/20/yales-first-classes-of-women-look-back/>.

Public Speaking / Webinars / Podcasts / Lectures

5th Annual Bay Area Lifesciences Roundtable, *Artificial Intelligence in Regulated Industries: Comparing Experiences in the Life Sciences and Financial Sectors* (June 30, 2020) (co-presenter).

Sidley podcast, *Walking the Line Between Worker Safety and Privacy* (April 2020) (co-presenter), available at <https://www.sidley.com/en/insights/podcasts/2020/podcast-covid19-walking-the-line-between-worker-safety-and-privacy>.

Sidley webinar, *The California Consumer Privacy Act: What Happened and What's to Come* (January 22, 2020) (co-presenter), materials available at <https://datamatters.sidley.com/the-california-consumer-privacy-act-what-happened-and-whats-to-come>.

17th Annual Washington Health Law Summit, *Rulemaking After Allina* (panel presentation), (December 10, 2019) (co-presenter), materials available at <https://www.americanbar.org/content/dam/aba/administrative/healthlaw/WHS2019/16-panel.pdf>.

Sidley Tech Forum Webinar, *The Final Countdown: What You Need to Know About the CCPA and Its Draft Regulations Before January 1* (November 5, 2019) (co-presenter), description available at <https://www.sidley.com/en/insights/events/2019/11/the-final-countdown-what-you-need-to-know-about-the-ccpa-and-its-draft-regulations-before-january-1>.

Sidley webinar, *California, Here We Come: Getting Ready for the California Consumer Privacy Act of 2018* (March 27, 2019) (co-presenter), description available at <https://datamatters.sidley.com/event/california-here-we-come-getting-ready-for-the-california-consumer-privacy-act-of-2018>.

28th National HIPAA Summit, *GPDR and New California Privacy Law Update* (March 5, 2019) (co-presenter), materials available at http://www.chcca.com/presentations/HIPAA28/heinzelman_gottlieb_clearwater_ms4.pdf.

Sidley webinar, *Getting Ready for the California Consumer Privacy Act* (September 25, 2018) (co-presenter), description available at <https://datamatters.sidley.com/event/getting-ready-for-the-california-consumer-privacy-act-of-2018>.

11th Annual Sidley MCLE Mini Marathon, *Law on The Cutting Edge: Emerging Legal Issues in Cybersecurity and Artificial Intelligence* (June 14, 2018) (co-presenter).

Conference of the Democratic Attorneys General Association, *Healthcare Exchanges* (panel presentation) (September 14, 2017) (co-presenter) (final title for these remarks is unknown).

Yale Ivy Scholars Program, *Balancing National Security & Civil Liberties Post-9/11* (July 2012).

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE AS THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY).

My work in the national security community, as a government lawyer in a variety of settings, and as counsel to senior leaders in government and in the private sector has given me the experience, knowledge, and perspective that I would bring to the position of General Counsel of the Central Intelligence Agency.

First, and as described in response to question 10, I have spent years working in the national security community within the U.S. Government. These experiences have shaped my understanding of some of the core legal issues and challenges of advising government clients on national security and intelligence issues.

In addition to this national security experience, my work counseling clients in a variety of federal government settings—from the Department of Justice, to the White House Counsel's Office, to the Department of Health and Human Services—has given me a broad perspective on federal government practice and experience working on an array of legal issues confronting federal agencies. As Deputy General Counsel at the Department of Health and Human Services I also helped lead a large federal general counsel's office in a department that confronts a variety of challenging legal issues on a daily basis.

Finally, in both private practice—where I served as a partner at a global law firm—and in government service, I have advised senior leaders on complex and time-sensitive legal issues.

I believe that these experiences would serve me well were I to be confirmed to this position.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

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

Biden for President	\$1,500	(3/2020)
Hillary for America	\$800	(7/2016)
Obama Victory Fund 2012	\$350	(11/2012)

Obama for America \$350 (11/2012)

I also performed volunteer work for the Biden campaign in 2020 and served on the presidential transition in 2020 and 2021.

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

None.

17. FOREIGN AFFILIATIONS

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

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

I have not had any such representations to the best of my knowledge. During his time at the law firm Quinn Emanuel Urquhart & Sullivan, my husband has represented DP World, a port and logistics company indirectly owned by the Government of Dubai, in various matters, primarily its dispute with the Republic of Djibouti over the Doraleh Container Terminal in Djibouti.

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

From 2017 until 2020, I worked at the law firm Sidley Austin LLP. Sidley Austin is headquartered in Chicago, Illinois and has offices around the world. Attorneys at Sidley Austin have represented foreign governments or entities controlled by foreign governments as part of the firm's practices in a range of areas, including global arbitration, trade, advocacy, litigation, government contracts, and project development and finance. My understanding is that the firm's records do not systematically identify which of its clients are foreign government or foreign government-controlled entities. I have therefore reviewed public information and the firm's recent filings under the Foreign Agents Registration Act (FARA) and have identified the following as examples of current or former clients of Sidley Austin that may be responsive to this question as foreign governments (sometimes represented through particular ministries), foreign government-controlled entities, or other entities listed on the firm's recent FARA reports: Bangladesh; beIN Media Group LLC; Bhutan; Canada; China; Columbia; Costa Rica; Guyana; Hong Kong Trade Development Council; Israel; JSC VTB Bank; Mexico; Peru; Qatar; Senegal; State Bank of Vietnam; Singapore; TENEX, Joint Stock Company; Turkey; United Kingdom; and YPF Sociedad Anónima.

My husband works at the law firm Quinn Emanuel Urquhart & Sullivan. The firm is headquartered in Los Angeles, California and has offices around the world. Attorneys at Quinn Emanuel have represented foreign governments or entities controlled by foreign governments as part of the firm's practices in a range of areas, including international disputes and investment fund litigation. My understanding is that the firm's records do not systematically identify which of its clients are foreign government or foreign government-controlled entities. I have therefore reviewed public information and the firm's recent FARA filings and have identified the following as examples of current or former clients of Quinn Emanuel that may be responsive to this question as foreign governments (sometimes represented through particular ministries) or foreign

government-controlled entities: Abu Dhabi Commercial Bank, Azerbaijan, Colombia, Guatemala, Ministry of Finance of Ukraine, Panama, Peru, and Tunisia.

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

DP World paid Quinn Emanuel for the work my husband performed on the company's behalf (as discussed in response to Question 17.A). My husband and I have also shared in the income of the firms' partnerships, and that income may have been derived in part from engagements with foreign governments and entities controlled by foreign governments (as discussed in response to Question 17.B).

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

No.

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

At Sidley Austin, a portion of my practice consisted of advising clients on legal matters involving federal law or policy, including in connection with litigation, enforcement, compliance matters, and requests for public comment. I have not been a registered lobbyist.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

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

During the nomination process, I consulted with agency ethics officials, including the Alternate Designated Ethics Official, at the Central Intelligence Agency who consulted with the Office of Government Ethics (OGE) to identify any potential conflicts of interest. As a result of this process, potential conflicts with my former employers, former clients, and with my husband's law firm and clients, have been identified in an Ethics Agreement, which has been provided to the Committee.

More broadly, I will follow the advice of ethics officials to address any potential conflicts of interest identified to resolve them in a manner consistent with the conflicts of interest statutes, applicable standards of conduct, the ethics pledge set forth in Executive Order 13989, and the terms of my Ethics Agreement.

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

I do not believe that I have business connections that are responsive to this question. If confirmed, I will resign from the U.S. Department of Justice.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION.

PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

If confirmed, I will resign from the U.S. Department of Justice. Please see Part 3 of the OGE Form 278e for more information on arrangements I retain in connection with Sidley Austin.

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

No.

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

I do not have plans, agreements, or understandings for future employment following my government service.

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

No.

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

My husband is a partner at Quinn Emanuel Urquhart & Sullivan. He joined the firm as an associate in 2014 after serving at the U.S. Department of Justice. His practice focuses on commercial and government-related litigation. Potential conflicts of interest with my husband's work have been identified in an Ethics Agreement, which has been provided to the Committee.

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

INFORMATION REDACTED

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

Over the last five years, aside from gifts from relatives, we have received gifts from personal friends and acquaintances in connection with special occasions and events. For instance, our children have received occasional gifts for their birth or birthdays, some of which may have exceeded \$100 in value, and we have had dinner and received hospitality from personal friends and partners at Sidley Austin and Quinn Emanuel. The realtor who helped my husband and me purchase a home recently gave us a gift at the closing of our new house. The gifts I have received from these individuals were either not given during the period in which I was under consideration for the position for which I have been nominated or were not given by individuals who were aware that I was being considered for such a position.

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

<u>DESCRIPTION OF PROPERTY</u>	<u>VALUE</u>	<u>METHOD OF VALUATION</u>
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Please see Parts 2, 5, and 6 of my OGE Form 278e. In addition, my husband and I own our current residence, and recently purchased another home that will be our residence.

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

<u>NATURE OF OBLIGATION</u>	<u>NAME OF OBLIGEE</u>	<u>AMOUNT</u>
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None.

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

No.

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

INFORMATION REDACTED

INFORMATION REDACTED

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

Yes.

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

My spouse and I plan to file joint returns for the 2021 tax year in the following jurisdictions: United States, California, New York, and Washington DC.

I previously joined composite tax returns filed by Sidley Austin, which in 2020 were filed in the following jurisdictions: California, Colorado, Delaware, Georgia, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, United Kingdom, and Singapore.

My spouse joins composite tax returns filed by his law firm in various jurisdictions, typically including: Colorado, Connecticut, Georgia, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, France, Germany, Japan, and the United Kingdom.

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

No.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN \$200 WORTH OF SERVICES

DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

23andMe, Inc.
 Abbott Laboratories
 AbbVie, Inc.
 Advisor Group Inc.
 Aetion, Inc.
 AGRO Merchants Group
 Aledade
 Allergan, plc.
 Allscripts Healthcare Solutions Inc.
 Amazon.com, Inc.
 American Board of Prosthodontics
 Anixter International, Inc.
 Apple, Inc.
 Aprea Therapeutics Inc.
 AT&T
 Athene Holding Ltd.
 Avair Pharmaceuticals
 Balyasny Asset Management L.P.
 Banc of America Securities LLC
 Baxter International Inc.
 Boehringer Ingelheim USA Corp.
 Cadian Capital Management LLC
 Canyon Partners LLC
 Cardiovascular Systems Inc.
 Caterpillar, Inc.
 Celgene Corp.
 CIGNA Corp.
 CIT Group Inc.
 College of American Pathologists
 Contego Medical, LLC
 Corel Inc.
 DaVita, Inc.
 Deseret Mutual Benefit Administrators
 Doheny Eye Institute
 DP Legal (Sidley Austin)
 Evercore Partners
 Exact Sciences Corp.
 Faraday & Future, Inc.
 Figure Technologies, Inc.
 An affiliate of Fidelity Investments
 Fortive Corp.
 Foundation Finance Company LLC
 FPK Services LLC
 Freedom Financial Network, LLC
 Fresenius Kabi USA, LLC
 FS Brands, Inc.
 GBIG Holdings, Inc.
 Gilead Sciences, Inc.
 Glenview Capital Management, LLC
 Great Rock Capital Management, LLC
 Group of Federal Insurers
 Grove Collaborative, Inc.
 Guardian Life Insurance Company of America

Health Care Service Corporation
Health Net Inc.
Helsinn Therapeutics (U.S.), Inc.
Hilltop Securities, Inc.
HireRight, LLC
HMS Holdings Corp.
Humana
Icon plc
Illumina Inc.
Incentrum Group
Intel Corporation
Jackson Laboratory
Jazz Pharmaceuticals
JUUL Labs, Inc.
Kalderos LLC
Kuvare US Holdings, Inc.
Ladenburg Thalmann Financial Services Inc.
Las Vegas Sands Corp.
LifePoint Health, Inc.
Lone Pine Capital LLC
LPL Financial, LLC
Lyell Immunopharma Inc.
Magnetar Capital LLC
Mastercard
MatrixCare
McAfee, LLC
McKesson Corp.
Medela, Inc.
Medical Information Working Group
Metagenics, Inc.
Metropolitan Life Insurance Co.
Michaels Stores, Inc.
Microsoft
MiMedx Group, Inc.
MyHeritage Ltd
National Flood Services LLC
Neiman Marcus Group
Nektar Therapeutics
Nevro Corp.
New York Life Insurance Co.
Northwestern University
Novartis Gene Therapies
Novo Nordisk Inc.
Nurix Therapeutics, Inc.
Omniceil, Inc.
OrbiMed Advisors LLC
Pandora Media, Inc.
Patroness
Pentax of America, Inc.
Pfizer Inc.
PhRMA
Piper Sandler Companies
Principia Biopharma Inc
Provepharm Inc.
Purdue Pharma L.P.
Quartet Health

Quest Diagnostics
Quest Software Inc.
Renaissance Acquisition Holdings, LLC
RLI Corp.
Roche Diagnostics
Roche Molecular Systems Inc.
Ryan Specialty Group, LLC
Salesforce
Scoville Risk Partners
Seattle Genetics, Inc.
Shape Security, Inc.
Simon Markets LLC
Sixth Street Partners, LLC
SquarePoint Capital LLC
Synchrony Financial
The RealReal, Inc.
TIBCO Software, Inc.
TPG Global, LLC
U.S. Chamber Institute for Legal Reform
uBiome
United Airlines Holdings, Inc.
Urban Meyer
Van Drunen Farms
Vector Capital Corporation
Vista Equity Partners Management LLC
Vitalize LLC
Wal-Mart Stores, Inc.
Walgreen Co.,
Wintrust Financial Corporation
WuXi App Tec Co., LTD
Yardi Systems, Inc.

I have not disclosed the names of two U.S.-based clients for whom I did work at Sidley Austin because I have been advised by Sidley that these client relationships are confidential. I performed under one hour of work for each of those clients.

During this period I also worked for the PT Fund, Inc. and the U.S. Department of Justice, as noted above.

I am licensed to practice in New York and Washington, DC.

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

No. I will follow the advice of government ethics officials to address any conflict of interest issues identified.

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

I filed an OGE Form 278e upon joining the U.S. Department of Justice in 2021. I am happy to provide a copy of this report.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PLEASE PROVIDE DETAILS.

No.

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

No.

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

No.

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

No.

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

No.

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

Not that I'm aware of.

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

No.

PART F - SECURITY INFORMATION

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

No.

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

Yes. I took a polygraph as part of the security clearance process for my position at the Central Intelligence Agency in 2003.

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

No.

PART G - ADDITIONAL INFORMATION

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

The congressional intelligence committees have a critical role in ensuring the Central Intelligence Agency's (CIA's) accountability to the American people and in maintaining public trust in the agency, including trust that the agency acts in accordance with applicable law. Congress's role in oversight is all the more crucial in the context of the CIA's work because the agency's activities often cannot be fully disclosed to the American people given their classified nature.

Pursuant to federal statute, the CIA has an obligation to keep the congressional intelligence committees fully and currently informed about CIA intelligence activities and covert actions, including any significant anticipated intelligence activity and any significant intelligence failure, and to provide specified information (including with respect to the legal basis for such activities), to the extent consistent with due regard for the protection from unauthorized disclosure of certain national security information, as provided in 50 U.S.C. §§ 3092-93. Further, consistent with 50 U.S.C. § 3109, the CIA General Counsel is specifically responsible for notifying the intelligence committees of significant legal interpretations of the U.S. Constitution or federal law affecting intelligence activities conducted by the agency.

The CIA's obligations to provide information to the intelligence committees is an important part of ensuring that Congress can execute its vital responsibilities, including with respect to oversight of the agency. The CIA General Counsel plays an important role in ensuring the agency's compliance with applicable law, including interpreting and applying these obligations. If confirmed, I commit to working with agency leadership and personnel to adhere to these legal obligations, to act in accordance with the principles and values that underlie them, and—more generally—to support the agency in maintaining a strong relationship with Congress.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.

The General Counsel of the CIA serves as the chief legal officer of the agency. In that role, the General Counsel has responsibility for providing accurate and timely legal counsel. The General Counsel provides advice to the Director, senior leadership, and agency personnel on legal matters affecting the agency's operations. The General Counsel assists the Director in carrying out the agency's responsibilities and functions (including with respect to congressional oversight, as discussed above), oversees and manages the Office of General Counsel and its personnel, works to ensure that the agency is appropriately represented in legal matters and proceedings, and interacts with entities within and outside of the Executive Branch on appropriate matters, among other duties.

AFFIRMATION

I, **KATE ELIZABETH HEINZELMAN**, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

3/18/2022 **SIGNATURE OF KATE ELIZABETH HEINZELMAN**
(Date)

03/18/2022 **SIGNATURE OF NOTARY**

County/City of Fairfax
Commonwealth/State of Virginia
The foregoing instrument was acknowledged
before me this 18 day of March,
2022 by Kate E. Heinzelman
(name of person seeking acknowledgement)
KIMMY L CASTILLO
Notary Public
My Commission Expires: 02/28/2025



TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

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

SIGNATURE OF KATE ELIZABETH HEINZELMAN

Date: 3/18/2022

April 3, 2022

The Honorable Mark R. Warner, Chairman
The Honorable Marco Rubio, Vice Chairman
Select Committee on Intelligence
United States Senate
211 Hart Senate Building
Washington, DC 20510

Dear Chairman Warner and Vice Chairman Rubio:

Thank you for the Committee's letter dated March 30, 2022. As you have requested, I have completed the Committee's Additional Prehearing Questions, which are enclosed.

My responses to the Committee's classified prehearing questions are being submitted under separate cover. I look forward to appearing before the Committee on April 6th.

Sincerely,

A handwritten signature in blue ink that reads "Kate Heinzelman". The signature is written in a cursive style with a large, stylized "K" and "H".

Kate Heinzelman

Enclosure

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



**Additional Prehearing Questions
for Kate Heinzelman
upon her nomination to be
General Counsel of the Central Intelligence Agency**

Relations with the Congressional Intelligence Committees

QUESTION 1:

The *National Security Act of 1947* provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities.

- What is your understanding of the standard for meaningful compliance with the obligation of the Director of the CIA to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities?

Pursuant to Section 502(a)(1) of the National Security Act of 1947, the Director of the Central Intelligence Agency (CIA) has an obligation to keep the congressional intelligence committees fully and currently informed about CIA intelligence activities, including any significant anticipated intelligence activity and any significant intelligence failure, to the extent consistent with due regard for the protection from unauthorized disclosure of certain national security information, as provided in 50 U.S.C. § 3092(a)(1). Section 502(a)(2) further provides that the CIA shall provide specified information, including with respect to the legal basis for such activities, upon request, to the extent consistent with due regard for the protection from unauthorized disclosure of certain national security information, as provided in 50 U.S.C. § 3092(a)(2). (Section 503 addresses covert actions.)

To comply with these requirements—which are an integral part of ensuring that Congress can execute its vital responsibilities—the CIA must provide the congressional intelligence committees with timely information about significant intelligence activities and failures. If confirmed, I commit to working with agency leadership and personnel to adhere to these legal obligations, to act in accordance with the principles and values that underlie them, and—more generally—to support the agency in maintaining a strong relationship with Congress.

- Section 503(c)(2) of the National Security Act describes the “Gang of Eight” briefings to the Chairman and Vice Chairman in the context of covert action. Are there circumstances in which the “Gang of Eight” briefings can apply to other than time-sensitive tactical matters? If so, please elaborate.

The specific provision of law to which this question refers—Section 503 of the National Security Act—provides that a presidential finding or notification about a covert action may be reported to the so-called “Gang of Eight” only if “the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States.” 50 U.S.C. § 3093(c)(2). This provision does not specifically limit itself to “time-sensitive tactical matters.”

There may be circumstances in which it could be appropriate to limit the disclosure of certain information on particularly sensitive matters consistent with Section 502 of the National Security Act. *See* 50 U.S.C. § 3092(a) (noting that reporting should be done “[t]o the extent consistent with due regard for the protection from unauthorized disclosure” of certain sensitive information). If confirmed, I would want to understand the circumstances in which such concerns may arise to determine how notifications can be achieved consistent with CIA’s obligations. In any such instance, I would recommend that the agency discuss such concerns with the Chairman and Vice Chairman of the Committee to have a dialogue with them about how and when the full committee membership should be briefed.

- Are there circumstances in which the CIA can limit briefings to the Chairman and Vice Chairman on intelligence activities that are not covert action? If so, what would be the statutory basis for such limited briefings?

Sections 502 and 503 of the National Security Act of 1947 provide that the Director of the CIA must inform the congressional intelligence committees about the specified intelligence activities “[t]o the extent consistent with due regard for the protection from unauthorized disclosure” of certain national security information. 50 U.S.C. §§ 3092(a), 3093(b). Section 503 contains other potential limitations on sharing of information related to covert action in particular. *See id.* § 3093(c)(1).

If confirmed, I would look to precedent about how these provisions have been applied in practice—and feedback CIA has received from the congressional intelligence committees—to determine how to apply appropriate protections to the most highly sensitive information, where warranted, consistent with Congress’s need to perform its critical constitutional functions.

- Are there any circumstances in which briefings limited to the Chairman and Vice Chairman would be intended to or have the effect of concealing from the full Committee significant legal analyses? If so, please elaborate.

The CIA is required to furnish the congressional intelligence committees “any information or material concerning intelligence activities (including the legal basis under which the intelligence activity is being or was conducted)” that “is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities” to “the extent consistent with due regard for the protection from unauthorized disclosure” of certain sensitive information. 50 U.S.C. § 3092(a); *see also id.* § 3093(b) (relating to covert action). Withholding information from Congress without justification consistent with the law—for mere purposes of concealment, as the question asks—would be impermissible.

QUESTION 2:

Sections 502 and 503 of the *National Security Act* obligate the Director of the CIA to furnish the congressional intelligence committees with the legal bases for intelligence activities, as requested by the committees. In addition to adhering to this requirement, do you agree to affirmatively notify the committees of any novel legal analyses underlying CIA programs and activities?

In addition to the obligations in the National Security Act of 1947 to keep the congressional intelligence committees fully and currently informed, the CIA General Counsel is responsible for timely notifying the intelligence committees of significant legal interpretations of the U.S. Constitution or federal law affecting intelligence activities conducted by the agency consistent with 50 U.S.C. § 3109. I view this requirement, and helping the agency comply with the relevant provisions of the National Security Act of 1947, as an important part of the CIA General Counsel’s obligations.

QUESTION 3:

According to the CIA Inspector General, in January 2014, CIA personnel improperly accessed Senate Intelligence Committee staff files and records. To the extent CIA manages or operates systems used by the congressional intelligence committees, will you ensure, if you are confirmed, that no such intrusions occur in the future?

If confirmed, I will work to ensure that appropriate steps have been taken to prevent any improper access to Committee staff files and records.

QUESTION 4:

50 U.S.C. § 3349 requires notification of Congress in the event of an authorized disclosure to the press or the public of classified information that has not otherwise been declassified. Based on the law, do you see any exceptions to this notification requirement?

Yes. Subsection (d) of 50 U.S.C. § 3349 includes several exceptions to the congressional notification requirement, including for disclosures made pursuant to the Freedom of Information Act or as a result of a declassification review process. I am not certain if other exceptions may apply in light of other law.

Priorities of the Director of the Central Intelligence Agency

QUESTION 5:

Have you discussed with the Director of the CIA his specific expectations of you, if confirmed as General Counsel, and his expectations of the Office of the General Counsel as a whole? If so, please describe those expectations.

Director Burns and I have discussed the role of the General Counsel and his priorities for the agency. I have explained my view of the importance of the role, particularly in the current national security environment, and the emphasis I place on providing timely and clear legal analysis. 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 hold the same values for the Office of General Counsel and would work to maintain and help further reinforce these principles throughout the agency.

Office of the General Counsel

QUESTION 6:

What is your understanding of the responsibility of the General Counsel of the Central Intelligence Agency in ensuring that all activities of the Central Intelligence Agency are undertaken in accordance with the U.S. Constitution, U.S. treaty obligations, the laws of the United States, and relevant executive orders and associated guidelines?

The General Counsel of the CIA is the chief legal officer of the agency, as set forth in the Central Intelligence Agency Act of 1949. 50 U.S.C. § 3520(b). Pursuant to the statute, she performs the functions that the Director prescribes. As a general matter, the General Counsel, with the assistance of Office of General Counsel attorneys, provides legal advice to the Director and other CIA personnel on the full range of legal obligations applicable to CIA's operations. The purpose of such advice is to ensure that all of the agency's activities are undertaken in accord with all applicable law.

QUESTION 7:

The Office of the General Counsel of the Central Intelligence Agency has a myriad of roles and responsibilities. What are your expectations for the Office?

My expectation is that the Office of General Counsel will support the agency's mission by providing accurate, clear, and timely legal advice on the full range of legal issues the agency confronts and thereby help the agency do its critical work in a manner that is fully consistent with applicable law. I also believe it is important that the Office of General Counsel play an integral role in the agency's compliance functions; work closely on matters involving congressional oversight; and distinguish for clients legal permissibility from risk, and legal advice from any non-legal counsel.

- Do you have any preliminary observations on the Office's responsibilities, performance, and effectiveness?

The Office of General Counsel's primary mission, as noted in my response to question 7, is to provide legal advice designed to ensure that the agency's activities are undertaken in compliance with all applicable law. At this time, I do not have the direct contact with the office necessary to have an informed view on its performance or effectiveness.

- If confirmed, will you seek to make changes in the number or qualifications of attorneys in the Office, or in the operations of the Office?

As noted in my response above, I do not, at this time, have the exposure to the Office of General Counsel necessary to have an informed view about whether changes are needed to the numbers or qualification of the attorneys or the office's internal operations.

- What do you understand your responsibility to be to manage and oversee the legal work of the attorneys from the Office of the General Counsel who are assigned to the various components of the CIA and how would you carry out this responsibility, if confirmed?

The General Counsel of the CIA is the chief legal officer of the agency, as set forth in the Central Intelligence Agency Act of 1949. 50 U.S.C. § 3520(b). As part of that role, the General Counsel is responsible for overseeing and ultimately managing the legal work of the Office of General Counsel, regardless of how the lawyers within the office may be assigned. If confirmed as General Counsel, I would seek opportunities to further enhance collaboration and cohesion within the office, particularly among lawyers who are assigned to different components.

Relationships with Other Elements of the U.S. Government

QUESTION 8:

Describe your understanding of the responsibilities of the Director of National Intelligence and the General Counsel of the Office of the Director of National Intelligence in reviewing and providing legal advice on the programs and activities of the CIA, including covert actions.

As Director Burns has explained, the Director of National Intelligence (DNI) is the head of the Intelligence Community and acts as the principal adviser to the President and the National Security Council for intelligence matters related to the national security. The DNI is also responsible for budgeting, oversight, and intelligence coordination across elements of the Intelligence Community. The General Counsel to the DNI is the chief legal officer of the Office of the DNI.

I anticipate that I would have a close working relationship with the DNI's General Counsel on a variety of matters, including those affecting multiple Intelligence Community components or significant matters involving CIA activities that may bear on broader Intelligence Community interests.

QUESTION 9:

Describe your understanding of the responsibility of the General Counsel of the Central Intelligence Agency to bring issues of legal significance to the attention of the Office of the General Counsel of the Director of National Intelligence.

I anticipate that I would have a close working relationship with the DNI's General Counsel on a variety of potential matters, including those affecting multiple Intelligence Community components or significant matters involving CIA activities that may have bearing on broader Intelligence Community interests.

QUESTION 10:

Under what circumstances is it appropriate or necessary for the CIA to seek guidance from the Department of Justice Office of Legal Counsel before initiating, continuing, modifying, or ending an intelligence program or activity?

It has been my experience that Executive Branch officials often seek advice from the Department of Justice's Office of Legal Counsel (OLC) on particularly complex or novel matters of law, or on matters on which agencies have different legal positions. If confirmed, I anticipate taking a similar approach to consulting with OLC on appropriate matters and having a strong working relationship with OLC.

Covert Action

QUESTION 11:

Under what circumstances must covert action involving the use of force comply with treaties to which the United States is a party, including the United Nations Charter and the Geneva Conventions?

All covert action must comply with applicable law. The President may direct covert action to the extent authorized by the Constitution and subject to other applicable federal law. Congress has specifically regulated covert action through the National Security Act of 1947, and Section 503(a)(5) of the Act provides that a covert action finding "may not authorize any action that would violate the Constitution or any statute of the United States." 50 U.S.C. § 3093(a)(5). While treaty obligations implemented in U.S. statutes would be binding under this statutory provision, my understanding is that a non-self-executing treaty or customary international law would not. It is also my understanding, however, that the United States complies with international law to the extent possible, as a general matter, including in the execution of covert action activities.

QUESTION 12:

The National Security Act places limits on the activities that may be conducted as “covert actions.” In particular, covert actions do not include “traditional . . . military activities or routine support to such activities.”

- What is your understanding of the definition of traditional military activities?
- What is your understanding of the definition of routine support to traditional military activities?
- What factors would you use in testing whether a proposed covert action involves traditional military activities or routine support to such activities? Please provide one or two illustrative examples.

Section 503(e) of the National Security Act defines the term “covert action” to mean “an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include . . . traditional . . . military activities or routine support to such activities.” 50 U.S.C. § 3093(e). I am also aware that Congress has, in other statutory provisions, expressly defined certain activities as “traditional military activities.” See 10 U.S.C. §§ 394(c), 394(f)(1) (“clandestine military activity or operation in cyberspace”); 10 U.S.C. § 397 note (“clandestine military operation in the information environment”). I have not, however, previously had occasion to study the statutory term. If confirmed, I would look to principles of statutory interpretation and historical practice, including by consulting with CIA, Department of Defense, and other lawyers, to determine the meaning of the term as applied to any given set of facts.

QUESTION 13:

A Presidential Memorandum of Notification (MoN) authorizes the Director of the CIA, acting through the CIA, to undertake certain activities. Are the CIA’s authorities limited by a MoN’s text, or can the CIA’s interpretation of a MoN include authorities that are not explicitly spelled out within a MoN’s text? Please explain your understanding.

I have not had occasion to consider this question closely or examine past practice on this issue, which is something I would look forward to doing if confirmed. Consistent with Section 503 of the National Security Act of 1947, the President determines the scope of a covert action activity based on a determination that “such an action is necessary to support identifiable foreign policy objectives of the

United States and is important to the national security of the United States, which determination” must be set out in a written finding. 50 U.S.C. § 3093. The CIA must, of course, operate consistent with the finding and any associated Memorandum of Notification (MoN). Whether the agency may interpret a particular MoN to include actions “that are not explicitly spelled out within a MoN’s text”—as this question asks—would depend on a fact-specific analysis of both the text of the MoN and the proposed actions, as understood using interpretive tools. As an additional check on the process, Section 503 of the National Security Act requires agencies to keep the congressional intelligence committees fully and currently informed of covert actions.

Rendition

QUESTION 14:

The United States recognizes its obligation, under the Convention Against Torture, not to “expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

- To what extent does U.S. compliance with this obligation depend on diplomatic assurances provided by countries to which detainees may be extradited or rendered?
- Should those assurances be conveyed in writing, so that a record of their provision and receipt is established?
- Should such assurances be accepted from countries with established records of committing torture?
- What is the role of the Office of General Counsel in ensuring that “diplomatic assurances” that detainees will not be subject to torture are credible?

In accordance with section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998, it is the stated policy of the United States “not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.” 8 U.S.C. § 1231 note.

As Director Burns has said, diplomatic assurances, and consulting with the Department of State or relevant Chief of Mission in assessing the reliability and

credibility of assurances, are important in determining whether the legal standards for return or extradition are met and that detainees will be treated humanely.

I am not familiar with the role that the Office of the General Counsel has historically played in such matters, but, if confirmed, I will familiarize myself with that role and work to ensure that the Office of General Counsel supports the U.S. Government in complying with applicable legal obligations.

Chief of Mission Authority

QUESTION 15:

22 U.S.C. § 3927 states that: “Under the direction of the President, the chief of mission to a foreign country... shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country...” Absent direction from the President, is the CIA obligated to cease intelligence activities that do not have the approval of the chief of mission?

In accordance with 22 U.S.C. § 3927, CIA personnel fall under the responsibility of the Chief of Mission and are required to keep the Chief of Mission fully and currently informed with respect to all activities and operations within that country. According to the statute, all such personnel “comply fully with all applicable directives of the chief of mission.” As Director Burns has noted, the CIA and the State Department play a vital role in advancing our foreign policy and national security interests. If confirmed, I would work to resolve any issues relating to the Chief of Mission’s authorities with counterparts at the State Department.

Foreign Intelligence Surveillance Act

QUESTION 16:

Section 702 of the Foreign Intelligence Surveillance Act (FISA) authorizes the government to target non-U.S. persons reasonably believed to be located outside the United States, for purposes of acquiring foreign intelligence information. Section 702 cannot be used to target any person located in the United States. The law also prohibits the government from “reverse targeting” – that is, targeting a non-U.S. person outside the United States specifically for the purpose of collecting the communications of a person in the United States. The IC uses this FISA Section 702 collection authority to detect, identify, and disrupt terrorist and

other national security threats. The current authority expires on December 31, 2023. Please also provide classified answers to the below questions, if necessary.

- How would you characterize FISA Section 702 authorities and their importance to current intelligence collection overall?
- If FISA Section 702 authorities were to sunset, what would be the impact on national security?
- How have FISA Section 702 authorities contributed to our efforts against Russia, China, Iran, and other adversaries?
- How have FISA Section 702 authorities contributed to our efforts regarding election security?
- What privacy and oversight protocols are in place to ensure these authorities are not misused and do you see the need for additional protections?
- Do you support a full reauthorization of all FISA Title VII authorities? Please answer yes or no. If no, please explain.

I understand Section 702 of the Foreign Intelligence Surveillance Act (FISA) to be a critical national security tool and a source of significant valuable intelligence. I thus support reauthorization of Title VII of FISA, and as Director Haines said during her confirmation hearing, would, if confirmed, work with elements of the Intelligence Community, the Department of Justice, and the Congress to determine whether any changes can be made that would improve the protection of privacy and civil liberties without compromising national security.

Multiple layers of oversight, and privacy protections, apply to Section 702 collection. For example, each agency with collection authority must make an individual targeting decision before tasking a selector for collection and must apply Foreign Intelligence Surveillance Court (“FISC”)-approved targeting procedures in so doing. Agencies that receive unminimized Section 702 collection must comply with their FISC-approved minimization and querying procedures. FISA compliance is also subject to oversight by the Department of Justice, the Office of the Director of National Intelligence, the FISC, and both the congressional intelligence and judiciary committees, as well as independent Inspectors General and the Privacy and Civil Liberties Oversight Board. At the CIA, compliance with applicable Section 702 requirements is subject to ongoing internal oversight by CIA’s FISA Program Office, Office of General Counsel, and the Office of Privacy and Civil Liberties and external auditing by the Department of Justice and the Office of the Director of National Intelligence at regular intervals.

QUESTION 17:

What is your understanding of the role of the CIA General Counsel in ensuring adherence to minimization procedures associated with Section 702 of FISA and in supporting the oversight functions of the ODNI and the National Security Division of the Department of Justice?

Agency minimization procedures are an important part of the Executive Branch's multi-layered Foreign Intelligence Surveillance Act (FISA) compliance mechanisms. I expect that the Office of General Counsel plays an important role in supporting the CIA's compliance with FISA, including by interpreting CIA's minimization procedures, assisting in training, participating in regular FISA compliance reviews, and reporting noncompliance incidents to oversight bodies. I anticipate that, if confirmed, the Office of General Counsel and I would work closely with the National Security Division of the Department of Justice and the Office of the Director of National Intelligence to implement these important requirements.

QUESTION 18:

Section 702 of FISA prohibits "reverse targeting" of U.S. persons. Given that the CIA can both nominate foreign targets and conduct U.S. person queries intended to return communications of or about U.S. persons, how should the Office of General Counsel guard against any instances of reverse targeting?

FISA Section 702 prohibits "reverse targeting" – *i.e.*, intentionally targeting a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States. 50 U.S.C. § 1881a(b)(2).

Director Burns has explained that "extensive internal and external oversight mechanisms help ensure that CIA's nomination of Section 702 targets does not violate the prohibition on reverse targeting." CIA's compliance program includes training; ongoing internal oversight by CIA's FISA Program Office, Office of General Counsel, and Office of Privacy and Civil Liberties; and external auditing by the Department of Justice and the Office of the Director of National Intelligence at regular intervals. FISA compliance is also subject to oversight by the FISC and both the congressional intelligence and judiciary committees.

Executive Order 12333

QUESTION 19:

What differences, if any, exist with regard to CIA access to, queries of, and use, dissemination and retention of U.S. person communications and metadata collected pursuant to Executive Order 12333 as compared to communications and metadata collected pursuant to Section 702 of FISA?

Publicly available Attorney General-approved guidelines govern CIA's collection, handling, retention, and dissemination of U.S. person communications and metadata collected pursuant to Executive Order 12333. These Attorney General Guidelines also incorporate the requirements set forth in Section 309 of the Intelligence Authorization Act for Fiscal Year 2015 regarding the protection of U.S. person communications.

For U.S. person communications and metadata collected pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Foreign Intelligence Surveillance Court-approved minimization and querying procedures apply.

QUESTION 20:

Please describe the rules, guidelines, or other authorities under which the CIA would approve requests for the unmasking of U.S. person identities in CIA intelligence.

The CIA's Executive Order 12333 Attorney General Guidelines restrict CIA's retention, use, and dissemination of information concerning U.S. persons. In addition, CIA has established procedures that implement Intelligence Community Policy Guidance 107.1, regarding "Requests for Identities of U.S. Persons in Disseminated Intelligence Reports." These procedures provide guidance about how CIA components process requests from government officials for nonpublic information that identifies any U.S. person by name, or other means, when CIA did not include that information in a dissemination to the requesting entity. These procedures require, among other things, that CIA document all requests it receives, including a fact-based justification about why each U.S. person identity is need to carry out the requesting official's official responsibilities. CIA also limits the authority to approve such requests to specified officials.

QUESTION 21:

Do you believe the CIA should be authorized to monitor U.S. persons' social media activities? If so, under what authorities and subject to what limitations?

While I do not have first-hand experience with the manner in which the CIA may, or may not, presently engage in such monitoring, as a general matter, it is my view that the CIA's role with respect to the collection of U.S. person information is and should be circumscribed in light of its foreign intelligence mission and as a matter of applicable law and policy.

As a legal matter, there are several specific limitations on CIA's activities in the United States and with respect to U.S. persons (aside from statutes of general applicability). For instance, the National Security Act of 1947 states that the Director of CIA shall "collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions." 50 U.S.C. § 3036(d)(1). Under Executive Order 12333, the Director of CIA is charged with collecting "foreign intelligence and counterintelligence" and conducting counterintelligence "without assuming or performing any internal security functions within the United States." Executive Order 12333 § 1.7(a). Pursuant to CIA's Executive Order 12333 Attorney General guidelines, CIA may collect "[i]nformation that is publicly available or collected with the consent of the person concerned" if done in the course of CIA's duly authorized intelligence activities and in fulfillment of the CIA's national security responsibilities. Attorney General Guidelines § 2.3(a). But—among other limitations relevant to collection of U.S. person information—CIA may not collect or maintain information concerning U.S. persons solely for the purpose of monitoring activities either protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or U.S. law. Attorney General Guidelines § 3.3. The Attorney General Guidelines impose further restrictions on the handling, retention, and dissemination of U.S. person information.

QUESTION 22:

Section 7 of *Central Intelligence Agency Intelligence Activities: Procedures Approved by the Attorney General Pursuant to Executive Order 12333* (AG Guidelines) provides for limitations on the retention of information concerning U.S. persons. However, Section 6 of the guidelines states that the CIA may retain "unevaluated information when it is impracticable, infeasible, or detrimental to the

CIA mission to determine promptly whether the information qualifies for retention under the criteria of Section 7.”

- How would you define “impracticable, infeasible, or detrimental”?
- What is the role of the CIA General Counsel in ensuring that unevaluated U.S. person information is retained only under those circumstances?

I have not had the opportunity to study the application of the criteria in Section 7 of the Attorney General Guidelines at the CIA. If confirmed, I would look to principles of interpretation and historical practice, including by consulting with subject matter experts, to interpret the phrase and apply it to CIA data.

If confirmed, it would be my hope and expectation that, by providing interpretive guidance across the agency, the Office of General Counsel can help enhance consistency in the application of such standards.

QUESTION 23:

Section 6.2.1(b) of the AG Guidelines requires exceptional handling requirements for “unevaluated information that is anticipated to contain [U.S. Person Information] that is significant in volume, proportion, or sensitivity.”

- How would you define “significant in volume, proportion, or sensitivity”?
- What is the role of the CIA General Counsel in identifying unevaluated information that is “significant in volume, proportion, or sensitivity” and ensuring adherence to the exceptional handling requirements?

I have not had the opportunity to study the application of the criteria in Section 6.2.1(b) of the Attorney General Guidelines at the CIA. If confirmed, I would look to principles of interpretation and historical practice, including by consulting with subject matter experts, to interpret the phrase and apply it to CIA data.

If confirmed, it would be my hope and expectation that, by providing interpretive guidance across the agency, the Office of General Counsel can help enhance consistency in the application of such standards.

QUESTION 24:

Section 4.4.1 of the AG Guidelines describes “special collection techniques” for use outside the United States, specifically electronic surveillance and physical

searches. Section 4.4.2 states that: “Any special collection technique directed at a U.S. person outside the United States (including a U.S. person’s property or premises outside the United States) must be forwarded through the General Counsel for concurrence and approved by the D/CIA or designee, the Attorney General (as required by Section 2.5 of Executive Order 12333), and where applicable, the Foreign Intelligence Surveillance Court.” Are there any circumstances in which the CIA could employ a special collection technique directed at a U.S. person outside of FISA?

All CIA activities involving special collection must be carried out in accordance with the Constitution, applicable federal statutes, Executive Order 12333, presidential directives, and the CIA’s Attorney General Guidelines. To determine what law applies to a given “special collection technique,” I would need to know more about the technique and the circumstances of its proposed use. If confirmed, I will take very seriously my role under the Attorney General Guidelines as General Counsel in confirming there is a lawful basis for all special collection techniques directed at U.S. persons.

QUESTION 25:

In its “Deep Dive II” report on CIA activities pursuant to EO 12333, the Privacy and Civil Liberties Oversight Board made the following recommendations: (1) the CIA should draft implementing guidance for the CIA’s Attorney General Guidelines that would specifically apply [to the data that was the subject of the PCLOB review]; (2) CIA analysis should memorialize the Foreign Intelligence (FI) justification [REDACTED] queries involving known or presumed U.S. person information, [REDACTED] in an easily reviewable manner; (3) The Privacy and Civil Liberties Officer should, in consultation with relevant mission personnel, design a framework sufficient to routinely identify, review, and address issues related to USP information; (4) the CIA should determine how best to address the retention and use of legacy data that may include USP information; (5) the CIA should conduct periodic efficacy assessments in coordination with the Counterterrorism Mission Center to analyze whether the use of [REDACTED] provides continuing value; and (6) the CIA should consider the automated tools to assist with the auditing, oversight, and compliance of matters or issues related to [REDACTED] especially with regard to U.S. Persons.” What is your view of each of these recommendations and what is the responsibility of the CIA General Counsel to ensure that they are implemented?

I have not had the opportunity to review the classified Deep Dive II report to which this question refers, but look forward to reviewing the report and CIA's responses to the Privacy and Civil Liberties Oversight Board's (PCLOB's) recommendations if I am confirmed.

If confirmed, my role as General Counsel will be to help ensure all CIA activities are conducted in full compliance with applicable law, including Executive Order 12333, and that CIA keeps intelligence oversight committees apprised of its intelligence programs.

I understand that Director Burns has agreed that the CIA will review its current procedures and ensure that all of its systems are compliant with CIA's Attorney General Guidelines issued pursuant to Executive Order 12333. If confirmed, I would look forward to assisting in that review.

QUESTION 26:

On February 10, 2022, in connection with the release of a portion of the PCLOB's "Deep Dive II" report and a separate report on financial data, the CIA issued a press release stating that:

"CIA's core authority to collect intelligence stems from its statutory mandate to do so—found in the National Security Act of 1947—as well as the President's inherent constitutional authority to collect foreign intelligence and counterintelligence information, which is expressed in E.O. 12333. The Foreign Intelligence Surveillance Act (FISA) also governs important but relatively narrow areas of intelligence collection including electronic surveillance, physical search, and certain other activities as defined in that statute. Many of CIA's core intelligence activities fall outside the scope of the FISA, but are nevertheless governed by E.O. 12333, implementing Procedures promulgated by the CIA Director and the Attorney General of the United States, and other US law... These entirely unclassified procedures, and an accompanying narrative description, describe a range of restrictions that apply to CIA's intelligence activities, to include specific procedures applicable to collections of large datasets which, though collected for a valid foreign intelligence purpose, may contain incidental information regarding United States persons. This is why, under CIA's Attorney General procedures, collectors must take reasonable steps to limit the information collected to only that which is necessary to achieve the purpose of the

collection. This winnowing down of collection highlights one example of the privacy protections which are embedded in these foundational procedures. These declassified materials provide specific examples of how some of these safeguards are applied in practice."

- Do you agree with the CIA's statement? Please answer yes or no. If no, please explain.

I agree that there are a number of laws and regulations that authorize and govern the CIA's intelligence activities. I have not had the opportunity to review the underlying CIA activities described in the reports of the Privacy and Civil Liberties Oversight Board (PCLOB), but I look forward to reviewing the matter if confirmed.

- Are foreign collection authorities legal only if the authorities appear within FISA's four corners? Please answer yes or no. Please explain your answer.

No, if I am understanding the question correctly, foreign collection is governed by a number of authorities, including the Foreign Intelligence Surveillance Act (FISA). Surveillance activities that come within FISA's scope are governed by FISA's statutory requirements.

- Do you agree that the CIA derives its collection authorities not just from statutory laws (such as FISA), but from Executive Orders (such as E.O. 12333) and the U.S. Constitution? Please answer yes or no. If no, please explain.

As Section 104A(d) the National Security Act of 1947 recognizes, Congress has authorized the Director of the CIA, among other things, to collect intelligence through human sources and by other appropriate means, to correlate and evaluate intelligence related to the national security, and to perform such other functions and duties relating to intelligence affecting the national security as the President or the Director of National Intelligence may direct. *See* 50 U.S.C. § 3036(d)(1), (d)(4). The President has further specified the CIA's functions, including the responsibility to collect foreign intelligence and counterintelligence, in Executive Order 12333. Many other legal authorities govern intelligence collection activities as well.

- Do you agree that the CIA has legal authority under the unclassified Attorney General Guidelines for E.O. 12333 to undertake foreign

collection, which can result in incidentally-collected information on U.S. Persons, and that the Attorney General Guidelines address such incidental collection as legitimate, legal collection? Please answer yes or no. If no, please explain.

I am aware that CIA's Attorney General Guidelines promulgated pursuant to Executive Order 12333 "[a]s part of authorized intelligence activities . . . permit collection that involves incidentally acquired information concerning a U.S. person," subject to restrictions regarding handling, retention, and dissemination and as limited by applicable law. As the agency has explained, these guidelines "represent only one aspect of the authorizations and restrictions on the CIA's intelligence activities." CIA, The CIA's Updated Executive Order 12333 Attorney General Guidelines, <https://www.cia.gov/static/100ea2eab2f739cab617eb40f98fac85/Detailed-Overview-CIA-AG-Guidelines.pdf>.

With regard to any questions about the legal authority for particular collection activities, I would want to review the specific activity in question before addressing the source of authority.

QUESTION 27:

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

Yes, if confirmed I would work with the CIA's Privacy and Civil Liberties Officer to ensure there is an appropriate process to review and update the Attorney General Guidelines as needed to respond to changes in law and technology.

QUESTION 28:

In June 2018, in the case of *Carpenter v. U.S.*, the U.S. Supreme Court found that that the government's collection of cell-site locational information was a Fourth Amendment search. In your publications (*Carpenter and Everything After: The Supreme Court Nudges the Fourth Amendment into the Information Age*, and *Carpenter v. United States: A Revolution in Fourth Amendment Jurisprudence?*),

you described the Supreme Court’s holding as a “decidedly ‘narrow one’”, citing the Court’s statement that “our opinion does not consider other collection techniques involving foreign affairs or national security.” The *Carpenter* case also raised questions about the so-called “third party doctrine,” whereby information held by third parties is not protected by the Fourth Amendment.

- Do these publications represent how you will conduct matters if confirmed as General Counsel of CIA? Please respond with yes or no. If no, please explain.
- What is your view of the application of the *Carpenter* case to the Intelligence Community, specifically with regard to cell-site location and other geolocation information? Please be specific in terms of collection authorities, and please provide a classified response, if necessary.
- What is your view of the “third party doctrine,” after *Carpenter*, as it applies to the Intelligence Community? Please be specific in terms of collection authorities, and please provide a classified response, if necessary.

In its decision in *Carpenter v. United States*, 585 U.S. __ (2018), the Supreme Court declined to extend the so-called Fourth Amendment “third-party doctrine,” including as articulated in *United States v. Miller*, 425 U.S. 435 (1976), and *Smith v. Maryland*, 442 U.S. 735 (1979), to the particular type of information (cell-site location information, or CSLI) at issue in *Carpenter*. Distinguishing key third-party doctrine cases from the particular circumstances at issue in that case, the Court explained that these cases relied on several factors and applied those considerations to CSLI. The Court stated that it was not “disturb[ing] the application of *Smith* and *Miller*,” or “call[ing] into question conventional surveillance techniques and tools,” and that its decision was a “narrow one.”

The excerpts from the articles cited largely quote the Supreme Court’s opinion in *Carpenter v. United States*. They are therefore descriptive—which was the primary purpose of both publications—and, as such, would not necessarily resolve Fourth Amendment questions that may be presented to me if I am confirmed as CIA General Counsel.

I am not familiar with the manner in which *Carpenter v. United States* may have affected current Intelligence Community operations—in particular, with the manner in which the CIA may collect or use CSLI or other geolocation data, or with the manner in which the CIA may rely on the “third party doctrine” with respect to other collection. If confirmed, I look forward to better understanding

any impact *Carpenter*, or courts' recent Fourth Amendment case law, may have had on the Intelligence Community.

QUESTION 29:

Can the CIA ask a foreign entity or any other third party to undertake an activity that the CIA is not authorized to undertake itself?

The CIA may not request any person (including a foreign entity or any third party) to undertake activities that the CIA is prohibited by law from undertaking.

Presidential Policy Directive-28

QUESTION 30:

The *Policy and Procedures for CIA Signals Intelligence Activities* state: "Agency components shall consult with the Privacy and Civil Liberties Officer (PCLO) and the Executive Director of the Central intelligence Agency (EXDIR) or their designees on novel or unique SIGINT collection activities, and any significant changes to existing SIGINT collection activities, to ensure that there are appropriate safeguards to protect personal information." Do you commit to informing the full Committee with regard to any novel or unique SIGINT collection activities and the potential implications for U.S. person privacy interests?

If confirmed, I would support the agency, and coordinate with other relevant Intelligence Community agencies, to ensure full compliance with the obligation to keep the intelligence committees fully and currently informed with regard to SIGINT collection activities.

Privacy Shield

QUESTION 31:

In your publication *Movement on Section 702 of the Foreign Intelligence Surveillance Act (FISA)*, you note the potential impacts on the U.S.-E.U. Privacy Shield.

- Given the interim events that occurred after this publication, including those the White House announced publicly on March 25, 2022, what is your

current view of the steps that the U.S. needs to take regarding our national security laws in order to maintain the free and open transfer of data with the E.U.?

- How will you approach these matters if confirmed as General Counsel of the CIA? Please be specific, and please provide a classified response, if necessary.

In 2020, the Court of Justice of the European Union invalidated the European Commission's adequacy decision regarding the U.S.-E.U. Privacy Shield framework in its *Schrems II* decision, finding that U.S. law does not adequately protect personal data transferred to the United States from the European Union. The court focused, in particular, on its view about the need for additional safeguards to ensure that U.S. government access to personal data remains necessary and proportionate, as well as a new redress mechanism.

According to the recent joint statement by the United States and the European Commission, a new Trans-Atlantic Privacy Framework will respond to these concerns by putting in place new safeguards to ensure that signals surveillance activities are necessary and proportionate in the pursuit of defined national security objectives, establishing a two-level independent redress mechanism, and enhancing rigorous and layered oversight of signals intelligence activities.

If confirmed, I will assist the Intelligence Community in implementing the new framework and assessing any related legal issues.

Classification and Transparency

QUESTION 32:

What is the role of the Office of the General Counsel in ensuring that CIA classification decisions are consistent with Executive Order 13526?

The Office of General Counsel advises CIA personnel on the proper interpretation of executive orders, including Executive Order 13526.

QUESTION 33:

Executive Order 13526 provides that: "In no case shall information be classified, continue to be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or

administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security.”

- Do you agree with these prohibitions?

Yes.

- What is the role of the General Counsel in ensuring adherence to these rules?

I view it as the role of the General Counsel to help ensure compliance with these legal requirements.

QUESTION 34:

In a January 5, 2022, letter, DNI Haines wrote that “deficiencies in the current classification system undermine our national security, as well as critical democratic objectives, by impeding our ability to share information in a timely manner, be that sharing with our intelligence partners, our oversight bodies, or, when appropriate, with the general public.” Her letter further noted that “current prioritization given to remediating these issues and the resources dedicated to making tangible progress are simply not sufficient.” Do you share these views and, if so, would you make declassification reform, including investments in modernization technologies, a priority?

Since I do not currently work in the Intelligence Community, I cannot speak to the current prioritization and resources dedicated to remediating these important issues, but I share Director Haines’ views that it is critical for the Intelligence Community to be able to share information in a timely manner with intelligence partners, oversight bodies, and, when appropriate, the general public, consistent with the need to protect sensitive national security information. If confirmed, I would work to support Intelligence Community efforts to improve the declassification process and modernize the policies that govern classified information as needed.

QUESTION 35:

In its 2020 Report to the President, the Intelligence Security Oversight Office (ISOO) urged that: “The White House must begin a comprehensive interagency process, led by the NSC’s Records Access and Information Security directorate...

to review and update critical national security policies and authorities that govern the [Classified National Security Information] system,” including EO 13526, which was last updated in 2009. At the request of the National Security Council, the Public Interest Declassification Board (PIDB) has begun formulating recommendation for a new executive order to amend or replace EO 13526. What is your view of the need to update EO 13526 and will you ensure that the CIA cooperates fully with the interagency process led by the NSC?

As a general matter, I support efforts to review and update policies governing sensitive national security information as needed. If confirmed, I will work to ensure that the CIA is an active participant in any interagency process led by the National Security Council to update Executive Order 13526.

QUESTION 36:

The CIA currently publicly posts *Central Intelligence Agency Activities: Procedures Approved by the Attorney General Pursuant to Executive Order 12333*, and *Policy and Procedures for CIA Signals Intelligence Activities*. Will you ensure that the CIA continues to post these procedures as well as any modifications or superseding policies and procedures?

The CIA has made both its 2017 *Procedures Approved by the Attorney General Pursuant to Executive Order 12333* and its PPD-28 Section 4 policies and procedures publicly available. Director Burns agreed to continue this practice and to make publicly available any unclassified modifications to these procedures. If confirmed, I will help support the execution of these efforts.

QUESTION 37:

The ODNI releases to the public its *Annual Statistical Transparency Report Regarding the Intelligence Community’s Use of National Security Surveillance Authorities*. That report includes quantitative data on the impact of FISA collection and National Security Letters on U.S. persons. Do you agree that the American public also has an interest in quantitative data related to U.S. person information collected pursuant to EO 12333, including the amount of information collected; U.S. person queries; disseminations, maskings and unmaskings; and use in criminal proceedings?

I believe Americans have interests that are implicated when U.S. person information is collected by government entities, regardless of the particular means

of collection. I am not, however, familiar with the extent to which such data related to U.S. person information is compiled or what impediments may exist with respect to making such quantitative information publicly available. As a general matter, informing the public about the Intelligence Community's activities, consistent with the need to protect sensitive sources and methods, is important to maintaining accountability and trust, which I believe should be a priority. If confirmed, I would work to support such efforts and would be an advocate for them.

Whistleblowers and the Inspector General

QUESTION 38:

On October 22, 2019, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) sent a letter, signed by the inspectors general of sixty-eight government departments and agencies, to the Assistant Attorney General, disagreeing with the Office of Legal Counsel's opinion permitting the DNI to withhold from Congress a whistleblower complaint determined by the IC Inspector General to be an "urgent concern." The CIGIE letter, whose signatories included inspectors general from across the IC, noted that the Intelligence Community Whistleblower Protection Act does not grant the DNI discretion, but rather states that the DNI "shall" transmit such complaints to Congress. The *Consolidated Omnibus Appropriations Act, 2022*, signed into law on March 15, 2022, includes the *Fiscal Year 2022 Intelligence Authorization Act*, a provision of which reaffirms that the inspectors general shall have "sole authority" to determine whether a complaint or information is a matter of urgent concern. (Division X, Section 502) Does the language in the omnibus appropriations bill supersede the OLC opinion?

I have not studied the Office of Legal Counsel (OLC) opinion in question, but I believe the independence of federal inspectors general is critical to encouraging the prompt and appropriate resolution of allegations of governmental waste, fraud, abuse, mismanagement, and to protecting whistleblowers. As relevant to the CIA, the Fiscal Year 2022 Intelligence Authorization Act modifies Section 17(d)(5)(G) of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 3517(d)(5)(G), to give the Inspector General "sole authority to determine whether any complaint or information reported to the Inspector General is a matter of urgent concern" within the meaning of the statute. If confirmed, I will assist the CIA, as appropriate and consistent with my role and that of the CIA Inspector General, in implementing this provision of the law.

QUESTION 39:

Do you believe that CIA whistleblowers have all the protections they need to interact directly with the congressional intelligence committees?

If confirmed, I look forward to reviewing this question in light of current CIA practices and past experience at the agency, and to working with the Inspector General and this Committee on any reforms needed to protect CIA whistleblowers appropriately.

QUESTION 40:

50 U.S.C. § 3517(d)(5) states that a CIA whistleblower may contact the congressional intelligence committees directly only if the employee “obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.” Do you agree that this provision does not permit the Director to deny whistleblowers direct access to Congress altogether?

My initial impression is that Section 3517(d)(5)(D)(ii)(II) speaks to the secure method of contact with the intelligence committees. I have not, however, previously had the opportunity to consider this provision of the law, and would want to have the opportunity to review the statute more closely and consult with the CIA Office of General Counsel and Inspector General Ashton to better understand how the agency has historically interpreted and applied it before providing a definitive view on its scope. If confirmed, I would look forward to doing so.

QUESTION 41:

Please describe your understanding of the role of the CIA Inspector General, and the role of the CIA General Counsel in protecting the independence of the Inspector General.

The CIA Inspector General’s duties and responsibilities are set forth in Section 17 of the CIA Act of 1949 and include, among other things, the duty and responsibility to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the inspections, investigations, and audits of Agency programs and operations to ensure they are conducted efficiently and in accordance with applicable law and regulations. 50 U.S.C. § 3517I.

I believe the CIA General Counsel should have a strong working relationship with the CIA Inspector General, consistent with maintaining the appropriate independence of that office. If confirmed, I look forward to working with Inspector General Ashton.

QUESTION 42:

How would you resolve differences in the interpretation of law between the Office of General Counsel and the Inspector General?

If confirmed, I look forward to developing a close working relationship with Inspector General Ashton. The Inspector General's duties and responsibilities include the duty and responsibility to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the inspections, investigations, and audits of agency programs and operations to ensure they are conducted efficiently and in accordance with applicable law and regulations. 50 U.S.C. § 3517(e).

Although the CIA Inspector General has a counsel, Congress has recognized the CIA General Counsel as the agency's chief legal officer pursuant to 50 U.S.C. § 3520. *See* Pub. L. No. 111-259, § 425(f). If there were to be differences of opinion on matters of legal interpretation between the two offices, I would expect the Inspector General to raise those concerns with the General Counsel so that they can be resolved.

General Oversight

QUESTION 43:

Will you commit to ensuring that the Privacy and Civil Liberties Oversight Board is provided full access to all appropriate information it requests?

Yes. I share the views expressed by Director Haines and DNI General Counsel Fonzone during their confirmation hearings regarding the importance of the Privacy and Civil Liberties Oversight Board. If confirmed, I will work with the Director of the CIA and CIA's Privacy and Civil Liberties Officer to provide the Board the access to CIA information needed to allow it to perform its role.

QUESTION 44:

What is the role of the CIA General Counsel in ensuring that compliance issues are submitted to the Intelligence Oversight Board?

Section 1.6(c) of Executive Order 12333 states that the Director of the CIA must report to the Intelligence Oversight Board any intelligence activity that the Director has “reason to believe may be unlawful or contrary to executive order or presidential directive.” I understand that the Director of the CIA has assigned to the CIA’s General Counsel and Inspector General the responsibility to report to the Intelligence Oversight Board intelligence activities that they have reason to believe may be unlawful or contrary to executive order or presidential directive.

Analysis

QUESTION 45:

The CIA’s website states that the Agency’s mission is “to preempt threats and further U.S. national security objectives by... producing objective all-source analysis...”

- Is it appropriate for the CIA to produce subjective intelligence analysis advocating for policy positions in interagency and presidential decision processes?
- How would you, if confirmed, ensure that CIA remains objective and apolitical in its analysis and production?

Director Haines has described analytic objectivity as a core ethic for Intelligence Community analysis, and I agree. The role of CIA’s intelligence analysts is to present accurate, rigorous intelligence analysis to policymakers. If confirmed, I would help support the agency’s implementation and reinforcement of that core ethic in any manner that is appropriate to my role as General Counsel.

General

QUESTION 46:

Section 104A(d)(4) of the *National Security Act* includes, among the duties of the Director of the CIA: “perform such other functions and duties related to intelligence affecting the national security as the President or the Director of National Intelligence may direct.” The Director’s duties related to the CIA’s

collection and analytical missions are described in Sections 104A(d)(1) – 104A(d)(3). All covert action is governed by Section 503 of the Act. Please describe any “other functions and duties” that could be authorized under Section 104A(d)(4).

I am not familiar with the historical uses of the particular provision of the National Security Act referenced, if any, and would want to better understand the range of potential functions that it might encompass before advising on its scope. If confirmed, I look forward to learning more.

QUESTION 47:

As defined in Title 50, “the term ‘intelligence’ includes ‘foreign intelligence’ and ‘counterintelligence.’” (50 U.S.C. § 3003(1)) Title 50 also defines “national intelligence” as referring “to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States that – (A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and (B) that involves (i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use of weapons of mass destruction; or (iii) any other matter bearing on United States national or homeland security.” (50 U.S.C. § 3003(5))

- Do you interpret the term “intelligence” to include anything beyond “foreign intelligence” or “counterintelligence?” If so, what other kinds of intelligence do you believe fall under the term “intelligence?”
- What are the differences between “intelligence” and “national intelligence?” Please provide examples of something you would consider to be “intelligence” that is not “national intelligence,” and something that is “national intelligence” but not “intelligence.” Your examples can be included in a classified annex.

The National Security Act makes clear that the term “intelligence” in the statute includes both foreign intelligence and counterintelligence. 50 U.S.C. § 3003(1).

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. That determination is a fact-specific one. All “national intelligence,” on the other hand, would seem to fall within colloquial definitions of “intelligence” in the sense of “information.”

Past Work Experience

QUESTION 48:

In your response to the Committee Questionnaire, you wrote that your portfolio at the White House Counsel's Office from 2013 to 2015 "involved working closely with the National Security Council staff on legal policy issues, including matters of national security and intelligence policy." Please provide a description of matters that you worked on that are relevant to the Intelligence Community or are otherwise relevant to the position to which you have been nominated. Please respond through classified channels to the extent necessary.

During my time as a Special Assistant to the President and as an Associate Counsel in the White House Counsel's Office, I worked on a range of national security matters. 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.

QUESTION 49:

In your response to the Committee Questionnaire, you wrote that, as Counsel to the Assistant Attorney General for National Security, you "provided legal advice to the Department and interagency partners on national security matters affecting the law enforcement and intelligence communities." Please provide a description of matters that you worked on that are relevant to the Intelligence Community or are otherwise relevant to the position to which you have been nominated. Please respond through classified channels to the extent necessary.

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. 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.

QUESTION 50:

Please describe private sector legal work related to clients' connections to the Intelligence Community or work that is otherwise directly relevant to the position to which you have been nominated.

I do not recall working for any private sector clients on litigation, arbitrations, or investigations to which elements of the Intelligence Community (IC) were a party; particular contracts private sector clients held with IC elements; or meetings private sector clients held with IC elements. It is, of course, possible that some of the matters on which I worked may have had other connections to elements of the IC. For instance, it is possible that the private sector clients for which I did work (for instance, health care companies) had IC element customers, or that matters on which clients had interaction with the government came to the attention of members of elements of the IC (for instance, during cybersecurity breaches reported to the Federal Bureau of Investigation).

More generally, I would consider some of my private sector experience, such as advising clients on privacy and cybersecurity matters, to be part of the set of relevant experience that I would bring to the position if confirmed.

QUESTION 51:

What were your duties as Vetting Director for the PT Fund, Inc.?

I led the team that vetted potential nominees and appointees for the incoming administration.

QUESTION 52:

You listed dozens of other companies and individuals as clients, including two clients whose client relationships with Sidley are confidential. Have you ever knowingly provided representation to any client that works on behalf of a foreign government or has direct links to the governments of any of our adversaries, including China, Russia, and Iran?

To the best of my knowledge, I have not represented any client knowing that the person/entity was controlled by a foreign government, including the foreign governments of any of our adversaries. My response to Question 35 on the Committee's standard questionnaire includes all of the foreign clients I represented while at Sidley Austin. On March 25, 2022, I provided for the Committee under separate cover the identities of the two confidential clients mentioned in my response to Question 35, both of which are U.S.-based.

QUESTION 53:

Please describe your *pro bono* work.

At Sidley Austin I did pro bono litigation and regulatory compliance work—for instance, advising non-profits on cybersecurity and health-information privacy.

Air America

QUESTION 54:

Chairman Warner and Vice Chairman Rubio introduced the *Air America Act of 2022* (S. 407) on February 24, 2021. On February 2, 2022, the Committee on Homeland Security and Governmental Affairs (HSGAC) ordered the bill to be reported favorably with an amendment in the nature of a substitute.

- Do you support the bill, as reported out? Please answer yes or no. If no, please explain.

I am not familiar with the underlying facts regarding Air America and therefore do not have an informed position on the bill as drafted. If confirmed, I look forward to learning more about this issue.

- Do you agree that the CIA owned and operated Air America? Please answer yes or no. If no, please explain.

I do not have sufficient information to make a judgment at this time but look forward to learning more about the issue, if confirmed.

- If confirmed, and if the bill is enacted, will you support its execution in your capacity as CIA's General Counsel? Please answer yes or no. If no, please explain.

Yes, I will support the execution of all applicable laws consistent with my obligation to support and defend the Constitution.

QUESTIONS FROM SENATOR RUBIO

Past Work Experience

QUESTION 55:

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 below questions and provide an explanation if answered “yes.”

- Have you advised on immigration or border security matters?
- Did you advise on the termination of the Department of Justice's China Initiative?
- Did you advise on any aspect of the Administration's Afghanistan withdrawal?
- Have you advised on matters related to Russia's invasion of Ukraine and the U.S. response?
- Did you advise on the decision to remove the FARC from the Foreign Terrorist Organization list?
- Did you advise on the Administration's recent engagement with the Maduro regime in Venezuela?
- Are you advising on the Administration's engagement on a nuclear deal with Iran?

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

With respect to matters that come to the attention of the office, I may have awareness of the matter, attend related meetings or events, oversee the work of a Counsel to the Attorney General on the matter, or advise on associated Attorney General statements or actions—to take a few examples. 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 might be to ensure that the Attorney General has appropriate preparation from subject-matter experts.

QUESTION 56:

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.”

- In which capacity did you work on legal issues of national security policy from the White House Counsel’s Office?
- Did such work fall within the purview of the Counsel’s Office as opposed to the Legal Advisor to the NSC?
- Did you work on matters related to the Obama Administration’s policy toward Cuba? If so, please explain your involvement.
- You were a senior White House attorney during the 2015 negotiations on the Joint Comprehensive Plan of Action regarding concessions to the Islamic Republic of Iran, a state-sponsor of terror, in exchange for purported restrictions to Iran’s nuclear program.
 - To what extent did you advise on that matter and related matters?
 - Given your close work with NSC staff during that period, did you supervise or advise attorneys otherwise involved on the Iran deal? What about those on the NSC staff coalescing policy decisions for the President?

I was first an Associate Counsel in the White House Counsel’s Office and was then promoted to the Special Assistant to the President-level in the office. I worked

closely with the National Security Council (NSC) legal staff, but was not part of the NSC staff. I did not supervise other attorneys in this position.

For a description of types of national security matters on which I worked, please refer to my response to question 48.

QUESTION 57:

In response to question 35 on the questionnaire, you listed a China-based company called WuXi App Tec Co., LTD as a client. It is the parent company of Wu Xi Biologics, which the Chinese state media have called the “Huawei” of China’s pharma sector, and it has deep connections to China’s Communist Party-State. This company raises several concerns: First, the Chinese Government, in its zero-sum competition with the United States, considers the biotech sector as one of the key industries to develop through illegal tech transfer, subsidies, and economic espionage. In 2016, WuXi App Tec Co., LTD and Huawei signed a strategic collaboration agreement to jointly advance the collection and use of medical data, and launched the China Precision Medicine Cloud, which they said would support the Chinese government’s \$9.2 billion Precision Medicine Initiative. Second, WuXi App Tec Co., LTD talent recruitment has drawn on state, military, and private sector networks involving China’s Thousand Talents Program, the Academy of Military Medical Sciences, which is on the Entity List, and the Western Returned Scholars Association, which is supervised by the CCP’s United Front Work Department. WuXi App Tec Co., LTD’s 7,000-plus employees include more than 1,000 Party members. Third, Beijing has amassed the world’s largest collection of biodata, in part thanks to WuXi App Tec Co., LTD investments in the United States and Europe.

- What was the nature of your work for WuXi App Tec Co., LTD?

I advised the company about compliance with U.S. privacy laws.

- When did the work occur?

Between the end of September 2018 and February 2019.

- How many hours did you bill the client?

Under ten hours.

- Do you believe WuXi App Tec Co., LTD is controlled by a foreign government? If you believe it is not, please explain. If you believe it is, please explain why this representation was not included in your response to question 17A on the standard questionnaire.

I was not aware during the course of the representation or when I was filling out the standard questionnaire of any suggestion that WuXi App Tec Co., Ltd. is controlled by a foreign government.

QUESTION 58:

In response to Question 13 on the standard questionnaire related to published writings, speeches, and other published materials, you listed nine articles that you have published coauthored with current ODNI General Counsel Christopher Fonzone.

- Were you and Mr. Fonzone law partners at the time you coauthored each of these publications?

Mr. Fonzone and I both worked at the law firm Sidley Austin when we wrote the pieces on which we are listed as co-authors in Question 13 of the Questionnaire, but I was a Counsel at the firm until 2020, when I became a Partner.

- Did you contribute to Mr. Fonzone's representation of the PRC?

Consistent with my recollection, firm billing records confirm that I did not bill any time to any matter for the People's Republic of China (PRC). I do not recall Mr. Fonzone's representation of the PRC from my time at the firm.

- Did you contribute to his representation of Huawei?

Consistent with my recollection, firm billing records confirm that I did not bill any time to any matter for Huawei. In an abundance of caution, I note that I believe I was included in internal firm discussion about a new or potential engagement for the company.

China

QUESTION 59:

Do you agree that China, under control of the Chinese Communist Party, is engaging in a zero-sum game of economic and technological competition against the United States?

I share your concern. As Director Burns said during his confirmation hearing, “out competing China” is “key to our national security in the decades ahead.” And the Intelligence Community assessed in its 2022 Annual Threat Assessment that “Beijing sees increasingly competitive U.S.–China relations as part of an epochal geopolitical shift.”

QUESTION 60:

Do you agree that one of the primary goals of the Chinese Communist Party is to displace the United States and rewrite the international-rules based system?

Yes, U.S. intelligence agencies have assessed that the People’s Republic of China government (PRC), ruled by the Chinese Communist Party (CCP), is working to change global norms, as reflected in the Intelligence Community’s 2022 Annual Threat Assessment.

QUESTION 61:

What threat does the Chinese Communist Party pose to the national security of the United States?

My understanding is that the PRC poses threats to the United States and U.S. interests along multiple vectors, including through its efforts to steal U.S. trade secrets, conduct espionage, utilize malicious illegal cyber activity, and engage in malign influence and transnational repression.

QUESTION 62:

What is your assessment of the Chinese Communist Party’s tactics to achieve global dominance, particularly as it relates to its efforts within the United States?

Please refer to my response to question 61 above.

QUESTION 63:

Is the threat from the People’s Republic of China and the Chinese Communist Party different than those from other nation-state actors? Please explain.

Yes. Although I am not a China subject-matter expert, it is my understanding that the PRC’s tactics and effort across a range of activities, likely among other things, distinguish it from other nation-state actors.

QUESTIONS FROM SENATOR WYDEN

Office of the General Counsel

QUESTION 64:

In February 2014, the then-Acting CIA General Counsel filed a crimes referral with the Department of Justice against Senate Intelligence Committee staff. According to the CIA Inspector General, the referral was based solely on information provided by two Office of General Counsel attorneys and that the information was “inaccurate” and had “no factual basis.”

- What accountability should there be for drafting and filing of a false crimes report against congressional staff?
- How would you respond should a request or proposal for a crimes referral against Members of Congress or congressional staff come to you?

If I were to be asked to file such a crimes referral, I would take such request seriously and would give it my personal attention, including with respect to the accuracy of any of the information upon which it relies. Those responsible for such reports should make every effort to ensure that such reports are accurate and comply with all applicable procedures.

Human Rights

QUESTION 65:

In an August 16, 2015, letter, then-Director of the CIA John Brennan wrote that: “While we neither condone nor participate in activities that violate human rights standards, we do maintain cooperative liaison relationships with a variety of intelligence and security services around the world, some of whose constituent entities have engaged in human rights abuses.”

- Please describe your understanding of the legal issues associated with CIA liaison relationships with services whose constituent entities have engaged in human rights abuses. Are there circumstances in which those human rights abuses legally obligate the CIA to discontinue the liaison relationship?
- If a liaison serve were to use CIA-provided resources to engage in human rights abuses, would the CIA bear any legal responsibility?
- Would the CIA have a legal responsibility to end or modify its relationship with a liaison service in such a scenario?

If confirmed, I would treat such matters with utmost concern. If presented with such a question, I would consider the totality of the issue, not simply whether CIA, or individual officers, could bear legal responsibility but also whether continuing, modifying, or terminating the relationship is consistent with the agency's legal obligations and broader responsibilities; what notifications should be made; and the basis for CIA's understanding about the abuses, or potential abuses.

Detention and Interrogation

QUESTION 66:

Section 1045 of the *National Defense Authorization Act (NDAA) for Fiscal Year 2016* prohibits the use of any interrogation technique or approach or treatment related to interrogation not authorized by the Army Field Manual (AFM) or any modifications to the AFM, and states that the AFM may not authorize techniques that “involve the use or threat of force.”

- Is this provision of law binding on the CIA?

Yes.

- Do you agree that the CIA's former “enhanced interrogation techniques” would violate the AFM and any modification thereof?

The Army Field Manual (AFM) constitutes the totality of legally permissible interrogation techniques. Anything not permitted by the AFM—which includes all forms of torture or cruel, inhuman, or degrading treatment or punishment—is prohibited.

- To the extent the CIA participates in any updates of the AFM, do you agree to oppose any techniques that involve the use or threat of force?

Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 (NDAA for FY 2016) prohibits updating the AFM to include any techniques that “involve the use or threat of force.” I would therefore not only oppose updates that include any techniques that involve the use or threat of force but advise my clients that such techniques are not legally permissible consistent with the NDAA for FY 2016.

QUESTION 67:

The statutory prohibition on interrogations not consistent with the AFM apply to any individual “in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.”

- Please describe the factors that would indicate whether a detainee was in the “effective control” of any officer, employee, or other agent of the United States Government.
- Please describe how you would define whether a detainee is “detained within a facility owned, operated, or controlled by a department or agency of the United States.”

If confirmed, I would want to look at this fact-specific question closely, after studying the law and text of the statute, and consulting with experts and attorneys from other departments and agencies, particularly since the CIA is prohibited from operating detention facilities pursuant to Executive Order 13491.

QUESTION 68:

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

During his confirmation process, Director Burns stated that he believed the CIA’s former enhanced interrogation techniques included torture, and I believe such techniques are clearly prohibited by U.S. law.

QUESTION 69:

Executive Order 13491 prohibits the CIA from operating any detention facilities other than “facilities used only to hold people on a short-term transitory basis.” Do you support this prohibition?

Yes.

QUESTION 70:

Do you agree that CIA officers should not participate in interrogations of detainees in liaison custody when those officers witness, know of, or otherwise suspect the torture or mistreatment of detainees?

In addition to complying with all applicable legal prohibitions, I agree with Director Burns’ position that CIA officers should not participate in detainee debriefings in liaison custody if the CIA has received credible information that detainees in liaison custody have been tortured or mistreated.

Executive Order 12333

QUESTION 71:

The Privacy and Civil Liberties Oversight Board’s report on Executive Order 12333 report stated: “As agencies implement their new or revised Attorney General-approved guidelines, such lower-level policies likewise must be updated to reflect new privacy and civil liberties safeguards. For instance, some agencies’ new or revised Attorney General-approved guidelines for the first time address ‘bulk collection.’ As a result, activity-specific policies that relate to such activities must be updated to address the safeguard now afforded by the revised procedures, as well as PPD-28 and other intervening developments in the law. These also may include, for example, new or revised training requirements and updated database user manuals.” Do you agree to prioritize the development of updated privacy and civil liberties safeguards, as well as policies, training, manuals and other guidance to ensure that EO 12333 activities are conducted consistent with the AG Guidelines and the public’s understanding of the legal and policy framework for such collection?

Yes, I would support the development of these materials in coordination with the CIA's Privacy and Civil Liberties Officer.

QUESTION 72:

The Privacy and Civil Liberties Oversight Board's report stated that IC elements should review their legal and constitutional analysis regularly and revise them as necessary to reflect changes in the law and technology. For example, technological changes can affect the scope and nature of U.S. person information collected or how the IC queries and retains U.S. person information. How will you ensure that the CIA regularly reviews its legal and constitutional analysis?

If confirmed, I will consult with the lawyers in the Office of General Counsel and CIA's Privacy and Civil Liberties Officer on existing practices for reviewing legal analyses to ensure that they adequately account for the need to reflect legal and technological changes.

QUESTION 73:

Would you agree to make public the CIA's interpretation of the U.S. Supreme Court's *Carpenter* case, to the extent such interpretation provides a legal framework for CIA activities?

I look forward, if confirmed, to reviewing any existing CIA guidance on the *Carpenter* case and to working with colleagues to seek to provide information about significant legal frameworks to the public to the extent consistent with the need to protect sensitive national security information.

QUESTION 74:

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

I believe that the privacy interests of Americans must be carefully protected. If confirmed, I will have an opportunity to better understand current methods of obtaining information and will be able to determine whether changes are advisable.

QUESTION 75:

During their confirmation processes, DNI Haines, CIA Director Burns and ODNI General Counsel Fonzzone committed to making public a framework to help the public understand the circumstances under which the IC purchases commercially available information and the legal basis for doing so. Do you agree to support efforts to maximize public transparency on this topic?

Yes.

Lethal authorities

QUESTION 76:

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

Decisions to engage in such a U.S. government operation are some of the most serious the government can confront. It is essential that any such operation comply with the law, and I believe that continued transparency on these matters is important.

Transparency

QUESTION 77:

What is your view on “secret law,” meaning classified legal interpretations that are inconsistent with the public’s reading of the law as informed by the plain meaning of statutes, jurisprudence, executive orders and associated guidelines, and public testimony?

- If confirmed, how would you approach any such inconsistencies?
- Would you support the declassification and public release of any legal interpretation that provides a basis for intelligence activities but is inconsistent with the public’s understanding of the law?

If confirmed, I will support efforts to enhance the public’s understanding of significant Intelligence Community legal frameworks, consistent with the need to protect sensitive national security information. I believe this is an important part of the Intelligence Community’s accountability to the American people.

Past Work Experience

QUESTION 78:

During your service at the White House Counsel's office, did you participate in any discussions related to the CIA's improper accessing of Senate Intelligence Committee staff files and records or the CIA's crimes report against Committee staff? If so, please elaborate on your role.

For a description of types of national security matters on which I worked at the White House Counsel's Office, please refer to my response to question 48.

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 Fonzone 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.