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DISCUSSION WITH THE INTELLIGENCE COMMUNITY INSPECTOR  
GENERAL

Thursday, September 19, 2019

U.S. House of Representatives,  
Permanent Select Committee on Intelligence,  
Washington, D.C.

The committee met, pursuant to call, at 9:00 a.m., in  
Room HVC-304, Capitol Visitor Center, the Honorable Adam  
Schiff (chairman of the committee) presiding.

Present: Representatives Schiff, Himes, Sewell, Carson,  
Speier, Quigley, Swalwell, Castro, Heck, Welch, Maloney,  
Demings, Krishnamoorthi, Nunes, Conaway, Turner, Wenstrup,  
Stewart, Stefanik, Hurd, and Ratcliffe.

Staff Present: [REDACTED]

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1 THE CHAIRMAN: Okay. Why don't we get started?

2 And just to remind members, we are in an unclassified  
3 session. So we are in closed session, but we are  
4 unclassified. If there is a need at any point to go to a  
5 classified session, we can make arrangements for that.

6 Mr. Atkinson, the committee is grateful that you have  
7 accepted our invitation to attend this bipartisan committee  
8 briefing today on short notice. We are deeply appreciative  
9 of the efforts you have undertaken on the matter of a  
10 whistleblower disclosure that was submitted to you on  
11 August 12, and we thank you for keeping us fully and  
12 currently informed.

13 One of the primary most sacrosanct responsibilities of  
14 the congressional Intelligence Committees and of any  
15 oversight committee in Congress is to ensure that Federal  
16 employees and contractors who witness serious misconduct in  
17 the government can responsibly disclose that information so  
18 the matter can be appropriately remediated and can do so with  
19 necessary protections from reprisal. This is our lawful  
20 responsibility and our moral responsibility and is also good  
21 government.

22 Within the Intelligence Community, this process is  
23 especially important to prevent the unlawful and damaging  
24 disclosures like those that others have made. Without a  
25 functioning whistleblower process, we risk people taking

UNCLASSIFIED, [REDACTED]

1 matters into their own hands to expose the wrongdoing or we  
2 risk gross misconduct or illegal activity remaining hidden.

3 These concerns are at the center of our concern at the  
4 extraordinary departure from precedent and law by the Acting  
5 Director of National Intelligence, Joseph Maguire.

6 On September 9, Mr. Atkinson, in his capacity as  
7 Intelligence Community Inspector General, informed the  
8 committee in a letter of the existence of a whistleblower  
9 complaint that had been reported to his office on August 12  
10 and should have been transmitted to the committee no later  
11 than September 2 as required under the statute governing  
12 Intelligence Community whistleblower disclosures.

13 As required, upon receiving the complaint, Mr. Atkinson  
14 and his team undertook a preliminary view during a 14-day  
15 window specified in the statute. Mr. Atkinson determined  
16 that the allegation of wrongdoing met the statutory  
17 definition of "urgent concern" and concluded based on  
18 investigative steps taken by his office that there were  
19 reasonable grounds to believe that the information relating  
20 to the urgent concern appeared credible.

21 On August 26, at the end of the 14-day timetable, the  
22 IC IG provided the complaint and his credibility  
23 determination to the Acting DNI and his office. This  
24 triggered a 7-day period within which the DNI is required by  
25 law to then transmit the complaint, the IC IG's

UNCLASSIFIED, [REDACTED]

1 determination, and any separate comments the DNI may have to  
2 the Intelligence Committees.

3 That never happened. Instead, the DNI, in violation of  
4 the terms of the statute and for the first time in memory,  
5 refused to transmit a credible "urgent concern" whistleblower  
6 complaint to the committee.

7 In subsequent letters, first in response to a letter I  
8 sent on September 10 and then following the subpoena issued  
9 on September 13, the Office of the Director of National  
10 Intelligence has acknowledged that the Acting DNI, in  
11 consultation with the Department of Justice, overruled  
12 Mr. Atkinson's independent determination and concluded that  
13 the whistleblower complaint was not required to be provided  
14 to Congress.

15 Consistent with his independent obligations under the  
16 statute, Mr. Atkinson sent on Tuesday a report to the  
17 committee, informing us that he has been unable to resolve  
18 differences with the DNI, affecting the execution of his  
19 duties, and that he has reached an impasse.

20 In particular, Mr. Atkinson underscored to the committee  
21 that the whistleblower disclosure, quote, "relates to one of  
22 the most significant and important of the DNI's  
23 responsibilities to the American people," unquote.

24 This breach of law and practices resulted in a cascade  
25 of negative consequences that threaten to undermine the

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1 independence of the IC IG, the integrity of the whistleblower  
2 process, and the trust of members of the IC, whose confidence  
3 in our system will be shaken.

4 Preserving the integrity and independence of the  
5 whistleblower process and protections is a fundamental  
6 obligation of the committee. And we are therefore grateful  
7 to hear from Mr. Atkinson today, who was appointed by the  
8 Senate to his independent role in May 2018. Prior to his  
9 appointment, Mr. Atkinson spent over 15 years at the  
10 Department of Justice in various capacities as a prosecutor.  
11 Mr. Atkinson has been a champion of whistleblower rights, and  
12 we appreciate his appearance today.

13 One note on the format. Today's briefing will be  
14 relatively informal, but it will also be transcribed. The  
15 ranking member and I will ask questions; we will recognize  
16 members for questions. I may have my staff do some of the  
17 questions on our side. And I would suggest that we use the  
18 model we have for interviews and have a certain time period  
19 for the majority, then minority, and go back and forth.

20 At this point, let me yield to the ranking member for  
21 any comments he would like to make.

22 MR. NUNES: Thank you.

23 Mr. Atkinson, thank you for your appearance today. The  
24 committee much values the work of your office and the work of  
25 all inspectors general across the Intelligence Community. We

1 appreciate your regular appearances before the committee and  
2 your willingness to keep the committee informed of your work.

3 The committee, furthermore, respects the rights of  
4 whistleblowers to disclose information to the IGs and to the  
5 congressional Intelligence Committees.

6 So I appreciate you being here and look forward to you  
7 taking questions.

8 Mr. Chair, before I yield back, just so I have an  
9 understanding of the lay of the land here, are you going to  
10 do the typical 5 minutes, 5 minutes, or what is your plan?

11 THE CHAIRMAN: I would suggest, because the process is  
12 more technical, that we go 30 minutes and then 30 minutes.

13 MR. NUNES: So you are going to start now with  
14 30 minutes.

15 THE CHAIRMAN: That would be my recommendation.

16 MR. NUNES: Okay. I just want to make sure it was  
17 clear.

18 THE CHAIRMAN: Yeah.

19 MR. NUNES: Okay. With that, I will yield back.

20 THE CHAIRMAN: Okay. I thank the ranking member.

21 Mr. Atkinson, do you have an opening statement to make?

22 MR. ATKINSON: Thank you, Chairman Schiff and Ranking  
23 Member Nunes. I do have an opening statement to make. It  
24 will probably take about 15 minutes.

25 As an inspector general, one of my messages to the

1 workforce at the Intelligence Community is to speak up, and  
2 so it is the same message here: Please speak up. If you  
3 have questions, you know, please feel free to ask them.

4 Good morning. My name is Michael Atkinson. I am the  
5 Inspector General of the Intelligence Community.

6 I also want to introduce Robin Ashton and [REDACTED]  
7 [REDACTED]. Ms. Ashton is the Principal Deputy Inspector General  
8 of the Intelligence Community, and [REDACTED] is [REDACTED]  
9 [REDACTED]  
10 [REDACTED].

11 I would ask to introduce into the record my letters to  
12 Chairman Schiff and Ranking Member Nunes dated September 9,  
13 2019, and September 17, 2019.

14 THE CHAIRMAN: Without objection.

15 [The letters follow:]

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17 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*  
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1           MR. ATKINSON: I want to begin by acknowledging that  
2 this is an unusual briefing for me. I have been the  
3 Inspector General of the Intelligence Community for about  
4 15 months. This is the first time that I have briefed the  
5 members of an entire committee, or of any committee, about a  
6 specific matter.

7           This bipartisan briefing is also unusual because of the  
8 extraordinary events that have prompted it and how little I  
9 will be able to say about those events beyond what I have  
10 already disclosed to the chairman and the ranking member in  
11 my two letters. To try to manage your expectations, I would  
12 like to point out certain limitations on what I will be able  
13 or willing to say about those events.

14           I am not authorized to discuss the specific or the  
15 general subject matter of the allegations at issue. The  
16 allegations involve classified information. To my knowledge,  
17 the classified information has not gone through a complete  
18 classification review.

19           The allegations also involve information that may be  
20 subject to the assertion of privileges. I have not been  
21 authorized to disclose information that may be subject to a  
22 privilege assertion.

23           The allegations as I will discuss were the subject of a  
24 preliminary review by my office. I will not discuss any  
25 specific steps taken or any sources or methods used by my

1 office to obtain evidence or to attempt to preserve evidence  
2 related to the allegations.

3 I take these constraints very seriously. The last thing  
4 that I want to do is to make or to be accused of making an  
5 unauthorized disclosure of information.

6 There is one more point that I want to make clear before  
7 I begin to discuss the allegations. And I want to thank the  
8 chairman and the ranking member for appreciating and  
9 recognizing how important this last point is to me.

10 When Congress created inspectors general over 40 years  
11 ago, Congress did not intend for inspectors general to be  
12 political or partisan. Congress intended the inspectors  
13 general to be independent and objective. As an inspector  
14 general, I take that need for independence and objectivity  
15 very seriously.

16 I thank the chairman and the ranking member for holding  
17 this briefing in a closed setting. I also thank the chairman  
18 and the ranking member for making this a bipartisan request  
19 for a briefing.

20 I am here this morning to discuss with you and to answer  
21 your questions, to the extent that I can, a disclosure that  
22 my office received from a complainant on August 12, 2019. I  
23 want to put that disclosure in the context of my office's  
24 primary mission.

25 My office, the Office of the Inspector General of the

1 Intelligence Community, also known as the IC IG, or  
2 Intelligence Community Inspector General, is part of the  
3 Office of the Director of National Intelligence. My office,  
4 the IC IG, was created in 2010.

5 The primary mission the IC IG is to initiate and conduct  
6 independent investigations, inspections, audits, and reviews  
7 on programs and activities within the responsibility and  
8 authority of the Director of National Intelligence.

9 What makes the IC IG unique among inspectors general in  
10 the Intelligence Community is that the scope of the IC IG's  
11 jurisdiction is co-extensive with the jurisdiction of the  
12 Director of National Intelligence. This means that the IC IG  
13 can initiate investigations, inspections, audits, and reviews  
14 of not just the Office of the Director of National  
15 Intelligence but of the other 16 components within the  
16 U.S. Intelligence Community as long as the program or  
17 activity is within the responsibility and authority of the  
18 DNI.

19 Now, as you know, the other elements within the  
20 Intelligence Community have their own inspectors general,  
21 like the Central Intelligence Agency or the National Security  
22 Agency. And there is a statutory process in place to resolve  
23 any jurisdictional disputes should they arise.

24 As part of the overall mission, the IC IG, like other  
25 inspectors general in the Intelligence Community, is

1 authorized by statute to process allegations of an urgent  
2 concern involving classified information that whistleblowers  
3 in the Intelligence Community want to share with the  
4 congressional Intelligence Committees.

5 For your convenience, we have brought copies of our  
6 authorizing statute in case anyone wants to refer to them  
7 during this briefing.

8 A little history. The original Whistleblower Protection  
9 Act of 1989 excluded employees of the Intelligence Community  
10 from its protections against retaliation. To remedy this  
11 exclusion, Congress in 1998 passed the Intelligence Community  
12 Whistleblower Protection Act, which was incorporated and  
13 updated when Congress created the Inspector General of the  
14 Intelligence Community in 2010.

15 This law provides an avenue for Intelligence Community  
16 whistleblowers to raise concerns about activities that may  
17 violate law or policy while ensuring the protection of  
18 classified information.

19 The statute authorizes the IC IG to receive and  
20 investigate complaints or information from any person  
21 concerning the existence of an activity within the  
22 authorities and responsibilities of the Director of National  
23 Intelligence constituting a violation of laws, rules, or  
24 regulations or mismanagement, gross waste of funds, abuse of  
25 authority, or a substantial and specific danger to the public

1 health and safety.

2 The statute also provides -- and this is important for  
3 today's briefing -- procedures for a whistleblower to inform  
4 the congressional Intelligence Committee of an urgent  
5 concern. The term "urgent concern" is defined by the statute  
6 in relevant part as a serious or flagrant problem, abuse,  
7 violation of the law or Executive order, or deficiency  
8 relating to the funding, administration, or operation of an  
9 intelligence activity within the responsibility and authority  
10 of the Director of National Intelligence involving classified  
11 information.

12 The statute requires that an individual within the  
13 Intelligence Community who wishes to make such a report of an  
14 alleged urgent concern first submit it to my office, the IC  
15 IG, who must determine within 14 calendar days whether it  
16 appears credible. The IC IG must then provide the DNI, the  
17 Director of National Intelligence, a copy of the complaint  
18 and the IC IG's determination about its credibility.

19 As I mentioned, on August 12, 2019, the IC IG received a  
20 disclosure from a complainant regarding an alleged urgent  
21 concern. This triggered the IC IG's statutory obligation to  
22 process the disclosure under the "urgent concern" statute.

23 During the 14-calendar-day period allotted to it, the  
24 IC IG, at my direction, conducted a preliminary review of the  
25 disclosure. As a result of that preliminary review, the

1 IC IG confirmed that the complainant is an employee of an  
2 element of the Intelligence Community, an employee assigned  
3 or detailed to an element of the Intelligence Community, or  
4 an employee of a contractor to the Intelligence Community.

5 I know the identity of the complainant. The complainant  
6 has asked to keep [REDACTED] identity confidential, and we have  
7 honored that request. The complainant, of course, has the  
8 opportunity to change the complainant's mind at any time and  
9 waive confidentiality, but, at this point, at this time, the  
10 complainant has requested confidentiality.

11 The IC IG also confirmed that the complainant intended  
12 to report to Congress, to the congressional Intelligence  
13 Committees, the complainant's information relating to the  
14 urgent concern.

15 As part of the preliminary review, I determined, in my  
16 capacity as the Inspector General of the Intelligence  
17 Community, that the complainant's disclosure met the  
18 definition of an urgent concern -- that is, a serious or  
19 flagrant problem, abuse, violation of the law or Executive  
20 order, or deficiency relating to the funding, administration,  
21 or operation of an intelligence activity within the  
22 responsibility and authority of the Director of National  
23 Intelligence involving classified information.

24 To be clear, I determined that all three conditions were  
25 met: first, that there was a serious or flagrant problem,

1 abuse, violation of the law or Executive order, or  
2 deficiency; second, that the serious or flagrant abuse,  
3 problem, violation of the law or Executive order, or  
4 deficiency was relating to the funding, administration, or  
5 operation of an intelligence activity within the  
6 responsibility and authority of the Director of National  
7 Intelligence; and, third, that the allegation involved  
8 classified information.

9 I also determined, based on the preliminary review  
10 conducted by the IC IG, that there were reasonable grounds to  
11 believe that information relating to the urgent concern  
12 appeared credible.

13 On August 26, 2019, I forwarded the complainant's  
14 disclosure and accompanying materials, along with my  
15 determination that the complainant's information appeared  
16 credible, to the Acting Director of National Intelligence.

17 I want the committee members to know that before  
18 transmitting my determination to the Acting DNI I had  
19 discussed the matter with the Acting DNI in person. I  
20 informed him how my determination was likely to come out, and  
21 I offered him an opportunity to provide me with any  
22 information that he thought might inform my ultimate  
23 determination. I also informed him of the next steps that I  
24 intended to take after transmitting my determination to him.

25 Pursuant to the "urgent concern" statute, upon receipt

1 of IC IG's transmittal, the Acting DNI, within 7 calendar  
2 days, is required to forward such transmittal to the  
3 congressional Intelligence Committees along with any comments  
4 he considers appropriate. It was my understanding and  
5 expectation, therefore, that the Acting DNI on or before  
6 September 2, 2019, would transmit to the congressional  
7 Intelligence Committees my determination along with any  
8 comments he considered appropriate.

9 I subsequently learned that the Acting DNI had  
10 determined that he was not required to transmit my  
11 determination of a credible urgent concern or any of the  
12 complainant's information to the congressional Intelligence  
13 Committees.

14 In a letter dated September 9, 2019, I informed the  
15 chairman and the ranking member of this committee of the  
16 complainant's disclosure, of my determination that the  
17 disclosure was a matter of urgent concern that appeared  
18 credible, of my transmittal of my determination and the  
19 accompanying materials to the Acting DNI, and of the  
20 Acting DNI's determination that he was not required to  
21 transmit my determination or any of the complainant's  
22 information to the congressional Intelligence Committees.

23 In my letter to the chairman and ranking member, I  
24 explained that the Acting DNI's treatment of the  
25 complainant's alleged urgent concern is contrary to past

1 practice.

2 My office, the IC IG, has on occasion in the past  
3 determined that, for a variety of reasons, disclosures  
4 submitted to the IC IG under the "urgent concern" statute did  
5 not constitute an urgent concern. In those cases, even  
6 though the IC IG determined that those disclosures did not  
7 meet the definition of an urgent concern, the DNI  
8 nevertheless provided direction to the IC IG to transmit the  
9 IC IG's determination and the complainant's information to  
10 the congressional Intelligence Committees.

11 In each of those cases, the IC IG followed the DNI's  
12 direction and transmitted the IC IG's determination, along  
13 with the complainant's information, to the congressional  
14 Intelligence Committees. That past practice permitted  
15 complainants in the Intelligence Community to contact the  
16 congressional Intelligence Committees directly in an  
17 authorized and protected manner, as intended by the "urgent  
18 concern" statute.

19 In my September 9 letter to the chairman and ranking  
20 member, I also informed them that I was continuing my efforts  
21 to obtain direction from the Acting DNI on how the  
22 complainant could transmit the complainant's information to  
23 the congressional Intelligence Committees in an authorized  
24 and protected manner and in accordance with appropriate  
25 security practices.

1           On September 13, 2019, I received a copy of a letter,  
2           dated the same day, sent from Jason Klitenic, general  
3           counsel, Office of the Director of Intelligence, to the chair  
4           and vice chair of the Senate Select Committee on Intelligence  
5           and to the chairman and ranking member of this committee.

6           In that letter, Mr. Klitenic informed the congressional  
7           Intelligence Committees that the Acting DNI had determined,  
8           after consulting with the Department of Justice, that no  
9           statute requires disclosure of the complaint to the  
10          Intelligence Committees because the disclosure, in this case,  
11          according to the Department of Justice, did not concern  
12          allegations of conduct by a member of the Intelligence  
13          Community or involve an intelligence activity under the DNI's  
14          supervision.

15          On September 17, 2019, I sent a second letter to the  
16          chairman and ranking member of this committee. In that  
17          letter, I informed them that I had concluded that the  
18          Acting DNI and I had reached an impasse over my efforts to  
19          obtain from the Acting DNI direction on how the complainant  
20          could transmit the complainant's information to the  
21          congressional Intelligence Committees in an authorized and  
22          protected manner and in accordance with appropriate security  
23          practices.

24          That difference between the Acting Director and I  
25          triggered a statutory obligation that I have to notify this

1 committee of any difference between the Acting DNI and me  
2 that affects the execution of the duties or responsibilities  
3 of the Inspector General.

4 I understand that I am bound by the determination  
5 reached as a result of the Acting DNI's consultation with the  
6 Department of Justice, and the IC IG will continue to abide  
7 by that determination.

8 I nevertheless respectfully disagree with that  
9 determination, particularly DOJ's conclusion and the Acting  
10 DNI's apparent agreement with the conclusion that the  
11 disclosure in this case does not concern an intelligence  
12 activity within the DNI's authority and that the disclosure  
13 therefore need not be transmitted to the congressional  
14 Intelligence Committees.

15 Also on September 17, 2019, I sent a letter to the  
16 Department of Justice, a copy of which I provided to the  
17 Acting DNI, in which I outlined my reasons for disagreeing  
18 with DOJ's analysis of the facts presented in the instant  
19 case and the conclusions reached regarding the same.

20 I set forth the reasons for my concluding that the  
21 subject matter involved in the complainant's disclosure not  
22 only falls within the DNI's jurisdiction but relates to one  
23 of the most significant and important of the DNI's  
24 responsibilities to the American people. For that reason and  
25 others, I have asked DOJ to reconsider its formal legal

1 opinion.

2 Based on the disagreement that exists between myself,  
3 DOJ, and the Acting DNI, I have requested authorization from  
4 the Acting DNI to disclose, at the very least, the general  
5 subject matter of the complainant's allegations to the  
6 congressional Intelligence Committees. To date, however, I  
7 have not been authorized to disclose even that basic  
8 information to you, in addition to the important information  
9 provided by the complainant that is also being kept from the  
10 congressional Intelligence Committees.

11 As it now stands, my unresolved differences with the  
12 Acting DNI are affecting the execution of two of my most  
13 important duties and responsibilities as the Inspector  
14 General of the Intelligence Community.

15 First, the differences are affecting what I view as my  
16 significant responsibilities to the complainant, an employee,  
17 detailee, or contractor in the Intelligence Community, who  
18 wants to disclose to Congress, in an authorized and protected  
19 manner, information that involves classified information that  
20 the complainant believes in good faith is with respect to an  
21 urgent concern.

22 Second, the unresolved differences are affecting the  
23 execution of the IC IG's statutory responsibility to ensure  
24 that the congressional Intelligence Committees are kept  
25 currently and fully informed of significant problems and

1 deficiencies relating to programs and activities within the  
2 responsibility and authority of the Director of National  
3 Intelligence.

4 In my judgment, the DNI's decision not to transmit my  
5 determination or any of the complainant's information to the  
6 congressional Intelligence Committees for reasons other than  
7 awaiting a classification review or asserting appropriate  
8 privileges may reflect a gap in the law that constitutes a  
9 significant problem and deficiency concerning the DNI's  
10 responsibility and authority or perceived responsibility and  
11 authority relating to intelligence programs and activities.

12 Further, the resulting inability for an employee,  
13 detailee, or contractor in the Intelligence Community to  
14 receive direction from the Acting DNI through the Inspector  
15 General on how to contact the congressional Intelligence  
16 Committees directly, in accordance with appropriate security  
17 practices, concerning what appear to be good-faith and  
18 credible allegations with respect to an urgent concern, even  
19 if it is later determined by others that the alleged conduct  
20 falls outside the definition of "urgent concern," may itself  
21 constitute a significant problem and deficiency concerning  
22 the DNI's responsibility and authority relating to  
23 intelligence programs or activities.

24 In addition, the complainant's current predicament,  
25 where an individual used the "urgent concern" process in good

1 faith but in the future might not be statutorily protected  
2 from reprisal or threat of reprisal for making the  
3 disclosure, may also constitute a significant problem and  
4 deficiency relating to the DNI's responsibility and authority  
5 relating to intelligence programs or activities.

6 DOJ's legal opinion may have significant implications  
7 for whistleblower rights and protections for all executive  
8 branch departments and agencies as well as the government  
9 contracting industry.

10 The IC IG has asked DOJ to clarify, among other things,  
11 whether the complainant and those individuals similarly  
12 situated to the complainant, now or in the future, are  
13 protected from actions constituting a reprisal or threat of  
14 reprisal in response to reporting an alleged urgent concern  
15 or other allegations of waste, fraud, or abuse that may later  
16 be determined to fall outside the jurisdiction of the  
17 individual's department or agency.

18 Finally, I want the committee members to know that my  
19 office, as required by the "urgent concern" statute, has kept  
20 the complainant informed of each action that my office has  
21 taken to process the complainant's disclosure.

22 I remain committed to ensuring that individuals in the  
23 Intelligence Community who disclose allegations of wrongdoing  
24 in good faith and in an authorized manner to the IC IG  
25 receive consistent, effective, and enforceable protections

1 from actions constituting a reprisal or threat of reprisal  
2 for making the disclosure.

3 I will also continue my efforts to ensure individuals in  
4 the Intelligence Community have a consistent, authorized, and  
5 effective means to report such allegations to the  
6 congressional Intelligence Committees.

7 I thank you for listening to that opening statement. I  
8 will be happy to answer, to the extent I can, your questions.

9 THE CHAIRMAN: Thank you, Mr. Atkinson.

10 We will now begin 30 minutes of questioning on our side,  
11 and then the minority will have 30 minutes of questions.

12 I just want to go over some top-line issues that you  
13 raised in your testimony -- and we thank you for that very  
14 detailed testimony -- and then I will probably have my staff  
15 follow up with some of the more specific issues.

16 When the DNI got the complaint and 7 days elapsed and  
17 they did not provide it to the committee, did the DNI inform  
18 you at that point that it had no intention of providing the  
19 complaint to the committee? How did you learn that the  
20 complaint would not be submitted as required by the statute?

21 MR. ATKINSON: I don't want to get into the specifics of  
22 my discussions with the Acting DNI. I will say that I have  
23 had close contact throughout the sequence of events with the  
24 Office of the Director of National Intelligence's Office of  
25 General Counsel, and, through those discussions, I understood

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1 that the Acting DNI would not transmit any information to the  
2 congressional Intelligence Committees.

3 THE CHAIRMAN: At what point did you learn that that was  
4 the case?

5 In other words, in a normal process -- and I think you  
6 have described, even when you find the complaint doesn't meet  
7 the definitions of an urgent concern, that the past practice  
8 has been to provide it to the committee anyway. What is the  
9 process? Does the DNI authorize you to provide it to the  
10 committee, or does the DNI directly provide that complaint to  
11 the committee?

12 MR. ATKINSON: In my experience, it has been the case  
13 where the DNI would direct us to provide the determination  
14 and the complainant's information to the committees on the  
15 DNI's behalf.

16 THE CHAIRMAN: And, in this case, did some period elapse  
17 after the 7-day window closed and you didn't receive that  
18 direction from the DNI that you had to follow up?

19 I ask the question because, had you not informed the  
20 committee, was it the DNI's intention that the committee  
21 never find out the complaint had been filed?

22 MR. ATKINSON: I do not know what the DNI's intention  
23 was.

24 THE CHAIRMAN: Did you learn before or after the 7-day  
25 window closed that the DNI did not intend to transmit the

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1 complaint to our committee?

2 MR. ATKINSON: The Acting DNI's response was due  
3 statutorily on or before September 2, 2019. September 2,  
4 2019, was Labor Day, a Federal holiday. I certainly knew on  
5 September 2, 2019, that the Acting DNI did not intend to  
6 transmit the information to the congressional Intelligence  
7 Committees.

8 THE CHAIRMAN: Did the DNI give you any instructions as  
9 to whether you should notify the committee of their  
10 unwillingness to do so?

11 MR. ATKINSON: I don't recall receiving those type of  
12 instructions from the Acting DNI.

13 After September 2, 2019, came and went without any  
14 notification to the congressional Intelligence Committees, I  
15 had conversations with ODNI's Office of General Counsel about  
16 whether the Acting DNI intended to provide notification to  
17 the congressional Intelligence Committees.

18 When it became clear to me that they had no present  
19 intention, as of that time, to inform the congressional  
20 Intelligence Committees, I wrote my letter to you, the  
21 chairman, and the ranking member on September 9, 2019.

22 THE CHAIRMAN: So, as of the deadline that the DNI was  
23 supposed to turn over the complaint to the committee, they  
24 had no present intention of even informing the committee of  
25 their withholding of the complaint?

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1 MR. ATKINSON: That was my impression.

2 THE CHAIRMAN: One of the justifications that you  
3 mentioned that the DNI gave for withholding the complaint was  
4 that the activities complained of did not involve a member of  
5 the Intelligence Community. That is not required by the  
6 statute, though, is it?

7 MR. ATKINSON: No, it is not.

8 THE CHAIRMAN: So if a member of the Intelligence  
9 Community discovers evidence of wrongdoing, a serious  
10 concern, and reports it, whether that evidence involves  
11 somebody who is also within the Intelligence Community or not  
12 doesn't matter; the statute still allows [REDACTED] to file the  
13 complaint, and the complaint should still be provided to this  
14 committee.

15 MR. ATKINSON: The matter has to relate to the funding,  
16 administration, or operation of an intelligence activity  
17 within the responsibility and authority of the Director of  
18 National Intelligence. That is the statutory requirement.  
19 So the intelligence activity itself does not necessarily have  
20 to involve a member of the Intelligence Community.

21 THE CHAIRMAN: So, for example, you could have someone  
22 who is a member of the Armed Forces that is working with an  
23 intelligence agency in an operation engage in misconduct, and  
24 that would fall within the jurisdiction of the whistleblower  
25 statute because it involved an intelligence activity, even

1       though it was not carried out by a member of the Intelligence  
2       Community.

3               MR. ATKINSON: That is my understanding, yes.

4               THE CHAIRMAN: At what point did you learn that the  
5       Acting DNI had involved another executive branch agency, the  
6       Department of Justice, in this matter?

7               MR. ATKINSON: I knew that -- I don't remember the exact  
8       date. I can find out the exact date. But I certainly knew  
9       about that contact with the Department of Justice before  
10       September 2, 2019.

11              THE CHAIRMAN: And did the DNI's Office inform you that  
12       they intended to consult the Department of Justice before  
13       they did so, or did they tell you after it was a fait  
14       accompli?

15              MR. ATKINSON: I believe I understood that they  
16       intended -- I don't know whether they contacted -- I don't  
17       know whether the DNI, the Office of the Director of National  
18       Intelligence, contacted the Department of Justice before I  
19       knew about it, but I never had the sense that ODNI's general  
20       counsel was trying to keep that information from me.

21              It is possible that they contacted the Department of  
22       Justice before I was aware of it, but I certainly knew that  
23       they were having consultations with the Department of  
24       Justice.

25              THE CHAIRMAN: And do you know whether the Acting DNI's

1 Office or his legal counsel had any contact concerning the  
2 complaint with any other executive branch agency or the White  
3 House?

4 MR. ATKINSON: I may not be authorized to disclose that  
5 information, so I will respectfully decline to answer.

6 THE CHAIRMAN: Well, if the Acting DNI was in  
7 consultation with the White House about a whistleblower  
8 complaint, that, in and of itself, is not privileged. The  
9 nature of the communication may or may not be, but the  
10 existence of that contact isn't. It is also not classified  
11 in any way. I see no basis to withhold from this committee  
12 whether the White House was involved in the decision not to  
13 transmit this complaint.

14 MR. ATKINSON: I may not be authorized to disclose that  
15 information because of security classifications or because of  
16 the assertion of privileges, so I will respectfully decline  
17 to answer that question.

18 THE CHAIRMAN: Inspector General, I realize that you are  
19 in a very difficult position here. We are also in a very  
20 difficult position, because if the complaint involves someone  
21 outside the Intelligence Community and if that person outside  
22 the Intelligence Community is in the White House and the  
23 White House has a role in stifling a complaint to this  
24 committee, the committee obviously needs to know that. That  
25 is why I asked the question.

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1           Are you able to affirm that the White House had no role  
2           in this?

3           MR. ATKINSON: I may not be authorized to disclose that  
4           information, so I will respectfully decline to answer.

5           THE CHAIRMAN: You mentioned that the Department of  
6           Justice wrote a legal opinion that it provided to the Acting  
7           DNI and you strongly disagree with the conclusions of that  
8           opinion. Is that right?

9           MR. ATKINSON: I didn't -- I didn't -- I certainly  
10          disagree with the conclusions.

11          THE CHAIRMAN: And in the DOJ opinion, did they do their  
12          own analysis of the facts to determine whether they thought  
13          the facts were credible?

14          MR. ATKINSON: Yes, that is my understanding. They had  
15          access to the information that the complainant wanted to  
16          share with the committee. The Department of Justice did not  
17          have access to the results of my office's preliminary review.

18          THE CHAIRMAN: So the Department of Justice did their  
19          own preliminary factual investigation and disagreed not just  
20          on the law but on the facts?

21          MR. ATKINSON: I cannot say whether the Department of  
22          Justice conducted any kind of preliminary factual  
23          investigation.

24          THE CHAIRMAN: But, in their opinion, they asserted  
25          facts that were different from the facts that you found in

UNCLASSIFIED, [REDACTED]

1 your preliminary investigation.

2 MR. ATKINSON: Not different. I had additional facts  
3 from my preliminary review.

4 THE CHAIRMAN: That they did not have.

5 MR. ATKINSON: Correct.

6 THE CHAIRMAN: And if they had the additional facts that  
7 you had, would that have altered their conclusion?

8 MR. ATKINSON: I do not know.

9 THE CHAIRMAN: Is it unprecedented for the Department of  
10 Justice to make its own factual determination and overrule an  
11 Inspector General?

12 MR. ATKINSON: I do not know whether it is  
13 unprecedented. That answer is knowable. It certainly had  
14 never happened to me in the past 15 months.

15 THE CHAIRMAN: On what basis or direction do you believe  
16 that you may not be authorized to acknowledge White House  
17 involvement?

18 MR. ATKINSON: I respectfully decline to answer that  
19 question because it may involve a security classification or  
20 the assertion of a privilege. So I respectfully decline to  
21 answer that question.

22 THE CHAIRMAN: Have you been given instructions by  
23 someone outside of the Director of National Intelligence not  
24 to answer questions as to White House involvement?

25 MR. ATKINSON: I have not received those kind of

1 instructions, no.

2 THE CHAIRMAN: So you are making an independent judgment  
3 that you believe you may not have the authorization to  
4 disclose that information?

5 MR. ATKINSON: Correct. I have not been prohibited from  
6 disclosing that kind of information. I have sought  
7 authorization to disclose that information so that I could  
8 not be accused of making an unauthorized disclosure. I have  
9 not received that authorization. And that is why I am not  
10 going to -- I am going to respectfully decline to answer  
11 those questions, so that it cannot be said later that I  
12 cannot -- hopefully could not even be accused later of making  
13 an unauthorized disclosure.

14 THE CHAIRMAN: I see.

15 Does the White House have the complaint?

16 MR. ATKINSON: I am going to give the same answer, that  
17 I may not be authorized to disclose that information, so I  
18 will respectfully decline to answer the question.

19 THE CHAIRMAN: I am going to turn it over to my  
20 investigative counsel.

21 [REDACTED]: Good morning, Mr. Atkinson. My name is  
22 [REDACTED]. I am the [REDACTED] for the  
23 committee.

24 MR. ATKINSON: Good morning.

25 [REDACTED]: Just to follow up on this topic, because

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1 we are on it -- and I understand it may make you a little  
2 uncomfortable to answer the questions. We are struggling to  
3 understand how the fact of a communication from the White  
4 House about a whistleblower complaint could involve  
5 classification issues, which you cite just now as one of the  
6 potential reasons why it would be an unauthorized disclosure.

7 We are not asking about the substance of the  
8 conversations. We are just asking about the fact of the  
9 conversation.

10 MR. ATKINSON: I understand the questions that are being  
11 asked of me, and I am going to give the same answer, that  
12 because I may not be authorized to disclose that information,  
13 I will respectfully decline to answer.

14 [REDACTED]: Okay.

15 And how would your answer as to whether or not the White  
16 House possesses the complaint involves either classification  
17 issues or potential privilege?

18 MR. ATKINSON: I am going to give the same answer, that  
19 because I may not be authorized to disclose that information,  
20 I respectfully decline to answer.

21 [REDACTED]: Okay.

22 You testified a second ago about the DOJ factual  
23 analysis. You have seen that. Is that correct?

24 MR. ATKINSON: Yes.

25 [REDACTED]: And it was an interpretation by DOJ of

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1 some facts that they used ultimately to reach a legal  
2 conclusion? Is that an accurate statement?

3 MR. ATKINSON: It is a fair statement, yes.

4 [REDACTED]: So it was not a policy or, sort of, a  
5 legal interpretation, an interpretation of the law, that led  
6 DOJ to conclude opposite to your conclusion. Is that right?

7 MR. ATKINSON: I think what is fair to say is that they  
8 applied the facts that they had to the law and reached their  
9 conclusions.

10 [REDACTED]: Okay. And you said that you are unaware  
11 in your 15 months whether that has ever occurred before --  
12 that that has never occurred before in your 15 months. Is  
13 that right?

14 MR. ATKINSON: With respect to my office, yes, that is  
15 correct.

16 [REDACTED]: Okay. Have you asked any your staff  
17 members who have been involved in this process before you  
18 arrived whether they are aware of whether DOJ's involvement  
19 in this way has ever occurred before?

20 MR. ATKINSON: I have, and, to my knowledge, since the  
21 IC IG's existence in 2010, that situation has not occurred  
22 before.

23 [REDACTED]: Could you just give the committee a  
24 general estimate of how many of these sorts of complaints the  
25 IG receives every year?

1 MR. ATKINSON: So that answer is also knowable, since  
2 however many number that has been over the past year or  
3 2 years, all of them have been transmitted to this committee.  
4 And so you would have the records of all of those and could  
5 come up with that exact number. My estimate is that in the  
6 past year it has probably been around 10 or 12.

7 [REDACTED]: Okay.

8 MR. ATKINSON: It might be higher, because my  
9 recollection is that one individual filed multiple "urgent  
10 concern" requests. So it might be higher than 10 or 12. But  
11 normally I think it is around 10 or 12.

12 [REDACTED]: And is it accurate that every single  
13 "urgent concern" complaint has been -- since you assumed this  
14 role, every "urgent concern" complaint that the IG has  
15 received has been transmitted to Congress, regardless of  
16 whether it was determined to be an urgent concern?

17 MR. ATKINSON: Yes, both the determination and all of  
18 the complainants' information that the complainants submitted  
19 were transmitted to the congressional Intelligence  
20 Committees.

21 [REDACTED]: Are you aware of either -- well, you just  
22 talked about during your 15 months, but are you aware of  
23 whether since 2010 any complaint from a whistleblower under  
24 this statute has not been transmitted to the Intelligence  
25 Committees?

1 MR. ATKINSON: No, I am not aware of that.

2 [REDACTED]: So when you refer in your letter to the  
3 past practice in the DNI's treatment of this complaint as  
4 appearing to be inconsistent with past practice, is that what  
5 you are referring to?

6 MR. ATKINSON: Yes.

7 [REDACTED]: Okay.

8 You testified earlier that you reached out to the  
9 Acting DNI before you transmitted the complaint on August 26.  
10 Is that right?

11 MR. ATKINSON: Yes.

12 [REDACTED]: Why did you do that?

13 MR. ATKINSON: I had several reasons for doing that. I  
14 have an obligation to keep the DNI currently and fully  
15 informed of my activities. Also, given what I consider to be  
16 the urgency of the matter, I wanted the Acting DNI to know  
17 that we had received the complaint and that, at that point, I  
18 was likely to determine it to be credible.

19 I also wanted to give the Acting DNI an opportunity to  
20 provide me with any information that he thought might inform  
21 my credibility determination. Because I thought it was  
22 possible that the Acting DNI might have information that I  
23 didn't that could affect my determination.

24 [REDACTED]: In your 15 months, had you ever reached  
25 out to the DNI in advance of transmitting a complaint in this

1 manner before?

2 MR. ATKINSON: In the past 15 months, I have not reached  
3 out to discuss an "urgent concern" filing with the DNI. But  
4 I will also say, in the past 15 months, I have not deemed an  
5 "urgent concern" filing to appear credible or to meet the  
6 definition of an urgent concern.

7 [REDACTED]: So, in your tenure, this is the first  
8 whistleblower complaint under the ICWPA that your office  
9 found to meet the definition of "urgent concern" and to be  
10 credible?

11 MR. ATKINSON: Yes -- and to appear credible, yes.

12 [REDACTED]: Appear credible.

13 And what guidance did you anticipate that you might  
14 receive from the DNI prior to you transmitting your -- making  
15 your determination?

16 MR. ATKINSON: I can't say that -- I don't think that I  
17 had -- I don't recall what my expectations were before I  
18 transmitted. I just wanted to give him an -- I wanted to let  
19 him know about the allegation, and I wanted him to know where  
20 I was likely to come out, and I wanted to let him know the  
21 date that I would be transmitting that determination to him.

22 [REDACTED]: This is the Acting DNI, Maguire. Is that  
23 right?

24 MR. ATKINSON: Yes, Acting DNI Maguire.

25 [REDACTED]: Did he ever notify DNI Coats prior to his

1 departure?

2 MR. ATKINSON: This allegation came in on August 12. I  
3 believe DNI Coats' last day as the DNI was on or around  
4 August 15. I did not discuss the allegation with Director  
5 Coats.

6 [REDACTED]: You said when you transmitted the  
7 complaint that you expressed your expectation for what would  
8 happen to the complaint to the Office of the DNI. What was  
9 your expectation for what would happen to the complaint once  
10 you turned it over to the DNI?

11 MR. ATKINSON: Well, I expected on or before  
12 September 2, 2019, that the DNI would transmit my  
13 determination of a credible urgent concern to the  
14 congressional Intelligence Committees.

15 I understood that some of the information provided by  
16 the complainant could be the subject of a privilege assertion  
17 and would need a full classification review. So I  
18 anticipated that my determination would be transmitted so  
19 that the Intelligence Committees would be aware of the filing  
20 and of my determination, but that the underlying information  
21 would likely need to undergo a classification review and  
22 potentially a privilege review before that could be  
23 transmitted to the Intelligence Committees.

24 [REDACTED]: You wrote in, I believe, your September 17  
25 letter and you testified earlier here today that you

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1 understand that the reasons -- correct me if I am wrong --  
2 that you understand that the reason why the DNI has not  
3 transmitted the complaint to Congress is for -- well, I  
4 should say, is for reasons other than classification and  
5 other than privilege. Is that accurate?

6 MR. ATKINSON: I would say it is in addition to those  
7 reasons.

8 My understanding is that the Acting DNI has determined,  
9 based on his consultations with the Department of Justice,  
10 that the statute does not require the Acting DNI to transmit  
11 my determination.

12 The Acting DNI, as I understand it, still has the  
13 discretion to transmit that information, subject to a  
14 classification review and the assertion of appropriate  
15 privileges, but has made the decision not to transmit any of  
16 that information to the Intelligence Committees.

17 [REDACTED]: But is it fair to say that the reason why  
18 it has not yet been transmitted to the Intelligence  
19 Committees is neither because of classification issues nor,  
20 to your knowledge, because of the invocation of a privilege?

21 MR. ATKINSON: My understanding is that the need for  
22 privilege assertions is one reason; the need for a security  
23 classification review is a second reason; and the third  
24 reason is the Department of Justice's conclusion that he is  
25 not required to transmit that information.

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1 [REDACTED]: Okay.

2 And just so we are clear on who is involved here, you  
3 just referenced that it is the Department of Justice's  
4 conclusion. Is that right?

5 MR. ATKINSON: It is the Department of Justice's formal  
6 legal opinion that the DNI, as I understand it, is relying  
7 upon.

8 [REDACTED]: Okay.

9 THE CHAIRMAN: Just to interject to clarify, when you  
10 say one of the reasons why the DNI is asserting they haven't  
11 provided the complaint is the need for a classification  
12 review, is that something the DNI is claiming?

13 Obviously, our committee receives classified information  
14 all the time. We are not talking about a classification  
15 review in the sense of a declassification of the  
16 intelligence.

17 Are you saying that one of reasons the DNI has given for  
18 holding up the complaint to the committee is that they  
19 haven't gotten authorization from somewhere else to provide  
20 this classified information to the committee?

21 MR. ATKINSON: My understanding is that the information  
22 has not gone through a full classification review. A full  
23 classification review, as I understand it, would require any  
24 department or agency in the executive branch with equities to  
25 review and make a security classification determination of

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1 that information if that executive branch department or  
2 agency has an equity in the information.

3 THE CHAIRMAN: And that review has not been undertaken?

4 MR. ATKINSON: I don't have personal knowledge one way  
5 or the other on that.

6 THE CHAIRMAN: And would the other complaints that you  
7 have transmitted to the DNI and that have been transmitted to  
8 us, did they go through a classification review?

9 MR. ATKINSON: Yes, I believe they would have.

10 THE CHAIRMAN: And they were all able to get that  
11 classification review done within the requisite time?

12 MR. ATKINSON: Correct.

13 THE CHAIRMAN: And, again, the classification review  
14 that we are talking about here is not for the purposes of  
15 declassifying information; it is just for the purposes of  
16 determining whether this particular classified information  
17 should be given to the Congress, to the Intelligence  
18 Committees.

19 MR. ATKINSON: I am not a classification expert. In  
20 terms of a classification review, I don't know whether the  
21 review is to determine whether it should be provided or at  
22 what level it should be provided.

23 THE CHAIRMAN: And at this point, on the privilege  
24 issue, you haven't even been able to ascertain whether they  
25 are doing a privilege analysis, have you?

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1 MR. ATKINSON: Because I may not be authorized to  
2 disclose that information, I will respectfully decline to  
3 answer that.

4 THE CHAIRMAN: Mr. Atkinson, to your knowledge, has the  
5 complaint been provided to the person or persons who are the  
6 subject of the complaint?

7 MR. ATKINSON: I am not going to discuss any specific  
8 action that my office took as part of its preliminary review.

9 THE CHAIRMAN: Well, I am not asking you about your  
10 preliminary review. I am just asking you whether, to your  
11 knowledge, the complaint has been provided to the persons who  
12 are the subject of the complaint, who might be in a position  
13 to either retaliate against the complainant or might be in a  
14 position to cover up evidence that is discussed in the  
15 complaint.

16 MR. ATKINSON: I understand your question. Because I  
17 may not be authorized to answer the question, I respectfully  
18 decline to answer it.

19 THE CHAIRMAN: Well, you can understand why we would be  
20 so concerned. A whistleblower files a complaint. The  
21 complaint is withheld from Congress. You can't tell us  
22 whether the White House was involved. And you can't even  
23 tell us whether the complaint has been given to the person or  
24 persons who may be the subject of that complaint.

25 MR. ATKINSON: I certainly understand that, Chairman. I

1 made my own determination that it was an urgent concern, so I  
2 have my own concerns about the subject matter.

3 THE CHAIRMAN: Thank you.

4 I yield now to the ranking member, Mr. Nunes.

5 MR. NUNES: Thank you.

6 So, Mr. Inspector General, what prohibits this  
7 whistleblower from bringing the information to the Senate  
8 Intelligence Committee and the House Intelligence Committee?

9 MR. ATKINSON: The whistleblower is subject to the same  
10 limitations that I am at this point. The complainant has not  
11 been authorized to disclose classified information to the  
12 committees, and the complainant has not been authorized to  
13 waive any applicable privileges.

14 MR. NUNES: So it is your opinion that someone from the  
15 IC that has classified information cannot come to these  
16 committees, as whistleblowers, before going to the IC itself?

17 MR. ATKINSON: It is my understanding that the statute  
18 requires the complainant to come to my office, the Inspector  
19 General of the Intelligence Community, first to report the  
20 information. I make a determination whether it is credible  
21 and whether it is an urgent concern. I transmit that to the  
22 Director.

23 And then, because the allegation involves classified  
24 information, the Director is supposed to provide direction to  
25 me on how the complainant can come to the committees in an

1 authorized way.

2 So the complainant here has played by the rules. The  
3 complainant has classified information. The complainant used  
4 the "urgent concern" statute. I transmitted that information  
5 to the DNI. And what has happened is that neither the  
6 complainant nor I have received any direction or  
7 authorization to bring that information to the committees.

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1 [9:59 a.m.]

2 MR. NUNES: Yeah. No, I understand your position. I am  
3 just trying to figure out, it has been my understanding that  
4 the IC employee has the obligation to go to you first, but  
5 that does not prohibit that individual from coming to us with  
6 the same information as long as [REDACTED] goes to you first. That  
7 has been my understanding of it.

8 MR. ATKINSON: So let me be clear. The whistleblower is  
9 not prohibited from coming to the Intelligence Committees.  
10 The problem -- and it is the same problem that I have -- no  
11 one has authorized the complainant to come to the committees.  
12 And so the complainant, if [REDACTED] comes to the committees on [REDACTED]  
13 own at this point, even though [REDACTED] has come through the  
14 Inspector General's Office, risks being accused of making an  
15 unauthorized disclosure.

16 MR. NUNES: Yeah. So, I mean, I would have a  
17 disagreement with that. I mean, if that is the law and the  
18 statute or the interpretation of the statute, then that  
19 clearly would need to be changed, because I have always  
20 understood that anyone within the IC has every right to come  
21 to this committee at any time and give us -- as long as they  
22 report it to you first and then come to us.

23 But, I guess, that is -- is that your interpretation of  
24 the statute, or is that DNI's interpretation of the statute  
25 that this person doesn't have the right to come to us?

1 MR. ATKINSON: Again, the person has the right to come  
2 to the committees. The person just hasn't been authorized to  
3 share the information with the committees. And it is not  
4 only a classification issue, but there's also privilege  
5 issues, and so the individual has not been authorized to  
6 waive any privileges.

7 And so the individual would be at great risk, great  
8 personal risk, in my opinion, if the individual tries to come  
9 to the committees without direction from the DNI, without  
10 authorization to disclose classified information or  
11 potentially privileged information to this committee.

12 MR. NUNES: Okay. So you have claimed that this is an  
13 IC employee, if I understood your testimony in your opening  
14 statement.

15 MR. ATKINSON: Our preliminary review determined that  
16 the complainant was an employee, detailee, or contractor in  
17 the Intelligence Community.

18 MR. NUNES: Okay. So I assume you have -- maybe you  
19 haven't seen the letter that was sent to Mr. Schiff and  
20 myself that was sent on September 17. Have you seen that  
21 letter by Jason Klitenic, general counsel?

22 MR. ATKINSON: Yes, I have seen that.

23 MR. NUNES: Okay. So you have seen the letter?

24 MR. ATKINSON: Yes.

25 MR. NUNES: Okay. So, on page 2 of the letter, it says:

1 This complaint, however, concerned conduct by someone outside  
2 the Intelligence Community and did not relate to any  
3 intelligence activity under the DNI's supervision. So I am  
4 just trying to clarify here because it looks like there is a  
5 clear discrepancy. So help us understand the discrepancy.

6 MR. ATKINSON: My factual and legal analysis was that  
7 the specific allegations by the complainant related to the  
8 funding, administration, or operation of an intelligence  
9 activity. That was my analysis based on the facts and the  
10 law as I understood it.

11 MR. NUNES: But is it an IC employee or not an IC  
12 employee?

13 MR. ATKINSON: I am not --

14 THE CHAIRMAN: If I could, just for clarification, I  
15 think you may be referring to the subject of the complaint  
16 versus the complainant. I think that may be the confusion.  
17 The complainant is either an employee, contractor, et cetera.  
18 I think what you are referring to is the subject of the  
19 complaint. I think that is what DNI was mentioning. I may  
20 be wrong, but just trying to clarify.

21 MR. NUNES: Well, I am just -- it seems like this is a  
22 really difficult process that shouldn't be that difficult, is  
23 what I am trying to get to the bottom of here.

24 THE CHAIRMAN: And, Ranking Member, I agree with you.  
25 My understanding was that the whistleblower could come to us

1 as well after going to the IG and be protected by the  
2 whistleblower statute. But from the IG, it is apparent that  
3 there is some question about whether they would be able to  
4 enjoy those protections. And I am sorry. I refer back.

5 MR. NUNES: I thank the gentleman.

6 So this is an IC employee, correct?

7 MR. ATKINSON: The complainant --

8 MR. NUNES: Or contractor or --

9 MR. ATKINSON: Detailee.

10 MR. NUNES: Detailee.

11 MR. ATKINSON: Yes, correct.

12 MR. NUNES: Okay. Does the Acting DNI know the identity  
13 of this IC complainant?

14 MR. ATKINSON: Not to my knowledge.

15 MR. NUNES: He does not know the identity?

16 MR. ATKINSON: Not to my knowledge.

17 MR. NUNES: Okay. Okay. I know you said that, I just  
18 want to make sure that I clarified that.

19 So, last night, there were two media reports that appear  
20 to be leaks from somewhere, and I am trying to obviously -- I  
21 don't know if you -- have you seen these reports?

22 MR. ATKINSON: Which ones?

23 MR. NUNES: Washington Post and NBC News.

24 MR. ATKINSON: I have read the Washington Post article.

25 MR. NUNES: Okay. I assume you are not a source for

1 this story?

2 MR. ATKINSON: Correct.

3 MR. NUNES: You were not contacted by them, or if you  
4 were, you did not respond -- no one in your office responded  
5 to inquiries by these -- by the media?

6 MR. ATKINSON: No one in my office, to my knowledge, is  
7 a source for that news article.

8 MR. NUNES: Okay. So I am trying to figure out, if only  
9 you and the complainant know about this complaint, right,  
10 only -- the identity, clearly, the Acting DNI and a few  
11 people within the DNI's office must know about this.

12 Do you know who in the DNI's office, Acting DNI's office  
13 would know about this situation? We have the general counsel  
14 that would know about it because we have a letter from the  
15 general counsel. Who else would know about it? Who else did  
16 you work with in the DNI's office?

17 MR. ATKINSON: So I want to just distinguish between the  
18 complainant's identity and who I worked with on the issue. I  
19 worked on the issue with Jason Klitenic, the general counsel,  
20 and [REDACTED], the [REDACTED] for  
21 ODNI. Those have been my two contacts.

22 MR. NUNES: Those are your two contacts?

23 MR. ATKINSON: Yes.

24 MR. NUNES: And then have you been in contact with the  
25 Acting DNI?

1 MR. ATKINSON: Yes.

2 MR. NUNES: Okay. So you have no idea who the two  
3 former intelligence officials would be that would be leaking  
4 the contents of this complaint to the news media?

5 MR. ATKINSON: It would be pure speculation on my part  
6 to try to guess.

7 MR. NUNES: Okay. Well, I know you are not going to  
8 answer this, but according to the news reports -- I just want  
9 to get it on the record that this has to do with the  
10 President's communications with foreign leaders. Is that  
11 accurate?

12 MR. ATKINSON: I may not be authorized to disclose that  
13 information, so I respectfully decline to answer.

14 MR. NUNES: Okay. All right.

15 Mr. Wenstrup?

16 DR. WENSTRUP: Yeah. Thank you.

17 My first question is, how did the whistleblower get his  
18 or her information? Was it firsthand? Was it through some  
19 type of SIGINT? Where are they claiming they got the  
20 information that they are sharing with -- the whistleblower?

21 MR. ATKINSON: I am not going to discuss the specific  
22 allegations. I am not authorized to discuss the subject  
23 matter. And so I am not going to discuss any facts related  
24 to the disclosure.

25 DR. WENSTRUP: So you can't discuss whether it was

1 firsthand, secondhand, whatever?

2 MR. ATKINSON: I do not know whether anyone from ODNI  
3 has disclosed any of that information to anyone on the  
4 committee. So, if anyone from ODNI has disclosed that  
5 information, then --

6 DR. WENSTRUP: Then you could discuss it?

7 MR. ATKINSON: Potentially. But --

8 DR. WENSTRUP: Okay. I am just trying to get through  
9 process here.

10 MR. ATKINSON: No, of course. But on my own, I -- yes.

11 DR. WENSTRUP: This is where I am going more than  
12 anything else in all this because, you know, we certainly do  
13 get bogged down.

14 You know, so, in this one letter here from the 13th from  
15 ODNI, so we also included the IC IG, in those consultations  
16 to make sure that he had the opportunity to provide his  
17 views, and that is concerning whether it fell within their  
18 realm. So is that true, you were involved with the  
19 consultations?

20 MR. ATKINSON: Yes.

21 DR. WENSTRUP: Okay. And it said, based on those  
22 consultations, it didn't meet the definition of "urgent  
23 concern," and also conducted by some -- that the complaint  
24 concerned someone outside the Intelligence Community and did  
25 not relate to any intelligence activity within the

1 responsibility and authority of the DNI.

2 So you were involved with that process? It says you  
3 were involved with the consultation. They reached their  
4 conclusion. And you may have disagreed with it, but you were  
5 involved with the process?

6 MR. ATKINSON: I was involved with the process, yes.

7 DR. WENSTRUP: Okay. So you stated disagreement, I  
8 assume, with their conclusions, based on what I am hearing  
9 today?

10 MR. ATKINSON: I did not state disagreement with their  
11 conclusions before they reached their conclusions, because I  
12 did not know what they would conclude. I provided  
13 information to them, to the Department of Justice, about how  
14 I viewed the matter and how I had interpreted the matter.

15 DR. WENSTRUP: Okay. So now I am going to kind of go  
16 outside the realm and, again, as somebody trying to  
17 understand the process within the Intelligence Community and  
18 also, maybe, Presidential or executive privileges, so bear  
19 with me for just a second.

20 You know, several years ago, we heard the President of  
21 the United States tell the President of Russia that, after  
22 his election, he will have more flexibility. And the  
23 President of Russia said: I understand. I will relay that  
24 message to President Putin, and I stand with you.

25 I am paraphrasing, but those words were all included.

1 I am pretty sure that, if I said that to President  
2 Medvedev, that it would certainly be all over CNN and, if  
3 not, be of concern to the chairman of the Intelligence  
4 Committee, which I hope it would, by the way, because I think  
5 it should, and probably James Comey would have taken issue  
6 with it as well. Nothing happened in that issue.

7 But let me just tell you, I had a followup question. In  
8 an open hearing with former CIA Director Brennan, and I asked  
9 him -- went over that. He had described what the Russian  
10 playbook was. I asked him about that particular incident;  
11 was it a red flag? His response to me was: I am not going  
12 to comment on a private conversation between two heads of  
13 state.

14 Now, the article in The Post implies that this was with  
15 a foreign leader, so a head of state. My question is, is  
16 that standard operating procedure in the Intelligence  
17 Community to not get involved with conversations between two  
18 heads of state, or was he just avoiding my question?

19 MR. ATKINSON: I don't think I am qualified to answer  
20 that question.

21 DR. WENSTRUP: Is Mr. Brennan qualified to answer that  
22 question as a former CIA Director? Do you see where I am  
23 going with this? So I am trying to see what is in play and  
24 what is not in play. The CIA Director said he is not going  
25 comment on a private confirmation between two heads of state.

1 So I am asking, is that the norm within the Intelligence  
2 Community that that is just hands off?

3 MR. ATKINSON: I am going to answer the question this  
4 way, and you may find it to be not responsive. But what I  
5 had to determine was whether the allegations made by this  
6 complainant constituted an intelligence activity. And so  
7 what I did was I reviewed all the facts provided by the  
8 complainant as well as the facts provided to me through our  
9 preliminary review --

10 DR. WENSTRUP: I understand. You have made that very  
11 clear. I am just trying to get an answer to my question. As  
12 somebody of expertise within the Intelligence Community, is a  
13 head of state taken out of this equation? I mean, I think  
14 that is an important part of this whole conversation, and  
15 that is certainly the answer I got from Mr. Brennan that day.  
16 So, as I sit here on this committee trying to figure out what  
17 the authorizations are, what role we have to play, I am a  
18 little confused.

19 MR. NUNES: If the gentleman would yield?

20 DR. WENSTRUP: Yes.

21 MR. NUNES: We are not doubting your sincerity in what  
22 you are trying to get to this committee and we want this to  
23 come to this committee. However, if Presidential discussions  
24 with foreign leaders, if that is open game, that is fair  
25 game, and if the IC IG is going to make that determination,

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1 you can bet that we are going to want -- Republicans on this  
2 committee are going to want a whole lot that occurred during  
3 the Obama administration.

4 So you are kind of opening up this Pandora's box here.  
5 I mean, we don't know if this press release -- if this press  
6 article is accurate, but just know that that will be what we  
7 will want. Because if heads of states are fair game for the  
8 legislative branch of government, you know, we want to go  
9 after that, and we will put you in the middle of it, and we  
10 will be requesting all sorts of information.

11 MR. ATKINSON: To be fair to me, I haven't opened up  
12 anything. I received a complaint from a whistleblower that  
13 alleged a sequence of events. And I reviewed that sequence  
14 of events to determine, throughout that course of conduct,  
15 whether that course of conduct constituted the funding,  
16 administration, or operation of an intelligence activity, and  
17 I determined that that full course of conduct did meet that  
18 definition.

19 DR. WENSTRUP: I would -- if I may?

20 MR. NUNES: Yeah. I yield back.

21 DR. WENSTRUP: I just would somewhat expect that in your  
22 role in the Intelligence Community that you would be able to  
23 give me an answer as to whether heads of state are exempt or  
24 not. And if you can't, that is fine, just for the record.

25 I yield back.

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1 MR. NUNES: Mr. Stewart.

2 MR. STEWART: We appreciate you being here,  
3 Mr. Atkinson. And I would reemphasize what the ranking  
4 member said. We don't doubt in any way your sincerity or  
5 your sincere desire to try to do the right thing here. And  
6 you do find yourself between a rock and a hard spot, I think.

7 And I think almost everyone in this room, and I would  
8 imagine perhaps everyone in this room have come to recognize  
9 there is an apparent deficiency in the law here in which you  
10 find yourself, and that is that a person can't come directly  
11 to Congress without going through the IG first. I think that  
12 is probably a good idea. I mean, otherwise, we would be  
13 inundated with complaints here and there and everywhere.  
14 There needs to be some kind of filter and some kind of  
15 clarification process.

16 But I think what most of us would object to, and where  
17 we find ourselves today, is the ability for the DNI or any  
18 other agency to then determine definitively whether that  
19 information could be then forwarded to Congress, because it  
20 allows the executive to have the defining answer of what  
21 Congress can see and what can't Congress see.

22 And I think all of us here want to protect recognizing  
23 that we represent the people far more than the executive  
24 does, and that is true whether it is Republican or Democrat.  
25 And I think we need to discuss, outside of your purview, how

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1 we address that because it is a clear deficiency.

2 I think I understand the rock and the hard spot you find  
3 yourself. I want to state it clearly and have you say if  
4 this is true or if this isn't true. It seems to me, when you  
5 read this definition of what is an urgent complaint, it has  
6 to meet several criteria that you have gone through a number  
7 of times here.

8 But the thing we are talking about seems to be this:  
9 Was the person making the complaint a member of the IC? And,  
10 second -- and it has to be "and" second, not "if" -- and,  
11 second, was the alleged violation under the authority of the  
12 DNI? For example, you could have a member of the IC make a  
13 complaint about the Department of Education, but that  
14 wouldn't be under your authority; therefore, you would not  
15 forward that. Is that true?

16 MR. ATKINSON: That is correct.

17 MR. STEWART: And so you have determined that that  
18 complainant was a member -- the person making the allegation  
19 was a member of the IC. That is true, right?

20 MR. ATKINSON: The complainant is an employee, a  
21 detailee, or a contractor of an Intelligence Community  
22 element, yes.

23 MR. STEWART: Following within your authority and the  
24 authority of the DNI.

25 The second question then -- and I believe this is where

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1 there is a disagreement between you and the Department of  
2 Justice. The second question was, was the alleged violation  
3 under the authority of the DNI, and that is where the  
4 disagreement comes. Is that true?

5 MR. ATKINSON: I think that the question is whether the  
6 conduct relates to the operation, funding, or administration  
7 of an intelligence activity. So the answer to your question  
8 might be true, but I just -- as a lawyer, I am reluctant to  
9 take --

10 MR. STEWART: Okay.

11 MR. ATKINSON: But one thing. But the Department of  
12 Justice and the Acting DNI have determined that the activity  
13 does not relate to the funding, the administration, or  
14 operation of an intelligence activity.

15 MR. STEWART: Okay. And that is a fair explanation. I  
16 think that is fairly consistent with what I just said. I  
17 don't think there is much difference. You are an attorney.  
18 I am not. You are smarter than I am. Perhaps there is a  
19 difference there, but it seems to be --

20 MR. ATKINSON: Let's not mistake education for  
21 intelligence, so --

22 MR. STEWART: Yeah. Okay.

23 So I am just going to read through this one more time  
24 just to make sure that I think all of us understand this.  
25 The urgent concern must involve activity within the

UNCLASSIFIED, [REDACTED]

1 responsibility of the DNI.

2 And this is their response. This is Mr. Klitenic, if  
3 that is how you pronounce his name. His response was: The  
4 present complaint does not allege misconduct with the  
5 Intelligence Community or concern of the intelligence  
6 activities subject to the authority of the DNI.

7 That is where this disagreement is. He states that.  
8 You state what you just did just moments ago. That is where  
9 we are at an impasse. Is that true?

10 MR. ATKINSON: I believe that is true, yes.

11 MR. STEWART: Okay.

12 And this is for further clarity, although I don't think  
13 it is as important. He goes on to state: The complainant  
14 involves confidential and potentially privileged  
15 communications.

16 And, once again, you are not allowed -- as you have  
17 stated many times, you are not allowed to reveal the  
18 privileged communication, but that may also prohibit the DNI  
19 from furthering that complaint to Congress. Is that true?  
20 If there is a potential claim of privilege.

21 MR. ATKINSON: The DNI would -- those privilege  
22 determinations and security classification reviews would have  
23 to be conducted, yes.

24 MR. STEWART: Okay. And I think -- and I know there  
25 will be some who will read all sorts of nefarious

UNCLASSIFIED, [REDACTED]

1 implications or assumptions into this. There may be. But we  
2 have been crying wolf in a lot of ways for a long time now.  
3 It may be that this may be something -- because we don't  
4 know. No one in this room knows. It may be this that this  
5 is something that is a judicial and a legal and a legislative  
6 deficiency and not nearly as exciting as some may suspect.

7 Let me ask you this: What do we do now? What do you do  
8 now? What would we do now? Do you know of any remedy or any  
9 activity that you or that we could take that would help  
10 conclude this?

11 MR. ATKINSON: So, because the conduct, according to the  
12 Department of Justice, is outside of the DNI's jurisdiction,  
13 it is also outside of my jurisdiction. So I am not  
14 authorized to take any additional action with respect to this  
15 specific complaint.

16 I think, you know, one thing to keep in mind here is  
17 that the complainant pushed a fire alarm that Congress  
18 provided to the complainant that was related to a general  
19 subject matter that is one of the most important and  
20 significant responsibilities of the Director of National  
21 Intelligence.

22 The complainant thought it was essential for my  
23 office -- an inspector general -- and for the congressional  
24 Intelligence Committees to be among the first responders to  
25 [REDACTED] alarm. I determined that the alarm was credible, and I

1 determined that the Intelligence Committees should be made  
2 aware of that.

3 It is important to note that the Department of Justice  
4 has not said that the complainant's alarm is a hoax. The  
5 Department of Justice has not said that my credibility  
6 determination was flawed.

7 MR. STEWART: And if I could, I am not implying that you  
8 did, by the way.

9 MR. ATKINSON: No. I am trying to answer your  
10 question --

11 MR. STEWART: Yeah.

12 MR. ATKINSON: -- about what to do next.

13 MR. STEWART: Well, and if I could, I am talking about  
14 some of the news reports. We don't know if they are true or  
15 not. That is my point there is that we don't know.

16 MR. ATKINSON: We don't know. But the one thing to keep  
17 in mind is no one has ruled out the existence of a fire.  
18 Your point is a good one. We don't know whether it is just  
19 smoke, whether it is a small fire, or whether it is a very  
20 dangerous fire.

21 But what the Department of Justice has said is that I  
22 can no longer be a first responder. And what the DNI did  
23 was, when it came time for him to report this information to  
24 another first responder, he didn't report the existence of an  
25 alleged fire. I don't know whether it is just smoke. I

1 don't know whether it is a small fire. All I know is that  
2 there was a time when no one -- another first responder was  
3 not getting information about an alleged fire.

4 MR. STEWART: Yeah.

5 MR. ATKINSON: And that was a problem, and that was a  
6 concern to me, because I think most Americans would expect  
7 the Director of National Intelligence, given the general  
8 subject matter and these specific facts, to be leading the  
9 Intelligence Community's efforts to obtain, analyze, and  
10 disseminate information about and conduct activities to  
11 protect against this alleged fire.

12 MR. STEWART: So do you have a suggestion on what we  
13 could do?

14 MR. ATKINSON: I don't think it is my place to tell the  
15 committee what to do.

16 MR. STEWART: Well, I understand that, and I don't want  
17 you to advise the committee. I am just expressing perhaps  
18 frustration. And I don't know that most of us have a  
19 solution for this.

20 MR. ATKINSON: I think that -- you know, I think  
21 transparency is generally a good thing, and so, to the extent  
22 that information could become more transparent to others, I  
23 think that would be helpful.

24 MR. STEWART: And I am going to yield. Thank you.

25 MR. NUNES: Mr. Hurd.

1 MR. HURD: Sure. Three quick questions. In general,  
2 when the IC IG investigates a complaint, does the component  
3 agency where the whistleblower works get notified?

4 MR. ATKINSON: What we would do in that situation is we  
5 would -- this goes to the confidentiality of the complainant.  
6 We would ask the complainant whether the complainant wanted  
7 to waive confidentiality in a way that would allow us to  
8 refer the complaint to another component's inspector general  
9 office.

10 MR. HURD: In this specific case, do you feel  
11 comfortable telling whether that happened or not?

12 MR. ATKINSON: I do not feel comfortable saying that.

13 MR. HURD: In this classification review, if a  
14 classification review needed to happen by the DNI, how many  
15 other entities would need to be involved in that  
16 classification review?

17 MR. ATKINSON: So I may not be authorized to disclose  
18 that information, so I respectfully decline to answer.

19 MR. HURD: Has the complainant given you any indication  
20 of the terms in which [REDACTED] would feel comfortable coming here  
21 to talk to us?

22 MR. ATKINSON: We have not had those discussions with  
23 the complainant because we have not been able to get  
24 authorization for the complainant to come talk to the  
25 committees.

1           MR. HURD: But I am indicating that we are not talking  
2 on behalf of the DNI. We are talking on behalf of Congress,  
3 that if there is terms in which the complainant feels  
4 comfortable coming here, whether that is something that we  
5 would be able to do.

6           And I yield my time back to Mr. Ratcliffe.

7           MR. RATCLIFFE: Mr. Atkinson, I know you received the  
8 complaint on August 12. What can you tell us, if anything,  
9 about the timing or the timeframe of the underlying conduct  
10 at issue?

11          MR. ATKINSON: I don't think I can tell you anything  
12 about the timeframe because I can't tell you anything about  
13 the subject matter because I am not authorized to disclose  
14 that information.

15          MR. RATCLIFFE: Okay. So I guess you can't tell us  
16 anything whether the alleged "urgent concern" conduct  
17 occurred days, weeks, or months before it was urgently  
18 reported?

19          MR. ATKINSON: I am not authorized to disclose that  
20 information.

21          MR. RATCLIFFE: Okay. Mr. Stewart did a great job of  
22 covering some of the questions that I had. But this  
23 September 13th letter -- I want to turn your attention to  
24 that -- that ODNI Office of General Counsel Mr. Klitenic sent  
25 to the chairs and the ranking members of the congressional

1 Intelligence Committee.

2 On page 2, just so we are clear, because there was some  
3 discussion about whether these were DOJ determinations or  
4 ODNI determinations, and on page 2, it says: Here we  
5 determined in consultation with DOJ that the complainant did  
6 not state an urgent concern. So, when they say, "When we  
7 determined in consultation with DOJ," my reading of that as  
8 "we" is the ODNI made that determination.

9 MR. ATKINSON: That is my understanding as well.

10 MR. RATCLIFFE: Okay. And then, as he -- in the  
11 second-to-last paragraph, I want to see what you -- just so  
12 we are clear. And I don't want to muddy the water. I want  
13 to make sure it is more clear if I can in terms of what you  
14 agree and what you disagreed with from ODNI general counsel's  
15 perspective.

16 And in that second-to-last paragraph, it says -- he  
17 distinguishes and says, the information within the present  
18 complaint, however, is different in kind from that that  
19 involved any past cases. And I know there has been a  
20 discussion about what the past practices were. But do you  
21 agree with that statement?

22 MR. ATKINSON: I think what he is getting to there is  
23 that the allegations didn't, according to the consultation  
24 with the Department of Justice, didn't meet that second prong  
25 of relating to the funding, administration, or operation of

1 an intelligence activity.

2 And so what I will say is, in the past 15 months, we  
3 have not had a case where that second condition was not met.  
4 So, in that respect, that is different than what we -- than  
5 my experience or the types of urgent concerns that we have  
6 gotten in the past 15 months.

7 MR. RATCLIFFE: Okay. And then my last question is  
8 about this sentence that was read by Mr. Stewart. I want to  
9 bifurcate the sentence and see if you agree with both parts  
10 of it. Because it says: The present complaint does not  
11 allege misconduct within the Intelligence Community or  
12 concern an intelligence activity subject to the authority of  
13 the DNI.

14 So the first part, "the present complaint does not  
15 allege misconduct within the Intelligence Community," do you  
16 agree with that or not?

17 MR. ATKINSON: I am not going to be able to answer that  
18 question.

19 MR. RATCLIFFE: Okay.

20 Then the second part would read, "The present complaint  
21 does not concern an intelligence activity subject to the  
22 authority of the DNI." Do you agree or disagree with that?

23 MR. ATKINSON: I think I have already stated my  
24 disagreement with that conclusion.

25 MR. RATCLIFFE: Okay.

1           And then the next sentence: Because the complaint  
2 involves confidential and potentially privileged  
3 communications by persons outside the Intelligence Community,  
4 the DNI lacks unilateral authority to transmit such materials  
5 to the Intelligence Committees. Do you agree or disagree  
6 with that?

7           MR. ATKINSON: That is my understanding as well because  
8 of the other classification equities and because of the other  
9 potential privilege assertions.

10          MR. RATCLIFFE: So you agree with that?

11          MR. ATKINSON: I do.

12          MR. RATCLIFFE: Okay. Great. Thank you.

13          THE CHAIRMAN: I just have a couple questions, and then  
14 I want to turn it to my colleagues.

15          We have a housekeeping matter.

16          [REDACTED]: Sorry. One administrative matter before the  
17 clock starts.

18          Mr. Atkinson, my name is [REDACTED]. I am the [REDACTED]  
19 [REDACTED] for the committee.

20          I want to underscore that your testimony so far and  
21 moving forward is truthful, consistent with your legal  
22 obligations to testify truthfully to Congress. Can you  
23 affirm for the record and to the committee that your  
24 testimony has been and will be truthful in this unclassified  
25 format?

1 MR. ATKINSON: Yes, I affirm that.

2 [REDACTED]: Thank you very much.

3 THE CHAIRMAN: And that is certainly not a commentary on  
4 anything. It is something we should have done at the outset  
5 of the hearing.

6 Just to follow up on Dr. Wenstrup's good questions, I  
7 want to underscore something that we know this complaint does  
8 not, and that is, the statute, when it defines "urgent  
9 concern," says it must be a serious or a flagrant abuse,  
10 problem, et cetera. But it also goes on to say that it  
11 cannot be a mere policy difference. Is that right?

12 MR. ATKINSON: Yes.

13 THE CHAIRMAN: And it is your conclusion here that what  
14 the whistleblower complained of is not the policy of the  
15 administration or anyone else; it was, instead, a serious or  
16 flagrant problem, abuse, or the other elements of that code  
17 section?

18 MR. ATKINSON: Yes. I determined this was not a  
19 difference of public policy.

20 THE CHAIRMAN: So, if this were about a conversation  
21 between the President and foreign leaders about policy, that  
22 would not qualify.

23 MR. ATKINSON: So I am reluctant to get into any  
24 hypotheticals like that, so, you know, I don't know that I am  
25 prepared to answer that question.

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1 THE CHAIRMAN: But a difference over policy does not  
2 qualify as an urgent concern, and that is not what you found  
3 here.

4 MR. ATKINSON: Correct.

5 THE CHAIRMAN: You described the nature of the complaint  
6 being akin to a credible complaint of a fire and there being  
7 some urgency to determine is the fire real, is the fire big,  
8 is the fire small, or is it merely smoke.

9 Can you tell us whether the nature of the complaint  
10 indicates a past harm that needs to be remedied or the  
11 potential of a future harm that, if undisclosed, could cause  
12 damage to our national security?

13 MR. ATKINSON: So I think all I can say is I determined  
14 that the allegations were credible and that they were urgent.  
15 What we all know about fires is, if they are not attended to  
16 or if they are played with, they can spread.

17 THE CHAIRMAN: And part of the reason you have taken the  
18 extraordinary step of coming to the committee, of following  
19 up with a letter that says you have reached an impasse with  
20 the ODNI is that this is an urgent matter and, at this point,  
21 no one is addressing it.

22 MR. ATKINSON: I can't say that. What I can say is that  
23 my office is not able to address it; that the Director of  
24 National Intelligence has determined that it is also outside  
25 of his jurisdiction; and, for a time being, because the

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1 congressional Intelligence Committees were not aware of the  
2 information, they were not able to respond to the report  
3 either. So three of the first responders -- well, the  
4 congressional Intelligence Committees are now responding, but  
5 two of the other three are not responding.

6 THE CHAIRMAN: Okay.

7 Mr. Himes.

8 MR. HIMES: Thank you, Chairman.

9 Thank you, Inspector General.

10 Just a couple of quick questions. You have been very --  
11 for reasons I understand -- very careful in your wording  
12 today. You also said that the individual, the complainant,  
13 would be -- and quoting you here -- at great personal risk if  
14 they came to the committee.

15 Do you care to expand on that, either in specific terms  
16 or in more general terms, why you believe it would be great  
17 personal risk for this individual to do so?

18 MR. ATKINSON: Well, there are a couple reasons.

19 One is, any kind of unauthorized disclosure by an  
20 individual in the Intelligence Community puts that  
21 individual's security clearance at risk, which then also puts  
22 that individual's livelihood at risk. So that is one  
23 concern.

24 The other concern that, until a couple weeks ago, wasn't  
25 as much of a concern was that, you know, when complainants

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1       allege wrongdoing to an inspector general, they are normally  
2       protected from reprisal or the threat of reprisal. Because  
3       of the Department of Justice's conclusion here, this  
4       particular individual, because the position is that the  
5       statute doesn't apply, this particular individual may no  
6       longer be protected statutorily from reprisal or the threat  
7       of reprisal.

8               So it is both an unauthorized disclosure issue and, even  
9       though the individual played by the rules, this individual is  
10       nevertheless at risk, potentially, because the statutory  
11       protections may not apply.

12              MR. HIMES: Okay. Thank you.

13              My other question: Is it your impression from your  
14       conversations with the Acting DNI that, relying on the  
15       opinion of the Department of Justice, the Acting DNI now  
16       considers this matter closed?

17              And for further elaboration, has the Acting DNI offered  
18       you any -- I understand the reason you are here, because you  
19       feel you are at an impasse. Has the Acting DNI offered you  
20       any other route of appeal or mode to take this up, or is it  
21       your impression that they consider this matter closed?

22              MR. ATKINSON: It is my understanding, based on the  
23       formal legal opinion from the Department of Justice, that the  
24       matter is outside the jurisdiction of the DNI, so it was my  
25       understanding that the DNI did not intend to take any

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1 additional action.

2 I do not know whether the Office of the Director of  
3 National Intelligence has, in fact, taken any action in  
4 response to the complaint, but my understanding was that they  
5 would not because it was outside of their jurisdiction.

6 MR. HIMES: And they have subsequently offered you no  
7 instructions on what to tell the complainant with respect to  
8 [REDACTED] rights of appeal or further action, and they have done  
9 likewise in not advising you of other routes of appeal, for  
10 lack of a better word?

11 MR. ATKINSON: They have not provided those types of  
12 instructions to me so that I could provide them to the  
13 complainant. So, as a result, yes, I don't have  
14 instructions, and the complainant does not have instructions.

15 MR. HIMES: Okay. Thank you. I yield back to the  
16 chairman.

17 THE CHAIRMAN: Mr. Quigley.

18 MR. QUIGLEY: Thank you, sir, for being here.

19 One of your tasks in any such complaint is to determine  
20 credibility, correct?

21 MR. ATKINSON: Yes.

22 MR. QUIGLEY: And what are the means in which you  
23 typically do that?

24 MR. ATKINSON: Well --

25 MR. QUIGLEY: Besides interviewing the person directly,

1 I assume.

2 MR. ATKINSON: Right. As a former prosecutor, we  
3 would -- any complaint that came forward to try to assess  
4 credibility, we would typically interview the complainant; we  
5 would interview others who knew the complainant; and we would  
6 interview others with direct knowledge of the information to  
7 try to corroborate the individual's allegations.

8 MR. QUIGLEY: And I assume that this would be no  
9 different under these circumstances, under this particular  
10 complaint, correct? You wouldn't have deviated from that  
11 path, correct?

12 MR. ATKINSON: We would have used many of the same  
13 tools.

14 MR. QUIGLEY: Corroboration.

15 MR. ATKINSON: Yes. But we were under a 14 calendar-day  
16 time period, unlike when I was a Federal prosecutor, we had  
17 much more time. But, of course, we had a much more difficult  
18 decision to make because we had to determine whether we were  
19 going to charge someone with a crime.

20 My responsibility here was to determine whether the  
21 allegations appeared credible, so we would use many of the  
22 same tools that I would use as a former prosecutor. I just  
23 had a much more compressed time period and a different  
24 standard.

25 MR. QUIGLEY: I understand. But in short, you did

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1 corroborate what this complainant came forward with?

2 MR. ATKINSON: So I am very reluctant to discuss any  
3 sources and methods. I appreciate the question. I think  
4 what you have to -- understand is that because this  
5 complainant may not be statutorily protected from reprisal, I  
6 am reluctant to say anything that could put any other  
7 individual -- or to, you know, to talk about tactics that we  
8 might have used that might, as a consequence, put other  
9 individuals in the same harm.

10 MR. QUIGLEY: Sir, and I respect that. All I am making  
11 clear is that you wouldn't have deviated from previous  
12 practices of corroborating someone's complaint, which is  
13 clearly something you would have done given the magnitude of  
14 any complaint before the IC.

15 MR. ATKINSON: We would have taken appropriate and  
16 responsible steps in the time period we had to make that  
17 credibility determination.

18 MR. QUIGLEY: So pretend that there is no complaint  
19 here, and you are just testifying before our committee about  
20 how your process works. So I suppose we have exhausted where  
21 I just went, but let's just ask how you handle complaints  
22 generally. A complaint comes in, who sees the complaint?

23 MR. ATKINSON: We have a hotline that will process those  
24 complaints. We receive complaints by email. We receive them  
25 by phone, both secure phone and unclassified phone and secure

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1 email and unclassified email. We also do walk-ins. So those  
2 complaints initially will come through our hotline. And then  
3 the hotline will make a decision about whether the matter  
4 should be referred to our investigations division for a  
5 preliminary review.

6 MR. QUIGLEY: But through the process, how many  
7 people -- or who actually sees someone's complaint?

8 MR. ATKINSON: It depends on the sensitivity of the  
9 matter.

10 MR. QUIGLEY: So I assume, in this one, it was  
11 particularly narrow?

12 MR. ATKINSON: Because of the subject matter, yes, it  
13 was particularly narrow.

14 MR. QUIGLEY: One hypothetical, and then I will let it  
15 go. If the subject matter is a member of the armed forces,  
16 right, the person that they are complaining about, you can  
17 see the scenario in which this is a high-ranking military  
18 official. Under what circumstances would that official be  
19 able to see the complaint?

20 MR. ATKINSON: If the determination was that the subject  
21 needed to see that information, it would be normally very  
22 late in the investigative process.

23 MR. QUIGLEY: And the concerns would be?

24 MR. ATKINSON: Well, we wouldn't want to disclose  
25 sources and methods or evidence to a subject because it could

1 impede the investigation.

2 I also just want to make one thing clear. As part of  
3 our 14-day preliminary review, we did not -- our  
4 responsibility was not to corroborate every single point that  
5 was made or alleged. Our responsibility was to corroborate  
6 the information sufficiently so that we could make  
7 determination about whether there were reasonable grounds to  
8 believe that the information appeared credible.

9 MR. QUIGLEY: Thank you.

10 THE CHAIRMAN: Mr. Swalwell.

11 MR. SWALWELL: Thank you, Chair.

12 And thank you, Mr. Atkinson.

13 Would you consider your investigation, as far as  
14 fact-finding, is that part closed?

15 MR. ATKINSON: Because we no longer -- because the  
16 Department of Justice has determined that we no longer have  
17 jurisdiction, we are not authorized to take any additional  
18 fact-finding efforts.

19 MR. SWALWELL: Is this relating to one complainant, or  
20 have multiple people complained about this issue?

21 MR. ATKINSON: I don't want to talk about the sources or  
22 methods of our preliminary review, so I will respectfully  
23 decline that answer.

24 MR. SWALWELL: So, I guess, without going into sources  
25 and methods, just in a general investigation like this, it

1       could be the case that once you start to investigate, you  
2       could find that others would be forthcoming and also  
3       acknowledge the concerning conduct. Is that right?

4             MR. ATKINSON: That has happened in the past, yes.

5             MR. SWALWELL: Okay. But, right now, because you have  
6       done your job and passed this up to DNI, you are not able to  
7       investigate further?

8             MR. ATKINSON: No, I am not able to investigate further  
9       because the Department of Justice has concluded that the  
10      matter is outside of the DNI's jurisdiction, which means it  
11      is outside of my jurisdiction.

12            MR. SWALWELL: What would you do if persons other than  
13      the complainant came forward now alleging the same conduct?

14            MR. ATKINSON: I have registered my disagreement with  
15      the Department of Justice. I would have to -- about their  
16      conclusion that this is beyond my jurisdiction. If I  
17      received additional information related to the same  
18      allegation, I would have to make a determination about  
19      whether I was authorized to investigate that information. I  
20      would also make a determination about whether there were  
21      others who had jurisdiction to investigate the matter.

22            MR. SWALWELL: Now, suppose there is a different DNI,  
23      different Attorney General. Does that change your  
24      calculation just, you know, again, knowing that that happens  
25      in administrations? Or, I mean, how long are you held to

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1 this opinion by the DOJ and the Acting DNI?

2 MR. ATKINSON: I believe I am bound by it until it is  
3 changed by the Department of Justice.

4 MR. SWALWELL: If a new Acting DNI came in or a  
5 confirmed DNI came in, are you able, in your position, to go  
6 to that person and seek reconsideration of the decision?

7 MR. ATKINSON: I am currently doing that with this  
8 Acting DNI. The Acting DNI is aware of my efforts to seek  
9 reconsideration from the Department of Justice, and I will  
10 continue those efforts regardless of who the DNI is.

11 MR. SWALWELL: Did the complainant or complainants have  
12 a lawyer when they presented the case?

13 MR. ATKINSON: The complainant does have a lawyer, yes.

14 MR. SWALWELL: Okay. Was the lawyer obtained prior to  
15 coming to you or after?

16 MR. ATKINSON: So "obtained" can have a legal  
17 significance. In terms of retained, I don't know whether the  
18 lawyer was formally retained, but --

19 MR. SWALWELL: Sorry. I meant, to your knowledge, when  
20 the complainant came forward, did the complainant have a  
21 lawyer?

22 MR. ATKINSON: The complainant represented to us that [REDACTED]  
23 was represented by counsel when the complainant came forward  
24 to us.

25 MR. SWALWELL: Does the Acting DNI know the identity of

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1 the complainant?

2 MR. ATKINSON: Not to my knowledge.

3 MR. SWALWELL: Does the Department of Justice know the  
4 identity of the complainant?

5 MR. ATKINSON: Not to my knowledge.

6 MR. SWALWELL: Does the White House know the identity of  
7 the complainant?

8 MR. ATKINSON: So, on that, I may not be authorized to  
9 disclose that information, so I respectfully decline to  
10 answer.

11 MR. SWALWELL: It has been referred to earlier that this  
12 is a deficiency in the law, but would you agree that this is  
13 actually a failure to follow laws that are already in place,  
14 meaning that it is a deficiency in that this person should be  
15 able to come to Congress, authorized or not, and we should  
16 change that? But, actually, isn't this just a failure to  
17 follow a law that doesn't give discretion to the Acting DNI?

18 MR. ATKINSON: I have registered my disagreement with  
19 the Department of Justice about its legal conclusion, but I  
20 am bound by its legal conclusion that this is outside the  
21 statute and so the Acting DNI is not required to transmit the  
22 information.

23 MR. SWALWELL: Is the complainant or complainants still  
24 employed within the Intelligence Community?

25 MR. ATKINSON: I am not going to disclose any additional

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1 information about the complainant. I decline to provide that  
2 information.

3 MR. SWALWELL: Since public reporting about this matter,  
4 have any other employees within the Intelligence Community  
5 come forward with whistleblower cases not related to this but  
6 just in general?

7 MR. ATKINSON: I am sorry. Could you ask the question  
8 again?

9 MR. SWALWELL: Since public reporting on this matter,  
10 have there been any other whistleblowers about other matters  
11 in the Intelligence Community?

12 MR. ATKINSON: Have there been any other whistleblowers  
13 about any other matters in the Intelligence Community?

14 MR. SWALWELL: Yeah.

15 MR. ATKINSON: I think, yes. Our hotline is open 24/7.

16 MR. SWALWELL: Is your concern that, if this is not  
17 resolved, the way the law is designed that this could have a  
18 chilling effect on future whistleblowers?

19 MR. ATKINSON: I am concerned that, if whistleblowers  
20 are not statutorily protected from reprisal or the threat of  
21 reprisal, it may have a chilling effect. It is very, very  
22 difficult to get individuals in the Intelligence Community to  
23 come forward with allegations of wrongdoing.

24 Part of the reason is because people don't think their  
25 allegations will be acted upon, and part of it is because

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1 individuals believe they will be reprimanded for rocking  
2 the boat, if you will. And any public message that  
3 whistleblower rights might be diminished will likely have a  
4 chilling effect on the willingness of individuals to come  
5 forward.

6 MR. SWALWELL: Is one risk of this procedure not being  
7 followed that it could be litigated in the press, either by  
8 the complainant or people familiar with the information  
9 frustrated that normal channels are not being used?

10 MR. ATKINSON: I think individuals who play by the rules  
11 expect people in charge of the rules to apply them  
12 consistently and fairly. And when individuals play by the  
13 rules and, you know, put themselves at risk and then the  
14 rules change, that can be demoralizing.

15 MR. SWALWELL: Thank you, Mr. Atkinson.

16 I yield back.

17 THE CHAIRMAN: Just a quick followup on Mr. Swalwell's  
18 questions before I hand it to my other colleagues. Can there  
19 be multiple complainants within a single whistleblower  
20 complaint, or are they all required to file separate  
21 complaints?

22 MR. ATKINSON: I am sorry, Chairman. Could you repeat  
23 the question?

24 THE CHAIRMAN: Yeah. Can there be multiple complainants  
25 within a single complaint, or does each whistleblower have to

1 file their own complaint?

2 MR. ATKINSON: No. I think you could have multiple  
3 complainants filing a complaint.

4 THE CHAIRMAN: In this case, though, it is a single  
5 complainant?

6 MR. ATKINSON: I think, through my letters to the  
7 committee, I have made it clear that the initial disclosure  
8 came in through an individual complainant.

9 THE CHAIRMAN: Have there been subsequent whistleblower  
10 complaints filed on this subject?

11 MR. ATKINSON: I would decline to answer that question.

12 THE CHAIRMAN: So I am not sure I understand the basis  
13 for that declination. If there was a second complaint filed  
14 on this same subject, would you go through the same process  
15 of doing a preliminary investigation and then referring it to  
16 the DNI, or would that be short circuited because there has  
17 already been a judgment by the Department of Justice this is  
18 outside your jurisdiction?

19 MR. ATKINSON: So it is important to keep in mind that  
20 the thing that triggers the "urgent concern" statute is the  
21 complainant's express intent to come to the congressional  
22 Intelligence Committees. That is what triggers the "urgent  
23 concern" statute.

24 If an individual makes a complaint to our hotline but  
25 doesn't indicate that they want the information to go to the

1 congressional Intelligence Committees, then we are not  
2 obligated to -- then the 14-day calendar time period doesn't  
3 kick in, and we would just review that matter and investigate  
4 the matter in the ordinary course.

5 So you need to distinguish between ordinary complaints  
6 and "urgent concern" matters. If we had another urgent  
7 concern on this matter, it would be relevant information that  
8 I certainly would have shared with this committee.

9 THE CHAIRMAN: So, even though the DOJ has made a  
10 determination this is outside the jurisdiction of the DNI and  
11 therefore outside your jurisdiction, if another IC employee  
12 or contractor, et cetera, filed a complaint regarding the  
13 same conduct or related conduct, you wouldn't refuse to  
14 consider it because of the DOJ opinion. You would go through  
15 the same process and make the same report back to us that the  
16 DNI was refusing to forward the complaint, presuming that the  
17 complainant then, as here, expressed the interest in sharing  
18 information with Congress?

19 MR. ATKINSON: If that situation occurred, I would go  
20 very, very slowly because I am currently not authorized to  
21 investigate that conduct. And if I were to start  
22 investigating that same conduct, I might be acting without  
23 authorization. And that could -- someone could make the  
24 argument that I am abusing my authority because I am acting  
25 beyond my jurisdiction. So, if I got a complaint like that,

1 I would have to think about what steps would need to be taken  
2 before I started to review the matter.

3 THE CHAIRMAN: And you are not willing to tell us  
4 whether you received a second complaint on this subject?

5 MR. ATKINSON: I think if I had received a second  
6 complaint on this matter, it would be relevant to my  
7 testimony today, and I would have disclosed that information.

8 THE CHAIRMAN: Okay.

9 MR. ATKINSON: Can I make one clarifying statement?

10 THE CHAIRMAN: Yes.

11 MR. ATKINSON: I believe I was asked whether the Acting  
12 DNI knew the identity of the complainant. The Acting DNI, to  
13 my knowledge, does not know the identity of the complainant.  
14 But other individuals within the Office of the Director of  
15 National Intelligence do know the identity of the  
16 complainant. So, if I misspoke on that point, I want to make  
17 it clear: Other individuals in the Office of the Director of  
18 National Intelligence do know the complainant's identity.

19 MR. SWALWELL: May I just follow up on that line of  
20 questioning, Mr. Schiff?

21 THE CHAIRMAN: Yes.

22 MR. SWALWELL: How would they have known -- how would  
23 they come to know the identity of the complainant?

24 MR. ATKINSON: I am not going to talk about --

25 MR. SWALWELL: Well, I guess --

1 MR. ATKINSON: -- how they might know that information.

2 MR. SWALWELL: In the regular course of a complaint, is  
3 that something that would occur, or is that something you try  
4 and prevent from occurring?

5 MR. ATKINSON: It depends on the circumstances of the  
6 disclosure.

7 MR. SWALWELL: Did you communicate to anyone in the  
8 Office of DNI the identity of the complainant?

9 MR. ATKINSON: No.

10 MR. SWALWELL: To your knowledge, did anyone on your  
11 staff communicate it?

12 MR. ATKINSON: No.

13 MR. SWALWELL: Okay.

14 Mr. Schiff, I will yield back.

15 THE CHAIRMAN: Mr. Carson.

16 MR. CARSON: Thank you, Mr. Chairman.

17 Thank you, Mr. Atkinson.

18 In the event that a contractor makes a complaint, which  
19 is within their right to do so, do those contractors have the  
20 same protections as traditional GS-level employees  
21 statutorily?

22 MR. ATKINSON: That was always my understanding. So I  
23 should be clear, the contractors generally do have the same  
24 protections in terms of their security clearances, their  
25 eligibility for access to classified information. There are

1 some differences for contractors when it comes to personnel  
2 actions. But in terms of eligibility for access to  
3 classified information, contractors do have the same rights  
4 and remedies.

5 MR. CARSON: In the event that the IG IC or even the  
6 Director of DNI happens to have a relationship or prior  
7 working relationship or otherwise or even knows the  
8 complainant, does either the Director of DNI or Acting DNI  
9 Director or yourself have to recuse himself? And if that is  
10 the case, who would take either of your place?

11 MR. ATKINSON: So let me speak to my office. If I was  
12 personally recused from the matter, but if I thought that my  
13 office could review the matter independently and objectively,  
14 then I could delegate my authority to the Principal Deputy  
15 Inspector General. If I thought that our office had an  
16 office-wide conflict, then I would refer the matter to  
17 another inspector general office in the Intelligence  
18 Community.

19 And I am not an expert on ODNI policy, but my  
20 understanding would be that if the Acting Director had a  
21 conflict of interest, that he would follow a similar  
22 procedure and delegate the matter to the Principal Deputy  
23 Director of National Intelligence.

24 MR. CARSON: Thank you, sir.

25 Are you aware, sir, if the White House communicated

1 directly with ODNI the identity of the complainant?

2 MR. ATKINSON: I may not be authorized to answer that  
3 question, so I respectfully decline to answer it.

4 MR. CARSON: Yes, sir. Thank you, sir. Thank you for  
5 your service.

6 Chairman, I yield back.

7 THE CHAIRMAN: Ms. Speier.

8 MS. SPEIER: Thank you, Mr. Chairman.

9 Thank you for your extraordinary service, Mr. Atkinson.  
10 At one point in your presentation, you referenced in answer  
11 to a question that the AG did not have all of the facts that  
12 you had at your disposal in making your determination. Is  
13 that correct?

14 MR. ATKINSON: The Department of Justice did not have  
15 all of the same facts that I had available to me.

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1 [11:00 a.m.]

2 MS. SPEIER: So do you believe they would come to a  
3 different conclusion if they had all the facts you had at  
4 your disposal?

5 MR. ATKINSON: I do not know the answer to that.

6 MS. SPEIER: Is there any reluctance on your part to  
7 share those sets of facts with them?

8 MR. ATKINSON: Yes, I am reluctant to share my sources  
9 and methods with other authorities who are not involved in  
10 investigating the underlying conduct.

11 MS. SPEIER: So what you are saying is that you would be  
12 in a situation of divulging sources and methods to the  
13 Department of Justice if you shared the facts you knew that  
14 they do not know?

15 MR. ATKINSON: Potentially, yes.

16 MS. SPEIER: And these facts could be persuasive?

17 MR. ATKINSON: You know, I can't speak to how the  
18 Department of Justice would view those additional facts.

19 MS. SPEIER: But these facts are critical in your  
20 determination that it met all three prongs?

21 MR. ATKINSON: They were relevant to my determination  
22 that it was a credible urgent concern.

23 MS. SPEIER: At another point in your testimony, you  
24 referenced the term "urgent." Now, I have always, in  
25 listening, thought of "urgent" as urgent in terms of national

1 security or intelligence. In something you just said a  
2 moment ago, "urgent" seemed to indicate more -- "urgent" was  
3 triggered by the complainant wanting to come to the  
4 committees of the House, versus whether it was urgent in  
5 terms of the content.

6 MR. ATKINSON: Well, let me clarify that. When a  
7 complainant indicates that they want to bring classified  
8 information to the Intelligence Committees, that triggers the  
9 "urgent concern" statute; that triggers my 14-day calendar  
10 time period to review the matter. I have to determine  
11 whether it is a credible urgent concern as defined in the  
12 statute.

13 My practice has been that -- the word "urgent" is not  
14 defined in the statute, but my practice has been for the past  
15 15 months that "urgent," you know, has the same common  
16 understanding we all have of it, that time matters.

17 And so I deemed it credible, and I deem it urgent. And  
18 the reason why there is that then 7-day time period for the  
19 DNI to transmit with any of his directions is because of the  
20 urgency of the complaint, of the underlying subject matter.

21 MS. SPEIER: So "urgent" has two triggers. One is if it  
22 is -- the complainant's interest in having it come before the  
23 committee. And in your interpretation, "urgent" also means  
24 that we all see "urgent" to mean, that it has a  
25 time-sensitive element to it. Is that correct?

1 MR. ATKINSON: That is correct.

2 THE CHAIRMAN: Representative --

3 MS. SPEIER: So do you believe it is urgent today? It  
4 was urgent, you know, a month ago. Is it still urgent today?

5 MR. ATKINSON: I still believe that this is a credible  
6 urgent concern.

7 THE CHAIRMAN: Our time has expired. We will come back  
8 to Representative Speier.

9 Mr. Atkinson, do you want a brief break?

10 MR. ATKINSON: How much longer do you expect this to go?

11 THE CHAIRMAN: I don't know. I think --

12 MS. SPEIER: Take a break.

13 THE CHAIRMAN: -- we are probably close to the end of  
14 our members, and it really depends on how long the minority  
15 wants to go.

16 MR. NUNES: We probably have this block, and I don't  
17 know if we would have followup after that.

18 THE CHAIRMAN: So it sounds like it will be at least a  
19 half an hour.

20 MR. ATKINSON: Could we take a break?

21 THE CHAIRMAN: Yeah, of course. We will come back in  
22 5 minutes.

23 [Recess.]

24 THE CHAIRMAN: All right, why don't we resume.

25 Ranking Member Nunes?

1 MR. NUNES: All right. Thank you. I am going to yield  
2 to Mr. Ratcliffe.

3 MR. RATCLIFFE: Mr. Atkinson, I just have one question.  
4 We have had some discussion about the role of the Department  
5 of Justice and it making determinations, but, as I asked you  
6 before, as it has been related by Mr. Klitenic, as he has  
7 reported to our committees, the determinations have been made  
8 by ODNI Office of General Counsel, correct, in terms of  
9 whether or not to communicate information to this committee?

10 MR. ATKINSON: So, to be clear, my understanding is that  
11 the Department of Justice left it to the Acting DNI to  
12 determine whether he would forward the information. And as I  
13 understand Mr. Klitenic's letter, it was that the DNI was not  
14 required to forward that information. And my understanding  
15 of that is it was the Acting DNI who determined not to  
16 forward the information.

17 MR. RATCLIFFE: Okay. But as to the issue of  
18 jurisdiction, you have said a number of times that, because  
19 the matter falls outside the jurisdiction of the ODNI, it  
20 falls outside my jurisdiction as the IC IG. Did I hear you  
21 say that?

22 MR. ATKINSON: Yes.

23 MR. RATCLIFFE: Okay. So do you know, if it falls  
24 outside of your jurisdiction, whose jurisdiction is it?

25 MR. ATKINSON: It potentially could fall within the

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1 jurisdiction -- so I don't want to get into the subject  
2 matter. But the way the normal process would work is we  
3 would look to see whether there were any other inspectors  
4 general that had jurisdiction over the matter, and we also  
5 have a statutory obligation to report alleged criminal  
6 violations to the Department of Justice, or to the FBI.

7 MR. RATCLIFFE: Right. So that is what I am trying to  
8 find out: Whose jurisdiction is it? Do you know whose  
9 jurisdiction it is, since it is not your jurisdiction, or you  
10 are being told it is not.

11 MR. ATKINSON: So I am not going to discuss other IGs  
12 that might have jurisdiction because that will potentially  
13 reveal the subject matter. But the Federal Bureau of  
14 Investigation would have jurisdiction over any allegation of  
15 a criminal violation.

16 MR. RATCLIFFE: Yeah.

17 MR. ATKINSON: I shouldn't say "any," but most criminal  
18 violations.

19 MR. RATCLIFFE: And I appreciate that, that you have to  
20 be careful. But I don't want there to be an impression that,  
21 as some members have said, well, the matter is closed.

22 Just because you don't have jurisdiction does not mean  
23 this matter does not fall within someone's jurisdiction and  
24 there isn't a discussion taking place about who does have the  
25 appropriate jurisdiction. Is that fair?

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1 MR. ATKINSON: That is fair.

2 MR. RATCLIFFE: Okay. Thank you.

3 MR. NUNES: I want to go back to this "urgent concern"  
4 part of the statute. So you say you are a first responder,  
5 and who are the other first responders on the "urgent  
6 concern" --

7 MR. ATKINSON: Because the complainant wanted to report  
8 this information to the congressional Intelligence  
9 Committees, the other first responders, the way I am using  
10 that term, are the two congressional intelligence oversight  
11 committees.

12 MR. NUNES: So you, the two committees --

13 MR. ATKINSON: And then, if it involved a criminal  
14 violation, the FBI would be -- I would classify as a first  
15 responder as well.

16 MR. NUNES: Okay. What prohibits you from turning this  
17 over -- anything over to the FBI at any time? Nothing  
18 prohibits you from doing that, correct?

19 MR. ATKINSON: Correct.

20 MR. NUNES: Okay.

21 So you described this as a fire --

22 MR. ATKINSON: An alleged fire.

23 MR. NUNES: -- an alleged fire. But you don't know if  
24 this is a -- do you know if it is a fire or not at this  
25 point? Have you done the due diligence to know that?

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1 MR. ATKINSON: I have made a determination that it is a  
2 credible urgent concern. So I have made a determination that  
3 the complainant's allegations appear credible to me.

4 MR. NUNES: Credible, but are they -- but you haven't  
5 done an investigation to know if they are truthful yet.

6 MR. ATKINSON: I haven't done an investigation to  
7 determine whether they actually, in fact, took place or, you  
8 know, that all of the alleged actions actually took place.

9 MR. NUNES: Okay. And sorry to belabor this, but I am  
10 still not understanding why the complainant can't come to  
11 this committee. I have always understood it to be, as long  
12 as they check the box and give whatever it is to you, they  
13 can then come here freely on their own and give us the same  
14 information.

15 MR. ATKINSON: So one thing to keep in mind is that  
16 there are privileges in play that individuals in the  
17 Intelligence Community may not have the authority to waive.  
18 And so that is one reason, is because there are potential  
19 privilege assertions in play.

20 And then, in terms of the classification, one of the  
21 reasons that the statute requires the complainant to follow  
22 the DNI's direction is because, when the complainant  
23 discloses the information to the congressional Intelligence  
24 Committees, the complainant and the Intelligence Committees  
25 need to understand the level of the security

UNCLASSIFIED, [REDACTED]

1 classification -- whether it is compartmented, whether  
2 individuals need to be read in to a certain program.

3 So that is my understanding as to why the statute  
4 requires the complainant to receive direction from me, from  
5 the DNI, about how to make that disclosure in an authorized  
6 and protected way. I understand what you are saying about  
7 your understanding based on past practice, but that is my  
8 understanding of the statute.

9 MR. NUNES: Okay.

10 So back to the -- so the most that we know about this is  
11 from the media. So we determined earlier that the general  
12 counsel for DNI, the Acting DNI, and the deputy general  
13 counsel for the DNI know about this situation. You said you  
14 think people within the DNI Office know about it, the  
15 identity of the individual.

16 MR. ATKINSON: There are individuals in the Office of  
17 the Director of National Intelligence who know the identity  
18 of the complainant and that the complainant has made this  
19 disclosure to my office.

20 MR. NUNES: So who outside of those three people know  
21 about this, the identity and the nature of the complaint?

22 MR. ATKINSON: So I have some information about the  
23 number of people in ODNI who know both about the  
24 complainant's identity and that the complainant has filed a  
25 complaint with my office, but I am certainly not going to,

1 you know, identify those individuals by name. But it is --  
2 and I don't know all of the individuals within ODNI who may  
3 know both pieces, both --

4 MR. NUNES: The name and the content.

5 MR. ATKINSON: The name and the disclosure. Yes.

6 MR. NUNES: Okay.

7 In your office, how many people know about the complaint  
8 and the content of the complaint -- or the complainant and  
9 the content of the complaint?

10 MR. ATKINSON: I would say -- I can find out the  
11 specific number. I would say it is around six.

12 MR. NUNES: Okay. That is helpful.

13 And then, of course, the whistleblower knows the content  
14 of the complaint. Those are the three groups of people:  
15 DNI, your office, and the whistleblower.

16 MR. ATKINSON: Yes.

17 MR. NUNES: Okay.

18 So I am trying to determine, how would two former  
19 officials know the content of this complaint? Because,  
20 clearly, what is in these news articles is classified, right?  
21 I think at least at the Secret level they would be  
22 classified, that communications of this, et cetera, et  
23 cetera. That would definitely be a -- my guess -- would be a  
24 sources and methods for sure. And the fact that there is now  
25 a complaint on these conversations between two foreign

1 leaders.

2 So I am just trying to figure out -- someone within  
3 those three, if the story is true, would have had to have  
4 leaked to the two former officials. So I want to make sure  
5 that you are confident that none of the six people in your  
6 office leaked to the two former officials, intelligence  
7 officials.

8 MR. ATKINSON: Yes, I am confident of that.

9 MR. NUNES: Okay. To your knowledge.

10 MR. ATKINSON: Yes.

11 MR. NUNES: Okay.

12 MR. ATKINSON: I do want to -- to go back to go your  
13 last question about the complainant's identity -- and you are  
14 not going to find this answer satisfying. But because of the  
15 way the information was initially disclosed by the  
16 complainant, there are individuals outside of ODNI who know  
17 the complainant's identity and what the complainant intended  
18 to disclose, because of actions that the complainant took.

19 MR. NUNES: Okay.

20 MR. ATKINSON: But then, when the complainant came to my  
21 office, the complainant requested confidentiality. And we  
22 honor that, even though we understand that there are other  
23 people in the executive branch, outside of ODNI, who know the  
24 identity of the complainant and the nature of the disclosure.  
25 Does that make sense?

1 MR. NUNES: Yeah, no, that is actually very helpful,  
2 because that means that there is another bucket of people who  
3 would know about this who potentially would talk to former  
4 officials.

5 MR. ATKINSON: There are more people in the pool, if you  
6 will.

7 MR. NUNES: More people in the pool, right.

8 So did someone give advice to use this archaic process  
9 to come and put privileged information before -- take it to  
10 the IC IG in order to get it to the committees?

11 MR. ATKINSON: I am sorry, the archaic process?

12 MR. NUNES: Of -- or using an unknown process, I should  
13 say, maybe not archaic, but one that hasn't been tried  
14 before, to use the IC IG as a way to get privileged  
15 conversations to the legislative branch of government.

16 MR. ATKINSON: Are you talking about the whistleblower  
17 statute?

18 MR. NUNES: Uh-huh.

19 MR. ATKINSON: The "urgent concern" statute. This is  
20 a -- so I am struggling with --

21 MR. NUNES: We are just trying to figure out how we are  
22 taking, once again, press reports, potentially taking SIGINT  
23 conversations overheard in the executive branch and then we  
24 are devising a way to get them into the legislative branch of  
25 government.

1           MR. ATKINSON: Well, that is my understanding of how  
2 Congress intended the process to work if an Intelligence  
3 Community individual wanted to report that type of  
4 information to the congressional Intelligence Committees.  
5 That is how the statute was set up.

6           MR. NUNES: So, in reverse, if the Intelligence  
7 Community picks up conversations between members of the  
8 legislative branch and someone within there thinks that there  
9 is a problem with that, or whatever that one Member of  
10 Congress said to a foreign leader, and they come to you, what  
11 do you do with that?

12          MR. ATKINSON: Well, I would make a -- well, if they  
13 wanted to come to the congressional Intelligence Committees,  
14 we would do our review to determine whether it is an urgent  
15 concern and whether the allegations appear credible.

16          The most important thing is that this individual  
17 followed the authorized practice. What we don't want are  
18 individuals taking the allegations you have talked about or  
19 the allegations that are reported in the press and to go to  
20 the press with those allegations. So the individual here did  
21 the right thing in terms of --

22          MR. NUNES: Well --

23          MR. ATKINSON: -- bringing that information --

24          MR. NUNES: -- did the right thing, except that now  
25 there is classified information in the press.

1 MR. ATKINSON: But I don't think it is fair to blame the  
2 complainant for that. There is no evidence that the  
3 complainant did that. And keep in mind that the complainant  
4 has known this information since at least August 12, and, as  
5 far as I know, none of this leaked until the last couple  
6 days.

7 And keep in mind also that, until 10 days or so ago, the  
8 complainant understood that [REDACTED] was protected from reprisal,  
9 right? Now there is a question about whether [REDACTED] is protected  
10 from reprisal. So this complainant has more incentive now  
11 than before to keep [REDACTED] identity secret. And so it is harder  
12 to understand what his or her motivation would be for that  
13 person to disclose the information, given the risks, the  
14 personal risks, that they have right now.

15 MR. CONAWAY: Would the gentleman yield?

16 MR. NUNES: Sure.

17 MR. CONAWAY: Michael, I thought I heard you say that  
18 the complainant talked to other people and there were other  
19 people in the scheme before [REDACTED] sought the official path the  
20 [REDACTED] is taking now. Did I misunderstand you?

21 MR. ATKINSON: So I would never use the word "scheme" in  
22 this context.

23 MR. CONAWAY: I am sorry. The --

24 MR. ATKINSON: No, that is okay.

25 MR. CONAWAY: -- legislative protections associated with

1 the valuable whistleblowing scheme, that we have this in  
2 place. [REDACTED] is now doing that properly. But I thought I heard  
3 you say, before [REDACTED] took those steps to get into how we do it  
4 now, [REDACTED] talked to other people that are not a part of your  
5 office or any official piece. Did I misunderstand?

6 MR. ATKINSON: Let me answer the question, but, first,  
7 let me apologize. As a former prosecutor, when I hear  
8 "scheme," I just --

9 MR. CONAWAY: Yeah, yeah, yeah. That was a poor choice  
10 of words. That was a poor choice of words.

11 MR. ATKINSON: The complainant did disclose the  
12 complainant's concerns before coming to the IC IG, but those  
13 disclosures were to individuals with the appropriate  
14 classification. Those individuals, those are the types --  
15 those are individuals that the whistleblower laws encourage  
16 individuals to go talk to.

17 MR. CONAWAY: Okay. So if those individuals then talked  
18 to the press, they have broken the law.

19 MR. ATKINSON: That would be an unauthorized disclosure.

20 MR. CONAWAY: I got you. Thank you. Appreciate that.  
21 Thank you, Ranking Member.

22 MR. NUNES: Mr. Stewart.

23 MR. STEWART: Very quickly, to follow on from  
24 Mr. Conaway's previous questioning, what I would suppose is  
25 that they would be encouraged to talk to their supervisor or

1 someone, again, in that, kind of, chain of command. Would  
2 that be an accurate presumption on my part?

3 MR. ATKINSON: Yes. The individuals are encouraged to  
4 speak to their supervisors or to their general counsel's  
5 office or to their inspector general.

6 MR. STEWART: And if that were the case -- and I am not  
7 asking you to confirm or deny, but if that were the case,  
8 that would not be an unauthorized disclosure.

9 MR. ATKINSON: That is correct.

10 MR. STEWART: Can I ask you this: Is there any reason  
11 for us to believe that there was an unauthorized disclosure  
12 when [REDACTED] talked about this with other individuals?

13 MR. ATKINSON: By the complainant?

14 MR. STEWART: Yes.

15 MR. ATKINSON: I am aware of no evidence that this  
16 complainant made any type of unauthorized disclosure.

17 MR. STEWART: Okay. Thank you.

18 And then you said previously that you were aware that  
19 the complainant was represented by counsel when [REDACTED] first  
20 talked with you?

21 MR. ATKINSON: The complainant represented to us that [REDACTED]  
22 had an attorney, yes.

23 MR. STEWART: Okay. Do you know who that attorney is?

24 MR. ATKINSON: The complainant identified the attorney  
25 to me, yes.

1 MR. STEWART: And I am going to make an observation, and  
2 there may be a question at the end of it. But, I mean, you  
3 understand our concern because of the recent history we have  
4 of leaks that are detrimental to national security. And they  
5 are pervasive. And it frustrates many that there hasn't  
6 seemed to be any repercussions for that. And many times the  
7 leaks are inaccurate, or at least the reporting on them is  
8 inaccurate. In fact, I think most of time they prove to be  
9 inaccurate.

10 One interesting observation here is that apparently the  
11 press knows who this attorney is, which -- I would suppose  
12 they may know who the individual is, according to this  
13 reporting, because they went to the lawyer representing [REDACTED]  
14 and he declined to comment. I won't ask you to respond to  
15 that, because I don't think you can, and you may not know  
16 anyway.

17 Tell you what, I am just going to end there, Ranking  
18 Member. I will defer back.

19 MR. ATKINSON: Do you mind if I just respond to one of  
20 your points?

21 MR. STEWART: Yes.

22 MR. ATKINSON: I am not confirming or denying the  
23 accuracy of any of these press reports. I am not here to say  
24 that the press reports are accurate.

25 MR. STEWART: No, I understand that, which is why I

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1 didn't pursue the questioning, because I knew that you  
2 couldn't and you wouldn't do that. So --

3 MR. ATKINSON: Correct.

4 MR. STEWART: -- thank you.

5 MR. NUNES: So I hope if you see that this is a leak and  
6 you are trying to protect the whistleblower, that the leak is  
7 reported to the FBI.

8 MR. ATKINSON: So my office has primary responsibility  
9 for tracking unauthorized disclosures. And we will take  
10 appropriate steps in response to these newspaper articles.

11 MR. NUNES: Okay. I appreciate that. Thank you,  
12 Inspector General.

13 I think our staff has a few followup -- oh, I am sorry.  
14 Dr. Wenstrup, do you have --

15 DR. WENSTRUP: Just one quick question. Is the lawyer  
16 authorized?

17 MR. ATKINSON: My understanding is that the lawyer has  
18 not been cleared to discuss the classified information.

19 DR. WENSTRUP: Well, that is really interesting. That,  
20 to me, seems like a leak.

21 MR. ATKINSON: - Again, you --

22 DR. WENSTRUP: Shouldn't there be a lawyer available to  
23 the whistleblower that is authorized?

24 MR. ATKINSON: So the thing to keep in mind is we should  
25 not assume that the complainant provide classified

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UNCLASSIFIED, [REDACTED]

1 information to the lawyer, because there is no evidence to  
2 suggest that.

3 DR. WENSTRUP: Okay.

4 MR. ATKINSON: The complainant is following -- what I  
5 will say is the complainant is following the correct  
6 procedures in the Intelligence Community to obtain outside  
7 representation.

8 DR. WENSTRUP: Okay. That clarifies it. I appreciate  
9 it. Thank you.

10 MR. ATKINSON: Sure.

11 [REDACTED]: Hello, sir. My name is [REDACTED], and I  
12 am [REDACTED] for the [REDACTED]. I just have a couple of  
13 questions for you.

14 Did the complainant have lawful access to the  
15 information disclosed in the complaint?

16 MR. ATKINSON: I am aware of no -- I will say this.  
17 There is no indication of any misconduct by the complainant  
18 related to this disclosure.

19 [REDACTED]: The statute doesn't assign the duty to make  
20 the "urgent concern" determination to either your entity or  
21 the DNI's, so who makes that determination of whether the  
22 "urgent concern" piece applies?

23 MR. ATKINSON: Whether the conduct satisfies the  
24 definition of an urgent concern?

25 [REDACTED]: Yes.

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1 MR. ATKINSON: That is my responsibility.

2 [REDACTED]: But nowhere in the statute precludes the DNI  
3 from making such a determination as well?

4 MR. ATKINSON: The statute is silent on the DNI making a  
5 separate determination about whether the alleged conduct is  
6 an urgent concern.

7 [REDACTED]: Thank you. That is all I have.

8 MR. NUNES: Well, I would just -- Inspector General,  
9 thank you. I think we are done with our questions here. I  
10 don't know if staff will have any more after the majority  
11 goes.

12 But I would just caution you that this is a very  
13 dangerous road. I think the Republicans on our side already  
14 have grave concerns about DNI, the IC, FISA. We can go on  
15 and on. You have read a lot of it in the press.

16 And, you know, if this is a new way to take foreign  
17 leaders' calls from our executive branch or our legislative  
18 branch and siphon it off to the legislative branch and leak  
19 it to the press, we have crossed a Rubicon, which, as I said  
20 earlier, doesn't surprise me; we will be glad to play in that  
21 pond.

22 But I hope that you take the necessary precautionary  
23 steps here, that this is not -- this is indeed a fire. And  
24 if it is, it should be handled in a criminal way, not in a  
25 political way. Because it is just going to further the

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1 politicization of the Intelligence Community that has run  
2 amok the last decade or so.

3 So, with that said, I will yield back.

4 MR. ATKINSON: Well, thank you again, Ranking Member  
5 Nunes, for holding this session in a closed session and for  
6 making the request for a briefing a bipartisan request.

7 THE CHAIRMAN: Let me just ask a couple of followup  
8 questions, and then I want to go back to Representative  
9 Speier.

10 I just wanted to make sure that I had clarity on  
11 something. I think you said in response to a couple of  
12 questions from my colleagues in the minority that the Acting  
13 Director of National Intelligence was left to decide whether  
14 to provide the complaint to the committee. Is that correct?

15 MR. ATKINSON: That is my understanding, yes.

16 THE CHAIRMAN: So the DOJ gave an opinion that the DNI  
17 didn't have to, but the Department of Justice didn't tell him  
18 he was precluded from doing so.

19 MR. ATKINSON: That is my understanding, yes.

20 THE CHAIRMAN: Would it, though, be the DNI's  
21 interpretation of that legal opinion that if he did provide  
22 the complaint to this committee that he would do so  
23 potentially at his own peril, for the reason that the  
24 Department of Justice was saying that it had not authorized  
25 him to do so but it was not prohibiting him from doing so?

UNCLASSIFIED, [REDACTED]

UNCLASSIFIED, [REDACTED]

1 MR. ATKINSON: Could you clarify your question?

2 THE CHAIRMAN: Well, I guess my question is this. The  
3 whistleblower here may or may not be protected if they come  
4 directly to the committee.

5 MR. ATKINSON: That is correct.

6 THE CHAIRMAN: You may or may not be protected if you  
7 disclose the nature of the complaint to us.

8 MR. ATKINSON: Without authorization.

9 THE CHAIRMAN: Without authorization. Is it the DNI's  
10 view, as well, that he may not be protected should he share  
11 the information with our committee because he has not been  
12 authorized to?

13 MR. ATKINSON: I do not know the answer to that.

14 THE CHAIRMAN: But it is your understanding that, if the  
15 DNI wanted to provide the complaint to this committee as the  
16 statute requires, the DNI could do so?

17 MR. ATKINSON: He could do so subject to a full  
18 classification review and processing the assertion of any  
19 applicable privileges.

20 THE CHAIRMAN: Does this serious concern or urgent  
21 concern involve a potential violation of the criminal laws?

22 MR. ATKINSON: So I am going to decline to answer that  
23 question. Violation of the criminal laws is one of the  
24 components to an urgent concern, but it is not necessary that  
25 the conduct constitute a violation of law, of criminal law.

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UNCLASSIFIED, [REDACTED]

1 THE CHAIRMAN: So then the FBI does not necessarily have  
2 jurisdiction here. If it involved a different kind of abuse,  
3 serious or flagrant problem that wasn't necessarily a  
4 violation of criminal law but nonetheless posed a danger to  
5 national security, that might not be within the FBI's  
6 jurisdiction to investigate.

7 MR. ATKINSON: I mean, hypothetically, yes.

8 THE CHAIRMAN: Of course, if it involved a  
9 counterintelligence concern, then it would be.

10 MR. ATKINSON: And the national security concerns, yes.

11 THE CHAIRMAN: But then that would clearly be within the  
12 jurisdiction of this committee.

13 MR. ATKINSON: So I am not familiar with -- I am not an  
14 expert on the jurisdiction of this committee --

15 THE CHAIRMAN: But within your jurisdiction, if it  
16 involved a counterintelligence matter and concern, it would  
17 be within your jurisdiction.

18 MR. ATKINSON: If it involved the funding,  
19 administration, or operation of an intelligence activity,  
20 yes. And that has been my understanding, that those types of  
21 counterintelligence risks are within the jurisdiction and  
22 authority of the DNI and so would also be within mine.

23 THE CHAIRMAN: You may or may not be able to answer this  
24 question. The DNI, in one of their correspondences, suggests  
25 that the subject of the complaint is not within the

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UNCLASSIFIED, [REDACTED]

1 jurisdiction of the ODNI. Is it the interpretation of the  
2 Justice Department that the President is not within the  
3 jurisdiction of the ODNI because the President is above the  
4 ODNI?

5 MR. ATKINSON: I am not authorized to disclose, you  
6 know, anything in the DOJ legal opinion beyond what  
7 Mr. Klitenic has already disclosed to the committee.

8 THE CHAIRMAN: But you requested permission to share  
9 your communication with DOJ with us, and that has been  
10 denied.

11 MR. ATKINSON: I have not been authorized to share the  
12 opinion with the committee.

13 THE CHAIRMAN: But you have sought their permission to  
14 do so.

15 MR. ATKINSON: Can I have just one second?

16 THE CHAIRMAN: Yeah.

17 [Discussion off the record.]

18 MR. ATKINSON: Yes, my recollection is I have made that  
19 request.

20 THE CHAIRMAN: If the President is not within the  
21 jurisdiction, according to the Department of Justice or  
22 anyone else, of the ODNI because he is above the ODNI --

23 MR. ATKINSON: Or he is not a member of the Intelligence  
24 Community.

25 THE CHAIRMAN: -- or he is not a member of the

UNCLASSIFIED, [REDACTED]

UNCLASSIFIED, [REDACTED]

1 Intelligence Community, is it also the case that he is not  
2 going to be subject to anyone's jurisdiction because he will  
3 be above the Attorney General and therefore not subject to  
4 the Attorney General's jurisdiction, be above the Director of  
5 the Homeland Security because he doesn't report to the  
6 Director of Homeland Security? Would that kind of a legal  
7 opinion mean that the President was immune from any  
8 whistleblower complaint?

9 MR. ATKINSON: I am going to decline to answer that kind  
10 of hypothetical.

11 THE CHAIRMAN: Ms. Speier.

12 MS. SPEIER: Thank you, Mr. Chairman.

13 Thank you again, Mr. Atkinson.

14 You recently said that there was no misconduct by the  
15 whistleblower in the ascertaining of whatever was the core of  
16 the complaint. Is that correct?

17 MR. ATKINSON: I have seen no evidence of misconduct by  
18 the complainant related to this disclosure.

19 MS. SPEIER: You also said that -- you referred to "all  
20 of the alleged actions took place" when you were responding  
21 to a question about whether or not you had investigated the  
22 complaint. So is there more than one action that is being  
23 referenced then?

24 MR. ATKINSON: Well, let me put it this way. When you  
25 are asked to look at an intelligence activity, the activity

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1 can span over a period of time, and the activity can include  
2 different acts and not just a single act. And so I am not  
3 going to get into the specifics of the allegation, but I will  
4 say that this alleged conduct was not a single act.

5 MS. SPEIER: Okay. Thank you.

6 I am very concerned about the status of this  
7 whistleblower. It would appear that, since the Attorney  
8 General has opined on this, that the whistleblower may not be  
9 protected even now against reprisals, even though [REDACTED] has  
10 complied with the whistleblower law in terms of going up [REDACTED]  
11 chain of command and then to the IG. Is that your  
12 understanding?

13 MR. ATKINSON: That is my understanding. That is my  
14 concern as well. And that is why I have asked DOJ to clarify  
15 its formal legal opinion about whether the whistleblower is  
16 protected.

17 MS. SPEIER: I mean, this would make a sham of the  
18 whistleblower protection statute, would it not? If the  
19 Attorney General's Office could opine, as they have, then  
20 virtually anyone who would blow the whistle would be subject  
21 to reprisals if the AG got involved.

22 MR. ATKINSON: Well, what I will say is that, as I said  
23 in my opening statement, the Department of Justice's opinion  
24 has potentially serious implications for whistleblower rights  
25 and protections, and that is why I have asked the Department

UNCLASSIFIED, [REDACTED]

1 of Justice to clarify its opinion.

2 MS. SPEIER: Have they indicated to you that they will  
3 clarify their position?

4 MR. ATKINSON: They have not, but, in fairness to the  
5 Department of Justice, I did not make that request of them  
6 until 2 days ago.

7 MS. SPEIER: Will you be able to indicate to us when you  
8 do get an answer from the Department of Justice whether they  
9 have agreed to clarify?

10 MR. ATKINSON: I can certainly -- I am not sure whether  
11 I will be able to or not, given the potential privileges.

12 MS. SPEIER: Has anyone asked you to determine who might  
13 be leaking?

14 MR. ATKINSON: No.

15 Well, what I will -- so I should be more precise. Has  
16 anybody asked me to determine -- you mean in terms of the  
17 articles that have come out in the last day or two?

18 MS. SPEIER: Yes.

19 MR. ATKINSON: I am not aware of -- well, Ranking Member  
20 Nunes has just asked to -- you know, clearly expects some  
21 action from my office, and reasonably so, because we do have  
22 responsibility for unauthorized disclosures. But I am not  
23 aware of any person outside of this room making a complaint  
24 about an unauthorized disclosure.

25 MS. SPEIER: Okay.

UNCLASSIFIED, [REDACTED]

UNCLASSIFIED, [REDACTED]

1 Did this particular complaint come in by hotline?

2 MR. ATKINSON: I will say yes because that will inform,  
3 in some part, why, you know, there are others in my office  
4 who know the complainant's identity.

5 MS. SPEIER: Okay.

6 I would like to go back to this term "urgent." Can you  
7 give us some examples unrelated to this complaint that you  
8 would define as urgent? Since you haven't any complaints,  
9 based on your testimony, that have come in during the time  
10 that you have been the Inspector General that you believe  
11 rise to the level of urgency -- this is the first one -- can  
12 you give us any other examples of what you would deem to be  
13 urgent in nature?

14 MR. ATKINSON: Well, I could. They will bear no  
15 resemblance to --

16 MS. SPEIER: I understand that. I just want to have a  
17 sense of the gravity of the term "urgent."

18 MR. ATKINSON: If there were allegations that a -- this  
19 has no relationship to this situation. But if there were  
20 allegations that a senior official in the executive branch  
21 was leaking sensitive national security information to the  
22 press and a complainant brought that complaint to our  
23 attention and wanted to transmit it to the committee and if  
24 we determined that to be credible, that would be an example,  
25 I think, of a credible urgent concern.

UNCLASSIFIED, [REDACTED]

1           But I want to stress, that has nothing to do with the  
2 situation that we are dealing with right now.

3           MS. SPEIER: Does urgency relate to national security  
4 risks?

5           MR. ATKINSON: It can.

6           MS. SPEIER: It doesn't necessarily have to.

7           MR. ATKINSON: So, so outside the context of this  
8 specific complaint, given the jurisdiction of the DNI and the  
9 DNI's responsibilities, you know, I would think that there  
10 would be very few activities that didn't potentially  
11 implicate national security.

12          MS. SPEIER: I guess my final question is, if this  
13 particular complaint and set of actions is allowed to linger  
14 unaddressed, does it rise to a constitutional crisis?

15          MR. ATKINSON: So I am not -- I don't -- let me just say  
16 this about that. We, my office, conducted a preliminary  
17 review. We determined that the allegations appeared  
18 credible. Had we been allowed to fully investigate the  
19 allegations, our investigation would have been much more  
20 thorough than a 14-day review. Our thorough investigation  
21 could show a fire or smoke or a false or faulty alarm, to go  
22 back to my fire analogy. Because I have not been permitted  
23 to conduct a full investigation, I do not know where this  
24 complaint fits.

25          MS. SPEIER: Well, that is deeply troubling, because if

1 you don't investigate it, who will?

2 MR. ATKINSON: Well, as I said, if it involves a  
3 criminal violation of law, the Federal Bureau of  
4 Investigation would have jurisdiction. I also -- one of the  
5 reasons that it was important to get this information to the  
6 committee, not only because it was Congress' intent that that  
7 happen and that that was the whistleblower's intent, but my  
8 understanding is that the Intelligence Committees would have  
9 jurisdiction to investigate the matter as well.

10 MS. SPEIER: Thank you.

11 THE CHAIRMAN: Mr. Maloney?

12 MR. MALONEY: Mr. Atkinson, thank you for being here.

13 I have a couple questions about the statute. So the  
14 governing statute here, which you helpfully gave to us, is  
15 50 U.S.C.A. 3033, right?

16 MR. ATKINSON: Yes.

17 MR. MALONEY: And that statute contains some of the  
18 procedures we have been kicking around, some of the  
19 definitions. And I have only had a chance to read it pretty  
20 quickly, but it also contains a section on limitations on  
21 your activities. Am I right? Section F? Subsection F?  
22 Section 3033 F. It says, in fact, when the --

23 MR. ATKINSON: Yes, I see that.

24 MR. MALONEY: And it says, in fact -- well, I am sure  
25 you are familiar with it. It says, in fact, that the DNI can

1 stop your investigation if he determines it is a matter of  
2 national security, right?

3 MR. ATKINSON: Yes, he has that authority.

4 MR. MALONEY: And there are other limitations on your  
5 actions.

6 Is there any provision under F or anywhere in  
7 Section 3033 that says that your actions can be stopped by a  
8 determination of the Attorney General?

9 MR. ATKINSON: No.

10 MR. MALONEY: Is there a provision for your checking  
11 with the Attorney General every time you do one of these  
12 things whether you have jurisdiction or not?

13 MR. ATKINSON: The answer is no.

14 To go back to the last question, there is no provision  
15 of the statute that speaks to the Department of Justice or  
16 the Attorney General. But as a member of the executive  
17 branch, I am bound by certain determinations made at the  
18 Department of Justice.

19 MR. MALONEY: No, I appreciate that, sir. But I guess  
20 my question is, there is a specific provision limiting your  
21 activities and the role that DNI can have in limiting that,  
22 and I am just wondering if there is any provision in the  
23 statute for an ex ante review by the Department of Justice of  
24 jurisdiction. I think the answer is no.

25 And I am just wondering if, when you read that in

1 concert with the actual procedures that are laid out,  
2 particularly in Subsection K(5)(c), which says that the  
3 Director gets to comment, or the transmittal to Congress  
4 should include -- it should be transmitted to the  
5 Intelligence Committees, the language is, together with any  
6 comments the Director considers appropriate.

7 It seems like that is the explicit provision for the DNI  
8 to weigh in with the DNI's comments on your transmittal,  
9 right? I mean, isn't that pretty clear, that that is the  
10 procedure?

11 MR. ATKINSON: I agree with that. I also would say that  
12 the DNI also has a responsibility under that provision to  
13 provide direction to me for the whistleblower to come to the  
14 committees directly in accordance with appropriate security  
15 measures.

16 MR. MALONEY: Right. In other words, it doesn't say  
17 that the DNI will decide whether it gets transmitted. It  
18 doesn't say you should check with the Attorney General for  
19 general jurisdiction concerns. Right? And it doesn't say  
20 that he can overrule your determination of what an urgent  
21 concern is. It says he shall transmit it to the  
22 congressional committees together with any comments. Right?

23 MR. ATKINSON: I believe that is what the statute says,  
24 yes.

25 MR. MALONEY: Right. And yet none of that has happened

1 here, right? Instead, what we have done is we have created a  
2 procedure not in this statute by which the Director of  
3 National Intelligence has, on his own initiative, I assume,  
4 sought a Justice Department opinion, which then has given him  
5 a reason to deny you jurisdiction over this, which you have  
6 decided to follow. Is that fair?

7 MR. ATKINSON: Can you say that again? I am sorry.

8 MR. MALONEY: In other words, the DNI has presumably  
9 sought a Justice Department opinion which has asserted that  
10 you don't have jurisdiction on this issue. And the DNI,  
11 having served that up to you and to us, you feel bound by  
12 that limitation on your jurisdiction. Is that where we are?

13 MR. ATKINSON: Yes.

14 MR. MALONEY: And what would prevent the Justice  
15 Department from making a similar determination of anyone's  
16 jurisdiction over this kind of activity? In other words, the  
17 answer to the question "if you are not looking at it, who  
18 is," wouldn't we just go down the same potential procedure of  
19 the Attorney General saying that no IG has jurisdiction over  
20 this, no other entity has jurisdiction over this?

21 MR. ATKINSON: I think it is a fair question. I  
22 understand the question. I am reluctant to answer  
23 hypotheticals.

24 MR. MALONEY: Yeah, no, fair enough. But does your  
25 interpretation of the statute essentially give the Attorney

1 General a veto authority over any transmittal to Congress of  
2 an IG investigation such as this one?

3 In other words, your reading of the statute, or at least  
4 the reading of the DNI that you feel bound to follow, seems  
5 to put the Attorney General in the position of having  
6 discretion by interpretation of jurisdiction over what you  
7 report to Congress or not. In other words, doesn't that  
8 defeat the whole point of this law? Or at least give it to  
9 the Attorney General to decide.

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1 [11:59 a.m.]

2 MR. ATKINSON: So I am going to answer this question  
3 this way: I have always understood that the Department of  
4 Justice can bind other executive branch departments and  
5 agencies through certain formal legal opinions. I did not  
6 anticipate that a whistleblower complaint under the "urgent  
7 concern" statute would make its way to the Department of  
8 Justice. I did not anticipate that.

9 MR. MALONEY: Right.

10 MR. ATKINSON: I learned that it was happening during  
11 this process, but until this complaint was filed, I did not  
12 anticipate that that would happen pursuant to my authorities.

13 And I do want to go back to the limitations on my -- or  
14 the inspector general activities. You referenced F(1), that  
15 the Director of National Intelligence may prohibit certain  
16 activities in the interest of national security. You know,  
17 the second provision there requires -- if the DNI does that,  
18 it requires the DNI to inform the congressional Intelligence  
19 Committees within 7 days.

20 MR. MALONEY: Right. I didn't ask you about that, sir,  
21 because he hasn't made that determination, right? He hasn't  
22 said you can't go forward on the basis of national security.  
23 Am I right?

24 MR. ATKINSON: He has not. My only point --

25 MR. MALONEY: So we are not under provision F(1). My

1 point was only that that is the only one he gets, and he  
2 hasn't invoked it.

3 So I have a similar question, which is, has anyone  
4 invoked a privilege here that you are aware of? I know we  
5 get that kicked around in some of the correspondence, and we  
6 are getting used to people invoking the potential or the  
7 possibility or a future hypothetical where there might be a  
8 privilege asserted. But has someone asserted a privilege  
9 that you are aware of?

10 MR. ATKINSON: So I may not be authorized to disclose  
11 that information, so I respectfully decline to answer it.

12 MR. MALONEY: Is there any provision in Section 3033 for  
13 the invocation of privilege? Is that part of the  
14 determination of the DNI when you give them a complaint like  
15 this after determining an urgent concern?

16 MR. ATKINSON: I don't think -- I am not aware of any  
17 express provision about that in Section 3033.

18 MR. MALONEY: Let me ask you one more question. Is  
19 there anything in 3033 that requires a classification review  
20 before you transmit information to the congressional  
21 committee specifically designed to handle classified  
22 information?

23 MR. ATKINSON: I think there is a reference to that. It  
24 doesn't use the word "classification review," but in  
25 K(5)(d)(2) -- and this is in the event -- (d)(1) is the

1 situation where, if I don't find credible the information or  
2 I don't transmit it to the Director in accurate form, then  
3 the employee may contact -- submit the complaint information  
4 to Congress by contacting either or both of the Intelligence  
5 Committees.

6 And then under 2, an employee may contact the  
7 congressional intelligence directly as described in clause 1  
8 only if the employee -- and then this is the part under 2  
9 there -- obtains and follows from the Director, through the  
10 Inspector General, direction on how to contact the  
11 congressional Intelligence Committees in accordance with  
12 appropriate security practices.

13 MR. MALONEY: Right. No, I understand that. But the  
14 point is, is the definition of "urgent concern" includes  
15 explicitly that it be classified information, right, if we  
16 are under K(5)(g)(1), the "urgent concern" definition? In  
17 other words, it explicitly has to be classified information,  
18 in fact, to satisfy the meaning of "urgent concern" under  
19 that subsection.

20 In other words, there doesn't seem to be any situation  
21 where an urgent concern would contain information that wasn't  
22 classified, because it is always classified. And the point  
23 of this statute is to provide the procedures by which  
24 classified information can be disclosed to Congress at the  
25 appropriate committee or committees, right, in each House.

1 And so why would there be any need for a classification  
2 review at all?

3 I understand we have compartmented stuff, and we do that  
4 all the time around here. We will strip down the room. We  
5 will have a couple of different configurations, but that is  
6 just technicality. In other words, there is no provision in  
7 here to withhold information on the basis of it being  
8 classified or, for that matter, privileged, right? I mean,  
9 that is just new. That is just another set of hurdles we  
10 have created that Congress didn't write into the statute. Is  
11 that fair?

12 MR. ATKINSON: There was a lot in that question.

13 MR. MALONEY: "Urgent concern" requires it be  
14 classified, so why would you review it for classification?

15 MR. ATKINSON: I think because different departments and  
16 agencies in the executive branch can have equities in that  
17 security classification process.

18 MR. MALONEY: Is there anything in this section that  
19 talks about the equities of other executive branch agencies,  
20 or does it say the Director shall transmit it to Congress if  
21 it satisfies the definition? Where is "equities" in Section  
22 3033, sir?

23 MR. ATKINSON: You probably won't find that exact word.

24 MR. MALONEY: All right.

25 Thank you, Mr. Chairman.

1 THE CHAIRMAN: If I could just follow up, because I  
2 think this is a very important point here. In your  
3 experience thus far as inspector general, you have gotten  
4 just, within the last year, over a dozen or so complaints.  
5 You have done your investigation. You have sent them to DNI.  
6 The DNI has had their period to review them. They have all  
7 been provided to this committee. None of them have been held  
8 up for classification review. Is that correct?

9 MR. ATKINSON: They all go through a classification  
10 review.

11 THE CHAIRMAN: How do you know they go through a  
12 classification review?

13 MR. ATKINSON: My office --

14 THE CHAIRMAN: I mean, doesn't the DNI look at the  
15 complaint and decide to transmit it to this committee? Isn't  
16 the abnormality here that the DNI got the Justice Department  
17 involved, and now they are using the pretext of a  
18 classification review or the potential future invocation of  
19 privilege to keep the complainant from this committee?

20 MR. ATKINSON: So let me just -- I am going to answer  
21 the question. The statute does require that the information  
22 involve classified information. So the complaint has to be  
23 reviewed to determine whether it includes classified  
24 information, so there is a classification review done just to  
25 make sure that it satisfies that classification review

1 component. And my office will do a classification review of  
2 the information when we receive it to make sure that we mark  
3 it appropriately, at the appropriate classification level.

4 But what I want you to understand is a classification  
5 review generally does not take very long in the Intelligence  
6 Community. Depending upon how many different departments and  
7 agencies hold equities, it can take some period of time to  
8 get them to review the material.

9 But there are people who work full-time at the Office of  
10 the Director of National Intelligence to do classification  
11 reviews. It is not a lengthy process. And we have been able  
12 to do that process in those other cases in this compressed  
13 time period even though they weren't urgent concerns.

14 THE CHAIRMAN: Okay. Well, you know, the concern we  
15 obviously have is that, if the classification review process  
16 gives an element of the IC the opportunity to veto a credible  
17 and urgent concern coming to Congress because they are not  
18 going to bless the classification disclosure, then it  
19 completely nullifies the statute.

20 MR. ATKINSON: I agree with that. It has never been my  
21 understanding that the classification review would prevent  
22 the transmission of any content to the Intelligence  
23 Committees. What I tell people when I speak to the workforce  
24 on this issue, is: I don't censor your information. If you  
25 want to get it to the congressional Intelligence

1 Committees -- and this is what I have told people for the  
2 past 15 months -- I won't censor it. What I will determine,  
3 I will figure out whether it is a credible urgent concern.  
4 But your information will go to the congressional  
5 Intelligence Committees. It has to go through a  
6 classification review, and it may have to go through a  
7 privilege review, but it will go to the congressional  
8 Intelligence Committees.

9 Because I don't want whistleblowers to think that, when  
10 they take the risk of, you know, stepping up and speaking up,  
11 that I am somehow going to prevent that information from  
12 going to the congressional Intelligence Committees.

13 THE CHAIRMAN: Thank you.

14 Mr. Castro.

15 MR. CASTRO: Thank you, Chairman.

16 You know, as Sean mentioned and the chairman mentioned,  
17 the statute says that the Director shall send that report  
18 over here. So as I read it, the Director right now is  
19 derelict in his duty. Do you agree?

20 MR. ATKINSON: I think the Director is following the  
21 legal advice that he has received from the Department of  
22 Justice.

23 MR. CASTRO: Somebody is derelict in their duty. Do you  
24 agree with that? Whether it is because of legal advice or  
25 for whatever reason, it says: We shall receive this report.

1 We can receive classified information. There is no mention  
2 here of privileges. We have not received that information.

3 Is somebody derelict in their duty?

4 MR. ATKINSON: I can't answer that because my  
5 understanding is that the Director is acting in accordance  
6 with the formal legal opinion that he received from the  
7 Department of Justice.

8 MR. CASTRO: Sir, you are dealing with people who like  
9 to cover things up in this government. You realize that?

10 Let me ask you the question: If an ethics complaint is  
11 filed against one of us and we are the subject of that  
12 complaint, we are notified that an ethics complaint has been  
13 filed. Has the subject of this complaint been notified that  
14 such a complaint was made?

15 MR. ATKINSON: So I may not be authorized to disclose  
16 that information, so I respectfully decline to answer.

17 MR. CASTRO: But that is a basic process question.

18 MR. ATKINSON: I may not have been authorized -- I may  
19 not be authorized to disclose that information so I  
20 respectfully decline to answer.

21 MR. CASTRO: And I know that you have given that  
22 response -- first of all, we appreciate that you are here.  
23 We know that you are in a tough spot, although I don't think  
24 the spot should be as tough as it is being made out to be. I  
25 think we should have this information.

1           You have mentioned that you are not authorized or you  
2 may not be authorized. When will you have these -- because  
3 your general counsel is here. When will you have these legal  
4 issues settled so that you will know whether you are actually  
5 authorized or not to provide that information to us?

6           MR. ATKINSON: I am not sure it is a legal issue. I  
7 think it is a question of being clear that I receive  
8 authorization. And until I receive that clear authorization,  
9 I am reluctant, very reluctant to divulge information that I  
10 may not be authorized to disclose.

11           MR. CASTRO: But we just had a discussion earlier about  
12 the fact that nowhere in this statute does it mention the  
13 Attorney General stepping in and subsuming your authority and  
14 this process. So what is the resolution to that? Are you  
15 waiting for the Attorney General, the Department of Justice  
16 to tell you that it is okay?

17           MR. ATKINSON: I have expressed today my disagreement  
18 with the Department of Justice opinion. I have made it clear  
19 that I have asked the Department of Justice to reconsider  
20 that decision.

21           I think it is important to remember that what the  
22 Department of Justice is saying is that this statute does not  
23 apply, and so all of the provisions that we are talking  
24 about, according to the Department of Justice, simply do not  
25 apply. And that is why I am particularly concerned about

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1 this whistleblower because that means that the protections  
2 against reprisal do not apply.

3 MR. CASTRO: Have you referred this matter to law  
4 enforcement?

5 MR. ATKINSON: So I will not disclose any referral to  
6 law enforcement.

7 MR. CASTRO: Can you tell us today that you have not  
8 referred this thing to law enforcement?

9 MR. ATKINSON: I will tell you that I have followed my  
10 statutory obligations.

11 MR. CASTRO: Have you gotten any indication from the  
12 Justice Department or the Acting Director about next steps?

13 MR. ATKINSON: I don't report to anyone at the  
14 Department of Justice, so I would not expect to receive any  
15 direction from the Department of Justice. I report to the  
16 Director of National Intelligence. I have --

17 MR. CASTRO: Has he -- has the Director told you any  
18 next steps?

19 MR. ATKINSON: As I understand it -- the answer is: I  
20 have asked the Director. I have made several requests of the  
21 Director, and I have not received affirmative responses to  
22 those requests.

23 MR. CASTRO: Do you believe it is possible that the  
24 Department of Justice and the Director are engaged in a  
25 coverup? Can you tell me they are not engaged in a coverup?

UNCLASSIFIED, [REDACTED]

1           MR. ATKINSON: I believe that the Acting Director of  
2 National Intelligence is doing things that he believes is  
3 in -- you know, I can't get into the Acting Director's mind.  
4 My sense is he has taken the facts and he has taken the law  
5 and he has taken the advice that he has received from the  
6 Department of Justice, and he has followed that advice. So I  
7 am not going to attribute any ill will to the Acting DNI  
8 until I see evidence of ill will.

9           MR. CASTRO: Well, Inspector General, I don't know that  
10 you are ever going to see it. You are just going to see a  
11 blank space and a void. Nothing ever happens.

12           One last question, because there was an issue about  
13 whether the President -- I know -- without speaking directly  
14 to whether this applies here in this case or not, there is a  
15 question about whether the President would fall -- would be  
16 included as part of the Intelligence Community. Do you agree  
17 that the President has the power to declassify anything that  
18 he chooses?

19           MR. ATKINSON: I am going to answer the question, but I  
20 just want to caveat that I am not an expert on classification  
21 review. But my understanding is that the President does have  
22 the authority to declassify information.

23           MR. CASTRO: Well, then, I would just opine that, if  
24 somebody has the power to declassify any single thing that is  
25 classified, including anything that this committee would be

1 able to view, then I believe that that person must fall under  
2 the definition of the Intelligence Community.

3 Thank you, sir.

4 MR. ATKINSON: Thank you.

5 THE CHAIRMAN: Ms. Stefanik.

6 [REDACTED]: I am not Ms. Stefanik.

7 THE CHAIRMAN: Oh, I am sorry. I am sorry.

8 [REDACTED]: I know I am a total look-alike, a little  
9 older, but that is okay.

10 THE CHAIRMAN: Minority staff.

11 [REDACTED]: I get it a lot.

12 I do have one question. I am [REDACTED], [REDACTED]

13 [REDACTED].

14 MR. ATKINSON: Yes. Thank you. Nice to see you again.

15 [REDACTED]: Ditto. Wish it was better circumstances.

16 But just one: In your, let's see, letter to the HPSCI  
17 September 17, you state that the subject matter involved in  
18 the complainant's disclosure not only falls within the DNI's  
19 jurisdiction but relates to one of the most significant and  
20 important of the DNI's responsibilities to the American  
21 people.

22 Could you explain what you believe that that one  
23 significant responsibility is?

24 MR. ATKINSON: I cannot do that without disclosing the  
25 general subject matter of the complaint, and I have not been

1 authorized to do that.

2 [REDACTED]: Okay. Thank you. I don't have any  
3 further questions. Do you guys?

4 MR. ATKINSON: You are welcome. Thank you.

5 [REDACTED]: Thank you.

6 THE CHAIRMAN: [REDACTED].

7 [REDACTED]: I have a few final questions for you,  
8 Mr. Atkinson. I want to go back to the players involved here  
9 for a second. I think you said earlier today that DNI has  
10 the authority to transmit the complaint. Is that accurate as  
11 we stand here today?

12 MR. ATKINSON: My understanding is that the Department  
13 of Justice legal opinion was that he was not required to  
14 transmit the information, which left it within his discretion  
15 to transmit the information subject to a classification  
16 review and assertion of any appropriate privileges.

17 [REDACTED]: Okay. We can agree that the  
18 classification review can be done quickly, right? That is  
19 what you said earlier?

20 MR. ATKINSON: Well, what I said was that, normally, a  
21 classification review does not take an inordinate amount of  
22 time. It can take longer, depending upon the number of  
23 executive branch equities in play, but the Intelligence  
24 Community does these classification reviews all the time.

25 [REDACTED]: And in the ordinary course of any other

1 complaint that goes through, it goes through a classification  
2 review at a maximum of 3 weeks, right?

3 MR. ATKINSON: I am not familiar with that --

4 [REDACTED]: Well, there's 21 days from the time a  
5 complaint is submitted to the time it is transmitted to the  
6 Intelligence Committees.

7 MR. ATKINSON: That is correct. The "urgent concern"  
8 statute contemplated that the classification review would be  
9 done within those 21 days.

10 [REDACTED]: Right. So, if an ordinary "urgent  
11 concern" complaint can be done within 21 days, is it your  
12 assessment that, knowing the substance of this complaint,  
13 that the classification review could and should have been  
14 completed by now?

15 MR. ATKINSON: So I am not comfortable answering that  
16 question.

17 [REDACTED]: Why not?

18 MR. ATKINSON: Because I may not be authorized to  
19 disclose the subject matter, and I respectfully decline to  
20 answer.

21 [REDACTED]: I am not asking about the subject matter.  
22 I am just asking about a classification review.

23 MR. ATKINSON: But the answer may suggest the number of  
24 other executive branch departments and agencies involved, and  
25 that is why I decline to answer.

1 [REDACTED]: But in any event, a classification review,  
2 as you have just said, does not ultimately lead to any  
3 information being withheld from the committee?

4 MR. ATKINSON: It was never my understanding that a  
5 classification review would have any effect on the content of  
6 the information transmitted to the committees.

7 [REDACTED]: Do you believe that the DOJ's opinion on  
8 this matter, whatever it is, in whatever form it is, is  
9 binding on the DNI?

10 MR. ATKINSON: It is my understanding that it is binding  
11 on the -- that the legal interpretation is binding on the  
12 Acting DNI.

13 [REDACTED]: Okay. So where we are here, if I  
14 understand it, is that DOJ's legal opinion that the statute  
15 does not apply means that the DNI is not required to transmit  
16 the complaint, but the DNI is nonetheless permitted to  
17 transmit the complaint pursuant to the statute. Is that  
18 right?

19 MR. ATKINSON: That is my understanding.

20 [REDACTED]: Why did you write your letter then  
21 challenging the decision to DOJ and not to the Acting DNI?

22 MR. ATKINSON: One of the consequences of the DOJ's  
23 legal opinion was that my office does not have authority to  
24 take any additional investigative steps. And another  
25 consequence of the DOJ legal opinion, which I have talked

1 about, has to do with the potentially significant  
2 implications for whistleblowers. Even if DOJ comes back and  
3 declines my request for reconsideration, the DNI -- the  
4 Acting DNI still has the discretion to transmit the  
5 information to the congressional Intelligence Committees.

6 [REDACTED]: But you are concerned with -- is it fair  
7 to say you are concerned with larger, more generalized  
8 issues, such as overall whistleblower protections and whether  
9 the statute would apply to anyone making a good-faith  
10 complaint?

11 MR. ATKINSON: Yes, I am concerned about those larger  
12 whistleblower issues. There is also -- I am not going to  
13 disclose the content of this, but I have also had written  
14 communications with the Acting DNI regarding the instructions  
15 I have sought and my position on these issues. So I don't  
16 want you to think that I haven't been in contact with the  
17 Acting DNI about my disagreement with the DOJ legal opinion.

18 [REDACTED]: Can you list for us the requests for  
19 various authorizations that you have made to either the ODNI  
20 or DOJ?

21 MR. ATKINSON: You know, I can, and that information is  
22 knowable with certainty. Sitting here today, I have -- and I  
23 will try my best to remember them -- I have requested  
24 authorization to disclose the subject matter of the -- the  
25 general subject matter of the complaint. I have asked DOJ to

1 reconsider its formal legal opinion. I have asked DOJ for  
2 clarification about how the legal opinion implicates  
3 whistleblower protections?

4 [REDACTED]: Guidance to the complainant.

5 MR. ATKINSON: I have asked the Acting DNI for  
6 instructions to the complainant on how the complainant can  
7 make an authorized disclosure. And I have also -- I believe  
8 I also asked DOJ to clarify its legal opinion about how  
9 complainants would be allowed to transmit this type of  
10 information in an authorized way given the legal opinion.

11 There was a period of time when September 2nd came and  
12 went, and the Acting DNI did not transmit my determination to  
13 the congressional Intelligence Committee. I wrote the Acting  
14 DNI a letter, I believe -- I am fairly certain I did -- to  
15 let the Acting DNI know that if this was not -- if this  
16 matter was not reported to the congressional Intelligence  
17 Committees by a certain date, that I would do it. The date  
18 that I provided to the Acting DNI also came and went, and  
19 that is when I sent my letter on September 9, 2019.

20 [REDACTED]: And is it fair to say this is the only  
21 complaint, just to be clear, that you are aware of that has  
22 not been transmitted to Congress?

23 MR. ATKINSON: Yes.

24 [REDACTED]: One of the concerns I think the committee  
25 has is this jurisdictional issue. And you have said that if

1 it is a potential violation of law, it would be referred to  
2 the FBI.

3 MR. ATKINSON: Of criminal law.

4 [REDACTED]: Of criminal law, right?

5 MR. ATKINSON: Yes.

6 [REDACTED]: If it is not -- and you have also said  
7 there are other ways that it can be a serious or -- other  
8 ways it can meet the definition if it is not a violation of  
9 criminal law. Is that right?

10 MR. ATKINSON: Yes.

11 [REDACTED]: Okay. If it is not a definition -- if it  
12 is not a violation of criminal law, does anyone in the  
13 executive branch currently have jurisdiction over  
14 investigating this matter that you deem to be an urgent  
15 concern?

16 MR. ATKINSON: So, when I learned that the Department of  
17 Justice was going to determine that this was outside the  
18 DNI's jurisdiction, I consulted with other inspectors general  
19 in the Intelligence Community to figure out whether they had  
20 jurisdiction, because I was concerned that if I was stopped,  
21 I wanted to see whether other inspectors general could  
22 proceed.

23 And I am not certain what those inspectors general have  
24 done since I discussed this with them. I understood from the  
25 discussion I had with them that they likely would not have

1 jurisdiction either. But I also understood that they were  
2 going to consider the matter. I do not know whether those  
3 other inspectors general have taken any action or have  
4 jurisdiction over the allegations.

5 [REDACTED]: And this is all inspectors general within  
6 the IC that you are referring to?

7 MR. ATKINSON: Yes.

8 [REDACTED]: Okay. Would you be able to report back to  
9 the committee as to whether any of them have engaged in an  
10 investigation of the underlying conduct?

11 MR. ATKINSON: I am hesitating because the Department of  
12 Justice has determined that I have no jurisdiction over the  
13 matter, and so I am not certain whether I have any authority  
14 to take further action related to the matter.

15 [REDACTED]: Well, you are obligated to keep Congress  
16 fully and currently informed, correct?

17 MR. ATKINSON: I am. I am also -- you know, thinking  
18 about it, I am also responsible for coordinating the  
19 activities of the Intelligence Community inspectors general  
20 forum, so I am happy to consider that request.

21 [REDACTED]: Thank you. It does seem unlikely that  
22 some element of the IC would have jurisdiction if you do not,  
23 but we would just like confirmation of that.

24 MR. ATKINSON: Understood.

25 [REDACTED]: Am I correct that, if you don't have

1 jurisdiction, if none of the other elements of the IC have  
2 jurisdiction to investigate this, and if it is not a  
3 violation of criminal law and the complaint has not been  
4 provided to Congress, then nobody is investigating this issue  
5 right now?

6 MR. ATKINSON: So that is a hypothetical. If that were  
7 the case, that, what you are saying, is true. But I am not  
8 going to confirm or deny the accuracy of that hypothetical.

9 [REDACTED]: Mr. Atkinson, are you concerned that an  
10 important matter of national importance is not being  
11 investigated right now?

12 MR. ATKINSON: I continue to believe that the matter is  
13 a credible urgent concern, which is why I continue in my  
14 efforts to ask the DOJ to reconsider its legal opinion. And  
15 it is also why I continue in my efforts with the Acting DNI  
16 to find some way to get this information to the Intelligence  
17 Committees in an authorized and protected way.

18 [REDACTED]: And is that in part so that the  
19 Intelligence Committees could investigate this matter as part  
20 of their constitutionally mandated oversight  
21 responsibilities?

22 MR. ATKINSON: It is because that was my understanding  
23 of what Congress intended, and it is what the whistleblower  
24 intends.

25 [REDACTED]: And do you understand that Congress could

1 investigate that matter?

2 MR. ATKINSON: Yes, I do.

3 [REDACTED]: And do you think that that would be --  
4 that is an important path?

5 MR. ATKINSON: Whether it is important or not, this was  
6 my understanding what Congress intended.

7 [REDACTED]: Are you at all concerned -- well, let me  
8 just wrap up this way. Is it your understanding that the way  
9 the statute was devised was so that independent, neutral  
10 actors could evaluate whistleblower complaints from within  
11 the Intelligence Community that were intended to go to  
12 Congress?

13 MR. ATKINSON: Yes.

14 [REDACTED]: Are you at all concerned here, sir, that  
15 there are political actors who have intervened in this  
16 process to conceal the complaint from coming to Congress?

17 MR. ATKINSON: So I may not be authorized to disclose  
18 that information, and I respectfully decline to answer it.

19 [REDACTED]: Well, let's just exclude the White House  
20 from that question. Are you at all concerned that there are  
21 political actors outside of the White House who have  
22 intervened to conceal a complaint that should come to  
23 Congress?

24 MR. ATKINSON: My concern is that a credible urgent  
25 concern has not been transmitted to the congressional

1 Intelligence Committees.

2 [REDACTED]: And that, as I think you have said  
3 earlier, puts the whistleblower at potential risk. Is that  
4 right?

5 MR. ATKINSON: That is one reason that I am concerned  
6 about that.

7 [REDACTED]: And it also -- I believe you testified it  
8 also limits your ability to carry out the duties and  
9 responsibilities that you have as the Inspector General. Is  
10 that right?

11 MR. ATKINSON: That is a second reason, yes.

12 [REDACTED]: And is it also prohibiting the  
13 Intelligence Committees from carrying out their  
14 constitutionally mandated role?

15 MR. ATKINSON: I don't know -- did you say  
16 "prohibiting"? Did you --

17 [REDACTED]: Preventing. Preventing.

18 MR. ATKINSON: Well, we are here. It is clearly making  
19 it more difficult than Congress perhaps intended.

20 But, you know, the other important point is that -- my  
21 view is that, you know, this is a matter within the DNI's  
22 jurisdiction, and it is one that the American people would  
23 expect the DNI to be leading the efforts of the Intelligence  
24 Community to address. And, right now, if it is determined  
25 not to be within his jurisdiction, then they are not doing

1 that.

2 [REDACTED]: And nobody is?

3 MR. ATKINSON: I don't know that nobody is. I know that  
4 the DNI apparently is not.

5 [REDACTED]: Have you been given any indication as to  
6 when you are going to receive a response to any of your  
7 requests from the DNI or DOJ?

8 MR. ATKINSON: No, I have not.

9 [REDACTED]: This committee -- and you may or may not  
10 know this -- but is conducting a variety of investigations,  
11 some of which are public, including whether the President or  
12 senior administration officials have any financial conflicts  
13 of interests with foreign countries or individuals; whether  
14 the President's personal lawyer, Rudy Giuliani or others in  
15 the administration are improperly using the Office of the  
16 President to influence policy in foreign country or even our  
17 own political process; there is an investigation into the  
18 Trump Tower Moscow project; and there is also public  
19 investigations into the foreign influence in our elections.

20 Can you say whether the subject of the complaint relates  
21 to any investigations that I just listed of this committee?

22 MR. ATKINSON: I am not authorized to disclose that  
23 information.

24 [REDACTED]: Can you rule it out?

25 MR. ATKINSON: I am not authorized to disclose that

1 information.

2 [REDACTED]: Okay. What element of the Department of  
3 Justice did you send your letter to?

4 MR. ATKINSON: I am going to decline to answer that  
5 question because it may be privileged, and I may not be  
6 authorized to disclose that information.

7 [REDACTED]: The section of the Department of Justice  
8 is privileged?

9 MR. ATKINSON: So Mr. Klitenic's letter referenced, for  
10 whatever reason, the Department of Justice. I followed that  
11 approach because I was not certain that I was authorized to  
12 go any further.

13 [REDACTED]: Today, you have referenced in very broad  
14 strokes very broad potential privileges. Have you made any  
15 requests of anyone above you or anyone who potentially  
16 controls those privileges to resolve that issue and make a  
17 determination as to whether those privileges actually apply?

18 MR. ATKINSON: I am going to -- I may not be authorized  
19 to disclose that information, so I will respectfully decline  
20 to answer it.

21 [REDACTED]: Okay. Just 1 minute, please.

22 Have you received any pressure from anyone at the DNI or  
23 DOJ or elsewhere to change your determination that this meets  
24 the statutory definition and is credible?

25 MR. ATKINSON: No.

1 [REDACTED]: You have just been overruled?

2 MR. ATKINSON: I think "overruled" is probably a fair  
3 term. What I have been told is that I don't have  
4 jurisdiction and that the DNI will not transmit the  
5 information to the congressional Intelligence Committees.

6 [REDACTED]: Okay. One minute and [REDACTED] has a  
7 couple questions, unless the chairman --

8 THE CHAIRMAN: I just have one question, and then I  
9 promise you we are wrapping up.

10 The whistleblower chose to come to you, and presumably  
11 that is in large part because the whistleblower is an  
12 employee, contractor, or detailee to the Intelligence  
13 Community. I would imagine these other inspectors general  
14 have similar jurisdiction, that is, the complainant needs to  
15 be within the jurisdiction of those other agencies. Is that  
16 right?

17 MR. ATKINSON: That is correct.

18 THE CHAIRMAN: So this whistleblower may have really  
19 only had this choice to come to you because [REDACTED] doesn't meet  
20 those other definitions in terms of [REDACTED] status?

21 MR. ATKINSON: Some inspectors general in the  
22 Intelligence Community have jurisdictions beyond the  
23 Intelligence Community. And so it doesn't -- I understood  
24 that the Department of Justice was going to conclude that  
25 this was not an intelligence activity, so what I looked for

1 were inspectors general who had jurisdiction beyond  
2 intelligence activities.

3 THE CHAIRMAN: And none of those other inspectors  
4 general were sure that they wouldn't run into the same  
5 obstacle that you did?

6 MR. ATKINSON: I think what those inspectors general  
7 were trying to consider is whether they had jurisdiction.

8 THE CHAIRMAN: And none of them were sure that they did?

9 MR. ATKINSON: Correct.

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1 [12:37 p.m.]

2 THE CHAIRMAN: Okay.

3 [REDACTED]?

4 [REDACTED]: Thank you, Mr. Atkinson. And these will be  
5 brief questions.

6 In your September 17 letter to our committee, in which  
7 you communicated the fact that you had reached an impasse  
8 with the Acting Director of National Intelligence, at the end  
9 of your letter, on page 3, you highlighted several other  
10 actions that you described may, themselves, constitute a  
11 significant problem and deficiency concerning the DNI's  
12 responsibility and authority relating to intelligence  
13 programs and activities.

14 That language echoes the language in the "urgent  
15 concern" provision of the statute.

16 Is it your view that these deficiencies, including the  
17 inability for the employee, detailee, or contractor to  
18 receive direction from the Acting DNI, is an urgent concern  
19 that your office would have jurisdiction over but also that  
20 the committee would have jurisdiction over?

21 It goes to the way in which the complaint was handled as  
22 well as the way in which the whistleblower is being treated.

23 MR. ATKINSON: So, keeping in mind that the "urgent  
24 concern" statute is triggered by a request by an individual  
25 in the Intelligence Community to report the matter to

1 Congress, I am not certain whether what you are talking about  
2 would fit the definition of an urgent concern.

3 [REDACTED]: If a request were submitted on the basis of  
4 what you describe here, we read this to mean that there would  
5 be a basis for you to investigate, clearly, within your own  
6 jurisdiction but also within the committee's jurisdiction.

7 MR. ATKINSON: I am sorry. To investigate?

8 [REDACTED]: To undertake the regular process and then  
9 transmit it to the committee. So to conduct a preliminary  
10 review and then ultimately to provide it to the committee.

11 MR. ATKINSON: I appreciate that -- I appreciate what  
12 you are saying. I would have to give that further  
13 consideration.

14 [REDACTED]: Sorry. One final question. One of the  
15 letters from the ODNI makes clear that no statutes require  
16 the Director of National Intelligence, or in this case the  
17 Acting Director, to transmit the complaint to the committee.

18 What do they mean by that? Was their analysis broader  
19 than just the "urgent concern" provision of the National  
20 Security Act? And, to be specific, was DOJ's analysis  
21 broader than that?

22 MR. ATKINSON: No, I understood the question. Thank  
23 you.

24 [REDACTED]: Yeah.

25 MR. ATKINSON: Let me answer it this way. I can't

1 disclose the content of the DOJ legal opinion beyond what  
2 Mr. Klitenic has already disclosed. I have said today that  
3 DOJ's legal opinion may have significant implications for all  
4 executive branch agencies and departments and the government  
5 contracting industry, and that is one of the reasons I have  
6 asked them to clarify the legal opinion.

7 [REDACTED]: We ask also because there are other  
8 statutory obligations on the Acting Director of National  
9 Intelligence and elements of the Intelligence Community to  
10 keep this committee fully and currently informed about  
11 intelligence activity, to include counterintelligence  
12 activity.

13 So one question is whether or not the analysis is  
14 intended -- or the DOJ legal opinion in fact also subverts  
15 that obligation, and whether or not the Acting DNI has  
16 accepted that, despite his other statutory obligations to  
17 keep our committee currently and fully informed.

18 MR. ATKINSON: So I am not in a position to confirm or  
19 deny anything of what you have said. And I am not authorized  
20 to disclose the content of the legal opinion beyond what  
21 Mr. Klitenic has already disclosed.

22 THE CHAIRMAN: Any further questions?

23 Yes.

24 [REDACTED]: We just have a very few.

25 Sir, regarding your reach-out to other IGs, where was

1 that done in the process? Before or after you received the  
2 DOJ opinion?

3 MR. ATKINSON: That was before I received the DOJ  
4 opinion.

5 [REDACTED]: And was it before or after the DNI  
6 indicated to you its position?

7 MR. ATKINSON: Well, let me be -- I am sorry. The first  
8 question, to the best of my recollection, it was before I  
9 received the formal legal opinion.

10 [REDACTED]: And had the DNI maybe informally indicated  
11 their position to you? I am trying to get at what prompted  
12 you to reach out to other IGs. Was it because you believed  
13 that the process was going to kind of stop?

14 MR. ATKINSON: I was involved with DOJ's consultations  
15 with ODNI. I was not -- ODNI, I believe, had many more  
16 consultations with the Department of Justice than I had. But  
17 I did understand from my consultations before they issued  
18 their formal legal opinion that it looked to me like they  
19 were going to conclude that I did not have jurisdiction. And  
20 so, as a result of that, before I received the formal legal  
21 opinion, I sought the assistance of the other inspectors  
22 general.

23 [REDACTED]: Thank you. And, in those consultations,  
24 did you divulge some or all of the underlying complaint facts  
25 with them?

1 MR. ATKINSON: I am not going to disclose the methods I  
2 used to try to identify other inspectors general with  
3 potential jurisdiction.

4 [REDACTED]: Understood. But I guess the question was,  
5 in your conversations, regardless of which IGs you talked  
6 with, I assume that you necessarily had to discuss some of  
7 the substance of the complaint with them in order to figure  
8 out if they had jurisdiction.

9 MR. ATKINSON: That is a fair question. Yes, I would  
10 have had to disclose to them the allegations, but I will say  
11 that I did not disclose with any of them the identity of the  
12 complainant.

13 I will also say that, before I contacted the other  
14 inspectors general, my office obtained the consent from the  
15 complainant to disclose the complainant's information to  
16 those inspectors general as part of our efforts to find other  
17 inspectors general with jurisdiction.

18 [REDACTED]: Understood.

19 Thank you very much.

20 MR. ATKINSON: Thank you.

21 THE CHAIRMAN: Mr. Atkinson, thank you very much for  
22 your testimony today. I know it has been a long day. Thank  
23 you for your work the last 18 months and during your time at  
24 Justice. We appreciate your candor. We appreciate the  
25 seriousness with which you take not just this complaint but

1 the entire whistleblower process.

2 And we know that you are very mindful, as we are, of the  
3 stakes of this. Because people within the IC will look to  
4 determine whether, when you were assuring people who would  
5 come to you that their complaints would reach Congress and  
6 they would be unfiltered, whether in fact the process works  
7 as you understood it, as we understand it, but apparently as  
8 the DNI or Justice Department does not understand it.

9 So we certainly intend to do what we can to make sure  
10 that we not only determine if there is a fire that needs to  
11 be put out -- that is our first obligation, particularly if  
12 it affects the national security -- but also that we have a  
13 viable whistleblower process that IC employees and  
14 contractors and detailees know works, that they don't have to  
15 take matters into their own hands.

16 And, once again, I appreciate your time today. Thank  
17 you.

18 MR. ATKINSON: Thank you, Mr. Chairman. Let me also  
19 thank the staff of this committee for their professionalism  
20 and for the assistance that they provided to us as part of  
21 this briefing.

22 THE CHAIRMAN: Thank you.

23 We are adjourned.

24 [Whereupon, at 12:47 p.m., the committee was adjourned.]

25