

**Responses To Additional Pre-Hearing Questions For John C. Demers Upon  
His Nomination To Be Assistant Attorney General for the  
National Security Division, Department of Justice**

*Keeping the Intelligence Committee Fully and Currently Informed*

**QUESTION 1:** Section 502 of 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 not only to the Director of National Intelligence (DNI) but also to "the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities." Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall "furnish to the congressional intelligence committees any information or material" concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. Finally, 28 C.F.R. § 0.72(a)(1) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the "briefing] of Congress, as appropriate, on matters relating to the national security activities of the United States[.]"

- a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

**RESPONSE:** The national security threats posed by our adversaries, be they terrorists or nation states, will continue over long periods of time. And government operations to counter these threats rely on the predictable availability of tools and resources, most of which are provided by the Congress. To support the continued use of these tools, the public needs assurance that they are being used appropriately and effectively. Because certain government operations are necessarily confidential or classified, much of this assurance comes from the oversight conducted by the intelligence committees. Section 502 of the National Security Act of 1947 reflects this reality. It imposes an obligation on the Director of National Intelligence and the heads of all agencies involved in intelligence activities to keep the congressional intelligence committees "fully and currently informed of all intelligence activities . . . including any significant anticipated intelligence activity and any significant intelligence failure." The Act also provides that this responsibility be exercised "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." These obligations apply to intelligence activities undertaken by the FBI and DEA components that are part of the Intelligence Community. The Attorney General, like all department heads, has responsibility for ensuring that Intelligence Community elements within the Department fulfill this obligation with respect to their activities.

- b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

**RESPONSE:** The FBI and DEA have obligations to keep the congressional intelligence committees fully and currently informed about their intelligence activities, as set forth in Section 502 of the National Security Act. These pertain to certain activities of the FBI's National Security Branch and the Drug Enforcement Administration (DEA)'s Office of National Security Intelligence, both of which are Intelligence Community elements.

- c. What is your understanding of the Attorney General's obligation to provide to the congressional intelligence committees any information or material concerning the legal basis for intelligence activities or covert actions, which either committee requests in order to carry out its legislative or oversight responsibilities?

**RESPONSE:** The congressional intelligence committees in particular have a unique and important role in authorizing and overseeing the Executive Branch's intelligence activities. To facilitate that role, it is important for the committees to receive timely information concerning the legal basis for intelligence activities or covert actions, as Sections 502 and 503 provide. The intelligence agencies themselves are required to provide information or material relating to their own intelligence activities to the committees as set forth in the National Security Act. The Attorney General has responsibility for ensuring that Intelligence Community elements within the Department fulfill this obligation with respect to their activities.

- d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to fulfill its intelligence authorization and oversight functions. Do you agree that the Department and the FBI should fully notify and brief the congressional intelligence committees on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

**RESPONSE:** Yes. I agree that the Department, including the FBI, should fully notify and brief the congressional intelligence committees on potential counterterrorism and counterintelligence threats to the United States, as well as the Department's intelligence-related activities to thwart such threats.

- e. The Committee's legislative and oversight responsibilities include assessing the utility and effectiveness of counterterrorism and counterintelligence authorities, as well as the legality of those authorities as applied. Do you agree that the Department's and FBI's notifications and briefings should include detailed information on these authorities, as well as their use in ongoing and completed investigations?

**RESPONSE:** Yes. I agree that the notifications and briefings of the Department, including the FBI, should include detailed information on these authorities. These intelligence briefings must be conducted in a way that keeps the intelligence committee fully informed as required, consistent with law enforcement and intelligence

responsibilities. And they provide the public with much of the confidence it needs to know that the authorities are being used appropriately and effectively.

***Liaison to the Director of National Intelligence***

**QUESTION 2:** Pursuant to 28 U.S.C. § 507A(b)(2), the AAG/NS "shall serve as primary liaison" to the DNI for the Department.

- a. What is your understanding of how past AAG/NS's have performed this responsibility? Describe the principal ways in which the AAG/NS should carry out this responsibility and the principal matters that the AAG/NS should address in performing this responsibility.

**RESPONSE:** As the Department's primary liaison to the DNI, the AAG/NS and, by extension, NSD as a whole, works closely with the Office of the Director of National Intelligence (ODNI) and the Office of General Counsel for ODNI. NSD was created to bring together law enforcement and intelligence efforts to counter national security threats. Coordinating and deconflicting these efforts is of great importance, and the AAG/NS plays a critical role in ensuring that intelligence equities are appropriately considered when making decisions in law enforcement matters, and similarly, ensuring that equities related to criminal investigations and cases are appropriately considered when making decisions in intelligence matters. This responsibility is best carried out through regular consultations and coordination with ODNI and its Office of General Counsel, thereby facilitating protection of national security consistent with the law.

- b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your respective understandings of that responsibility? If so, please describe.

**RESPONSE:** During my time as Deputy Assistant Attorney General at the NSD, I worked closely with ODNI, primarily with the Office of General Counsel, on matters ranging from the Foreign Intelligence Surveillance Act (FISA) Amendments Act and the rewrite of Executive Order 12333 to the Attorney General procedures governing the activities of the intelligence community that relate to U.S. persons. I was also involved in discussions weighing intelligence community equities in the decisions to prosecute. I have not yet had the opportunity to discuss our respective understandings of this responsibility with the DNI or his staff, but look forward to doing so should I be confirmed.

***Priorities of the National Security Division and the Attorney General***

**QUESTION 3:** Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the NSD as a whole? If so, please describe those expectations.

**RESPONSE:** No, the Attorney General has not conveyed any specific expectations to me, although we have discussed in general terms the need to work to counter the threat from cyber operations, the Department's public announcement to pursue leak investigations, as well as the need for NSD to work effectively with the U.S. Attorney's offices.

**QUESTION 4:** Based on your experience in, and current understanding of, the NSD, please provide any observations or recommendations related to the strengths or weaknesses of the NSD, including its organization, responsibilities, personnel, allocation of resources, and any other matters that you believe are relevant to strengthening the NSD.

**RESPONSE:** Having been in the private sector for almost nine years, I do not have any recommendations concerning the organizational strengths and weaknesses of NSD. I am aware that the Division has focused increasingly on cyber since my time there and in light of the growing importance of threats related to cyber, I am looking forward to ensuring that the Division has the right structure and resources to counter those threats.

#### *Oversight of Intelligence Activities*

**QUESTION 5:** Pursuant to 28 C.F.R. § 0.72(17), the AAG/NS shall "[p]rovide oversight of intelligence, counterintelligence, or national security matters by executive branch agencies to ensure conformity with applicable law, executive branch regulations, and Departmental objectives and report to the Attorney General on such activities."

- a. What is your understanding of NSD's oversight role, including the manner in which it has been exercised, concerning the FBI's intelligence activities?

**RESPONSE:** During my time at NSD, the Division created a dedicated Oversight Section in its Office of Intelligence. The Section oversees both the intelligence community's use of FISA and more broadly the FBI's national security investigations. The Section also ensures that the Foreign Intelligence Surveillance Court and Congress are informed of identified instances of FISA-related non-compliance. Furthermore, the Division works to approve the Executive Order 12333 guidelines that govern the U.S. person activities of the Intelligence Community.

- b. What is your understanding of the NSD's oversight role undertaken in the offices of United States Attorneys, including the manner in which it has been exercised?

**RESPONSE:** Based upon my experience as a Deputy Assistant Attorney General for the NSD, my understanding is that NSD is responsible for ensuring that national security activities conducted by United States Attorney's Offices are coordinated as part of a national program. To fulfill that responsibility, NSD supervises the application of most federal criminal laws related to counterterrorism and counterespionage. Through its authority to approve the use of certain statutes in national security prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating national security threats. NSD also ensures that the

Department's national security activities are coordinated with other members of the Executive Branch's national security apparatus.

- c. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning the IC's intelligence activities outside of the Department?

**RESPONSE:** Based upon my experience as a Deputy Assistant Attorney General for the NSD, my understanding is that NSD exercises its oversight responsibilities with respect to elements of the Intelligence Community outside the Department of Justice in several ways. First, through its role as the government's representative before the Foreign Intelligence Surveillance Court, NSD reviews and submits all FISA applications from outside the Department and monitors compliance by the elements of the Intelligence Community with orders from the FISC. Together with ODNI, NSD reviews acquisition under Section 702 of FISA to ensure compliance with targeting and minimization procedures established pursuant to the statute. Additionally, NSD performs oversight through its role as the liaison to the Director of National Intelligence. In that role, NSD reviews policies that require consultation and approval by the Attorney General under Executive Order 12333. Lastly, NSD, along with other Department components, may participate in National Security Council policy development and decision-making meetings in which intelligence activities are subject to legal and policy discussion.

- d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

**RESPONSE:** I cannot comment whether improvements are needed because I have not been with NSD for almost nine years. If confirmed, however, I look forward to managing the important oversight function of the Division and will make any needed changes.

### *Foreign Intelligence Surveillance Act*

**QUESTION 6:** Pursuant to 28 C.F.R. § 0.72(6), the AAG/NS shall administer the Foreign Intelligence Surveillance Act (FISA).

- a. What responsibility does the NSD have with regard to ensuring that representations made to the United States courts, both by other Department elements and by Intelligence Community (IC) elements, are accurate and complete with regard to intelligence activities and other classified matters? What responsibility does NSD have to correct any inaccurate or incomplete representations? Please describe how NSD fulfills this responsibility.

**RESPONSE:** NSD has the responsibility to ensure that the Department's representations in court are accurate, and to do its best to ensure that the same is true of representations made by the Intelligence Community in matters handled by NSD.

If there are mistakes, NSD must inform the courts promptly and work with the Intelligence Community to correct the mistakes. To fulfill this responsibility, NSD attorneys must work diligently to understand the facts of intelligence activities and other national security-related matters that may be at issue in litigation or other matters for which they are responsible.

- b. Based on your experience in and current understanding of NSD, what improvements, if any, would you make to the administration of FISA, in terms of policies, resources, technology, and relations with both the Foreign Intelligence Surveillance Court (FISC) and IC elements?

**RESPONSE:** I cannot comment whether improvements are needed because I have not been with NSD for almost nine years. If confirmed, I am looking forward to ensuring that the Division maintains a strong relationship with the FISC and that the Division has the appropriate policies, resources and technology.

- c. What is the role of NSD in the declassification of FISC opinions? What changes, if any, would you make to this process?

**RESPONSE:** Because I am not currently working at the Department, I am not privy to the current role of NSD in the declassification of FISC opinions.

- d. Title VII of the FISA Amendments Act of 2012 is set to expire on December 31, 2017. Do you support reauthorization for a period of years or making these provisions permanent? Please provide the principal reasons for your support.

**RESPONSE:** I support permanent reauthorization of this law. During my prior time at the Division, I worked closely with the staff of this Committee to draft this law. I believe the law provides the Intelligence Community with the speed and agility that it needs to counter the serious threats to our national security, and that it contains important protections for the civil liberties of Americans while ensuring appropriate oversight by all three branches of government. My understanding from public testimony is that the Intelligence Community views Section 702 as a critical tool and that, after a thorough review, the Privacy and Civil Liberties Oversight Board determined that there have been no intentional misuses of this authority. Thus, I support its reauthorization.

### *Protection of Classified Information*

**QUESTION 7:** Describe your understanding of the personnel resources that NSD should devote to the prosecution of unauthorized disclosures of classified information, and how the NSD should divide responsibility on these matters with the Criminal Division. Please describe any recommendations related to prosecutions connected to unauthorized disclosures of classified information with regard to Department policies and resources.

**RESPONSE:** Unauthorized disclosures of classified information can pose a serious risk to the nation's security, including to its sources of information and methods of information gathering. Effective enforcement of laws forbidding such disclosure has both a specific and general deterrent effect. That said, because I have not been with the Department for almost nine years, I am not privy to the personnel resources the NSD uses to investigate and prosecute unauthorized disclosures of classified information. Nor do I know how responsibility for these matters is shared with the Criminal Division.

**QUESTION 8:** Pursuant to 28 C.F.R. § 0.72(a)(1), the AAG/NS has the responsibility to advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security. In addition, pursuant to 28 C.F.R. § 0.72(a)(7), the AAG/NS has the responsibility to prosecute crimes involving national security, foreign relations, and terrorism.

- a. Describe your understanding of the personnel resources within the NSD that should be devoted to the prosecution of media leak cases, and how the NSD should divide responsibility on these matters with the Criminal Division.

**RESPONSE:** Because I have not been with the Department for almost nine years, I do not know what personnel resources the NSD uses to investigate and prosecute media leak cases. Nor do I know how responsibility for these matters is shared with the Criminal Division.

- b. Describe your understanding of the role that the NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the United States courts of appeals.

**RESPONSE:** I did not work on media leak prosecutions during my last time at NSD, and, because I have not been with the Department for almost nine years, I am not privy to the role that NSD has played in media leak prosecutions in United States district courts and on appeal to the United States courts of appeals.

- c. Are there any steps that the Department could take to increase the number of individuals who are prosecuted for making unauthorized disclosures of classified information to members of the news media? If so, please describe.

**RESPONSE:** Because I have not been with the Department for almost nine years, I am not familiar with the resources and investigative techniques the Department is utilizing, or other steps the Department may be taking, to combat unauthorized disclosures of classified information. I look forward to learning more about the steps NSD and the Department are taking and further studying this issue to determine whether more should be done.

- d. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

**RESPONSE:** Because I have not been in Government or with the Department for almost nine years, I am not familiar with the steps the Department and U.S. government as a whole may be taking to prevent the unauthorized disclosures of classified information. I look forward to learning more about the steps the Department and government are taking and further studying this issue to determine whether more should be done.

- e. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized removal and retention of classified information from occurring? If so, please describe.

**RESPONSE:** Because I have not been with the Department for almost nine years, I am not familiar with the steps the Department and U.S. government as a whole may be taking to prevent the unauthorized removal and retention of classified information. I look forward to learning more about the steps the Department and government are taking and further studying this issue to determine whether more should be done.

- f. Please describe your understanding of the NSD's prepublication review responsibilities and the administrative and judicial review, which is available to an officer or employee, or former officer or employee, with respect to the Department's exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

**RESPONSE:** While I was last there, NSD reviewed the manuscripts of several current or former employees before publication to ensure that no classified information was inadvertently released. Because I have not been at the Department for almost nine years, I do not have an understanding of NSD's current prepublication review responsibilities, whether employees are adhering to their responsibilities, or of the administrative and judicial review of the Department's exercise of its prepublication authorities.

### *Obtaining Approvals from the Department/National Security Undercover Operations*

**QUESTION 9:** In general, if a particular investigative authority has been underutilized because of governmental administrative burdens, are you committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority?

**RESPONSE:** Yes. If confirmed, I am committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority.

- a. What is your understanding of how long it takes for the FBI to obtain authority for exemptions in national security undercover operations?

**RESPONSE:** Because I am not currently working at the Department, I do not know how long it takes for the FBI to obtain authority for exemptions in national security undercover operations.



- b. What additional steps should the Department take to ensure to eliminate unnecessary delays?

**RESPONSE:** Because I am not currently working at the Department, I do not know the current process, or whether there are additional steps the Department should take to avoid unnecessary delay. If confirmed, I look forward to working on this issue and ensuring that there are no unnecessary administrative burdens.

### *Counterterrorism Prosecutions*

**QUESTION 10:** Pursuant to 28 C.F.R. § 0.72(a)(8), the AAG/NS has the responsibility to "[p]rosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts[.]"

- a. Describe your understanding of the personnel resources that NSD should devote to the prosecution of terrorism cases.

**RESPONSE:** The Department's highest priority is protecting our nation against acts of terrorism, espionage and other national security threats, and NSD plays a critical role in achieving that mission. Because I am not currently working at the Department, however, I am not privy to the personnel resources of NSD that are dedicated to the prosecution of terrorism cases and have no views on whether they are correctly allocated in light of competing responsibilities.

- b. Describe your understanding of the role that the NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the United States courts of appeals.

**RESPONSE:** Based upon my experience as a Deputy Assistant Attorney General for the NSD, NSD has played a key role since its inception in terrorism prosecutions in the United States district courts. Since I left, the Division has added an appellate capability in national security cases. NSD is responsible for ensuring that national security activities conducted by United States Attorney's Offices are coordinated as part of a national program. To fulfill that responsibility, NSD supervises the application of most federal criminal laws related to counterterrorism. Through its authority to approve the use of certain statutes in terrorism prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating terrorism threats. NSD also ensures that the Department's counterterrorism activities are coordinated with other elements of the Intelligence Community.

- c. Describe what role NSD will play, if any, in prosecutions before military commissions.

**RESPONSE:** NSD attorneys support the work of the military prosecutors before the military commissions, and NSD is responsible for handling related appeals to the U.S.

Court of Appeals for the District of Columbia. I expect that work to continue as the Division seeks justice for those, and the families of those, who died on September 11, 2001, and in other attacks.

### *Counterespionage Prosecutions*

**QUESTION 11:** Pursuant to 28 C.F.R. § 0.72(a)(7), the AAG/NS has the responsibility to "[p]rosecute federal crimes involving national security, foreign relations and terrorism[.]"

- a. Describe your understanding of the personnel resources that NSD should devote to the prosecution of espionage cases.

**RESPONSE:** I understand that the Department's highest priority is protecting our nation against acts of terrorism, espionage and other national security threats, and that NSD plays a critical role in achieving that mission. Because I am not currently working at the Department, however, I am not privy to the personnel resources of NSD that are dedicated to the prosecution of espionage cases and have no views on whether they are correctly allocated in light of competing responsibilities.

- b. Describe your understanding of the role that the NSD has played since its inception in espionage prosecutions in United States district courts and on appeal to the U.S. courts of appeals.

**RESPONSE:** Based upon my experience as a Deputy Assistant Attorney General for the NSD, NSD has played a key role since its inception in espionage prosecutions in the United States district courts. Since I left, the Division has added an appellate capability in national security cases. My understanding is that NSD is responsible for ensuring that national security activities conducted by United States Attorney's Offices are coordinated as part of a national program. To fulfill that responsibility, NSD supervises the application of most federal criminal laws related to espionage. Through its authority to approve the use of certain statutes in espionage prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating the threat of espionage. NSD also ensures that the Department's counterintelligence activities are coordinated with other elements of the Intelligence Community.

**QUESTION 12:** For each of the following, describe specifically how your experiences will enable you to serve effectively as the AAG/NS. Include within each response a description of issues relating to the NSD that you can identify based on those experiences.

- a. Vice President and Assistant General Counsel, Regulatory & Government Law, at The Boeing Company;

**RESPONSE:** As a vice president in the law department at the Boeing Company, I have gained valuable experience advising the business on achieving its objectives consistent with applicable law and policy, hiring and managing groups of lawyers, and allocating

resources to meet the organization's top priorities. I have developed a close relationship with the business leaders so that I could provide early and on-going advice and counsel, rather than legal "sign-off" (or not) when a policy or plan is already well formulated. I have participated in a variety of legal matters including investigations, litigation and commercial negotiations. I have also been responsible for trade controls, anticorruption and other compliance matters, which has helped me learn how to design and operate an effective compliance program. These lessons are applicable to compliance in other subject matter areas as well. During my time at Boeing, I have worked on several subject matters areas that will relate to my work at the Division, including export controls and some aspects of cyber security.

- b. Deputy Assistant Attorney General for the Office of Law and Policy, and Senior Counsel to the Assistant Attorney General, for the NSD at the Department; and

**RESPONSE:** My work as a Senior Counsel and Deputy Assistant Attorney General in NSD is most directly relevant to serving effectively as AAG/NS. In that prior capacity, I worked on a variety of national security legal issues, including those involving surveillance law and the Fourth Amendment to the U.S. Constitution, other investigative authorities including those under Executive Order 12333 and the National Security Letter statutes, and cyber operations. I was closely involved in the drafting and negotiation of the Foreign Intelligence Surveillance Act of 2008, and worked on minimization procedures and internal investigative guidelines. I also worked closely with various agencies of the Intelligence Community, including the Federal Bureau of Investigations, the National Security Agency, and the Central Intelligence Agency. As a result of that work, I am familiar with many of the issues facing the Division.

- c. Attorney Advisor for the Office of Legal Counsel at the Department.

**RESPONSE:** This job was my introduction to the Department and how it operates. I was also able to dive deeply into a variety of legal issues, although few that related directly to NSD. My experience at OLC, like that of clerking, trained me to think carefully about specific and difficult legal issues, and how to reconcile competing authorities and views. This is experience that served me well later at NSD when looking at particular legal and constitutional issues involving surveillance law.