

Questions for the Record for Kyle Shideler
Hearing on “Politically Violent Attacks: A Threat to Our Constitutional Order”
Submitted November 4, 2025

QUESTIONS FROM SENATOR WHITEHOUSE

Please answer each question and sub-question individually and as specifically as possible.
Where indicated, please provide only yes or no answers.

1. Under what circumstances should threats against public officials and judges be investigated?

Under 18 U.S. Code § 2332b, threats to engage in terrorism which would include to “kill, kidnap, maim, commit an assault resulting in serious bodily injury, or assault with a dangerous weapon, the “United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;” and a person found guilty under this statute would face up to 10 years in prison.

This requires prosecutors to demonstrate intent on the part of the perpetrator, and that the communicated threat was intended as such, was communicated in a manner that was unequivocal, unconditional and specific.

In my view this is a correct standard. As public servants, officials and judges are likely to receive communications from the public which express their displeasure, often in very stark terms, and this is perhaps the most fundamental part of the 1st amendment. Not all such communications should be regarded as threats, and law enforcement must exercise discernment in determining communications which clearly represent deliberate, intentional and unequivocal threats as opposed to comments which merely express anger, dissent or disagreement. That said, law enforcement should lean on the side of investigating potential threats to determine whether that standard is adequately met.

2. Under what circumstances should the orchestration or instigation of threats against public officials and judges be investigated?

Under 18 U.S. Code § 373, it is illegal to solicit an individual to commit a crime of violence, which would include “threatened use of force.” The standard here requires that the solicitation occur “under circumstances strongly corroborative” of the intent “to persuade such other person to engage in such conduct.”

There is also the “incitement” test under *Brandenburg V. Ohio*, which requires that inflammatory speech be both “directed to inciting or producing imminent lawless action”, and that speech be “likely to incite or produce such action.” In most cases, I suspect it would be difficult to demonstrate that encouraging others to engage in threats rises to the level “imminent lawless action.”

In investigating such incidents, law enforcement must balance the threat to the public (or public officials) with the rights of the citizens under the 1st amendment. In the current environment, I would emphasize investigations of activities which rise above speech to the level of clear action.

For a specific example, making a public statement that ICE officers should be threatened is not the same as producing a computer or phone application which can directly be used to facilitate that activity, or the production of online materials that provide detailed education about the tactics, techniques and procedures (TTP) that can be utilized in order to commit a criminal act or avoid prosecution for such acts.

In the above responses, I'd emphasize that I am not an attorney, and my views regarding the above statutes and legal requirements are based on prudence and observation.