
From:**To:** Raman, Sujit (ODAG); O'Callaghan, Edward C. (ODAG); Gauhar, Tashina (ODAG); Bolitho, Zachary (ODAG)**Subject:** RE: Latest draft**Attachments:** 2018.07.18.Aspen.Draft.docx

Here is a revised draft. Significant revision (b) (5)

We can revise tonight and

From: Raman, Sujit (ODAG)**Sent:** Wednesday, July 18, 2018 12:29 AM**To:** Rosenstein, Rod (ODAG (b) (6)); O'Callaghan, Edward C. (ODAG (b) (6)); Gauhar, Tashina (ODAG (b) (6)); Bolitho, Zachary (ODAG (b) (6))**Subject:** RE: Latest draft

Please see attached for some additional/final suggestions, in track changes mode, from the team. I think the speech is quite good. If you could let us know with final edits by tomorrow AM, I'll ensure we get it to Sarah for transmittal to the WH, etc. Many thanks.

From: Rosenstein, Rod (ODAG)**Sent:** Tuesday, July 17, 2018 3:08 PM**To:** Raman, Sujit (ODAG (b) (6)); O'Callaghan, Edward C. (ODAG (b) (6)); Gauhar, Tashina (ODAG (b) (6)); Bolitho, Zachary (ODAG (b) (6))**Subject:** RE: Latest draft

Updated draft. This is about the right length.

From: Raman, Sujit (ODAG)**Sent:** Tuesday, July 17, 2018 2:00 PM**To:** Rosenstein, Rod (ODAG (b) (6)); O'Callaghan, Edward C. (ODAG (b) (6)); Gauhar, Tashina (ODAG (b) (6)); Bolitho, Zachary (ODAG (b) (6))**Subject:** RE: Latest draft

Please see attached for a draft with my and Tash's suggestions in track changes mode. Happy to discuss at your convenience.

From: Rosenstein, Rod (ODAG)**Sent:** Tuesday, July 17, 2018 10:11 AM**To:** Raman, Sujit (ODAG (b) (6)); O'Callaghan, Edward C. (ODAG)

(b) (6) >; Gauhar, Tashina (ODAG) (b) (6) Bolitho, Zachary (ODAG)

(b) (6)

Subject: Latest draft

I need to cut quite a bit.

Rosenstein, Rod (ODAG)

Subject: Meeting
Location: DAG's Conference Room, 4111 Main

Start: Thursday, July 6, 2017 4:30 PM
End: Thursday, July 6, 2017 5:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Rosenstein, Rod (ODAG)
Required Attendees: Schools, Scott (ODAG); Gauhar, Tashina (ODAG);
(b) (6); Hur, Robert (ODAG); Crowell,
James (ODAG) (JMD); AMZ; CWK; RSMSC
Optional Attendees: Crowell, James (ODAG)

POC: Scott Schools

Attendees:

ODAG: DAG Rosenstein, Scott Schools, Tash Gauhar, Rob Hur, Jim Crowell

SCO: Bob Mueller, Aaron Zebley

Rosenstein, Rod (USAMD)

From: Rosenstein, Rod (USAMD)
Sent: Wednesday, April 26, 2017 4:56 PM
To: (b)(6): Lynh Bui email (Wash Post)
Subject: Fwd: Farewell
Attachments: 03-07-17 Rosenstein Testimony.pdf; ATT00001.htm

On background:

I appreciate your professionalism in covering our office. I look forward to continuing to follow your stories.

Begin forwarded message:

From: "Rosenstein, Rod (USAMD)" (b) (6)
Date: April 26, 2017 at 12:22:07 PM EDT
Subject: Farewell

In my final hours as U.S. Attorney, I met with Nina Epps. She came to the U.S. Attorney's Office to learn about an indictment we unsealed this morning. There is a street in Baltimore – McKenzie Elliott Way – named for Ms. Epps's daughter. [McKenzie](#) was three years old when she was shot and killed on the front porch of her home in 2014.

McKenzie's murder went unsolved for a long time. But righteous [police officers](#) and prosecutors cared about McKenzie and her family. They used their expertise and [tools](#) to pursue her killer and save other people from becoming victims. And they had the support of McKenzie's mom, and other citizens, who appreciate effective law enforcement.

We charged the alleged shooter's entire gang with a federal drug [conspiracy](#). As a result, other little girls on McKenzie's street will be a lot safer. And if other gangs get the message that we will come after them if any member uses an illegal gun, Baltimore won't need to name more streets after murdered children.

I spoke about other extraordinary achievements of our office and our partner agencies – both civil and criminal – at my confirmation hearing. In my new job, I will draw on memories of your accomplishments and my experience working with you to promote the rule of law, punish criminals, deter crime and protect government property.

Preventing crime is our most important mission.

Laws alone do not deter crime. Enforcement deters crime, and it is best accomplished when we work cooperatively with local, state and federal partners, and with other stakeholders.

Prosecutors who understand that principle can be an enormous force for good, particularly if they heed Attorney General [Robert Jackson's](#) advice to temper zeal with kindness, seek the truth, serve the law and approach the task with humility.

Many people applied for your job. Prove every day that the person who hired you made the right decision.

Work hard. Work quickly. Be proactive. Be persistent. Build coalitions. Solve problems. Share credit. Learn from mistakes. Make every day count. And never complain.

My favorite management parable is about three stonemasons working on a cathedral wall. A consultant asks each of them to describe the job. The first mason prosaically says, "I earn a living by laying stones." The second proudly proclaims, "I am the best stone cutter in the state." Then the consultant turns to the third mason, who reverently offers, "I am helping to build a cathedral."

Make sure you are building the cathedral.

In a few moments, as I close my office door for the last time, I will be thinking about the exceptional public servants who inspired me to spend the past 27 years as a government lawyer. The mission attracted me to law enforcement, but the people who carry out the mission are what I treasure most about this job. I have seen you pursue justice with ceaseless devotion, often at personal sacrifice and sometimes at physical risk. To those who taught me, those who worked beside me, and those who stood behind me, I am grateful for your friendship and thankful for your accomplishments.

Our office is in good hands. It is in your hands.

Use your power wisely. And always stay [humble and kind](#).

WRITTEN STATEMENT OF ROD J. ROSENSTEIN
NOMINEE TO SERVE AS DEPUTY ATTORNEY GENERAL
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C.
MARCH 7, 2017

Chairman Grassley, Ranking Member Feinstein, and other members of the Committee, it is a great privilege for me to be here. Thank you for scheduling this hearing, and thank you for taking the time to meet with me in your offices over the past two weeks.

I am very grateful to Senator Cardin and Senator Van Hollen for their generous introductions, and for their consistent support of law enforcement in my home state of Maryland.

My presence today is possible only because of a supportive family, exceptional colleagues, and my good fortune in being a part of one of America's crown jewels. The United States Department of Justice has been my professional home for almost three decades. I have served under five Presidents and nine Attorneys General. On every floor of the Robert F. Kennedy Main Justice Building, there are reminders of the heroes, mentors and friends who have occupied offices along the stately hallways. They taught me that the Justice Department stands for the principle that every American deserves equal protection under the rule of law. I want to thank the Attorney General and the President for placing their trust in me to help manage the Department and enforce the principle.

Please allow me to introduce the relatives who are here with me today. My wife, Lisa, is a former Assistant U.S. Attorney who shares my affection for the Justice Department. She now devotes much of her time to our most impressive accomplishments, our daughters, Julia and Allison. I would not be here today without Lisa's love and support.

At our local high school, Julie and Allie recently studied the confirmation process. They will never forget this opportunity to see it in operation. Allie was eager to attend, even though it required her to break her perfect school attendance record. Julie writes for the school newspaper, but journalistic ethics preclude her from reporting about this event. Julie and Allie are excellent students, superb athletes and fundamentally good people. I am thankful for their love and their understanding about the demands of my career, and I look forward to watching them continue to pursue their life journeys.

I am proud that my parents, Robert and Gerri Rosenstein, are here to share this moment. My mom worked as a bookkeeper and served as the president of the local school board. My dad ran a small business in Philadelphia with a partner, Miriam Smalls, who is also here.

My parents raised two children. They encouraged us to take full advantage of the limitless promise of America, even when it took us far from their home. It is probably not a coincidence that we both have spent our entire careers as federal public servants. My sister, Dr. Nancy Messonnier, traveled here from Atlanta, where she is the Director of the National Center for Immunization and Respiratory Diseases at the Centers for Disease Control and Prevention.

My mother-in-law, Alice Barsoomian, flew here from California with one of her sisters, Rita Arslanian.

I am grateful for the support of many other family members, friends and colleagues who are in this hearing room or watching the broadcast.

In my small hometown of Lower Moreland, Pennsylvania, I learned straightforward values. Work hard. Play by the rules. Question assumptions, but treat everyone with respect. Read widely, write coherently and speak thoughtfully. Expect nothing, and be grateful for everything. Remain gracious in times of defeat, and humble in moments of victory. And try to leave things better than you found them.

After high school, I attended the Wharton School of Business, where I studied public policy, management and economics. My interest in government led me to Harvard Law School.

During my senior year of college, I read a newspaper article about the large salaries paid to law firm associates. I remember thinking that I probably would be in their shoes in a few years. But something intervened and caused me to take a different path: I served as an intern for the U.S. Attorney's Office in Massachusetts. The federal prosecutors, agents and support employees who worked there were men and women of great intellect and integrity. They spoke about doing the right thing and keeping people safe, and they took immense pride in their careers. I aspired to work with professionals like them.

I started my career as a law clerk to Judge Douglas Ginsburg, on the U.S. Court of Appeals for the District of Columbia Circuit. In 1990, I joined the Justice Department as a public corruption prosecutor in the Criminal Division, under the leadership of Robert Mueller. During the Clinton Administration, I worked directly for Deputy Attorney General Philip Heymann and Criminal Division Assistant Attorney General Jo Ann Harris. After serving on detail to Independent Counsel Ken Starr for two years, I moved to Maryland when U.S. Attorney Lynne Battaglia hired me as an Assistant U.S. Attorney. In the Bush Administration, I served as Principal Deputy to Tax Division Assistant Attorney General Eileen O'Connor, who is seated with my family today.

Those distinguished government lawyers are most responsible for my career, but many other exemplary public servants taught me, inspired me and guided me along the way.

When I became a U.S. Attorney, I expected to serve for just four years, under President Bush. I am grateful to President Obama for demonstrating his confidence in me by allowing me to serve in his administration for eight years. With support from Senators Mikulski, Cardin and Sarbanes, I have been a U.S. Attorney for 12 years, under three Presidents.

I partnered with three Maryland Governors – Robert Ehrlich, Martin O'Malley and Larry Hogan – with three state Attorneys General – Joseph Curran, Douglas Gansler and Brian Frosh – and with many other officials to fight crime, protect national security and improve the lives of our citizens.

Political affiliation is irrelevant to my work. Effective law enforcement requires us to work cooperatively with all local, state and federal partners, and with private sector stakeholders. We relied on that model in Maryland to implement a comprehensive and proactive strategy to reduce gun crime and dismantle criminal gangs. Violent crime declined for nearly a decade.

A case that I personally prosecuted a few years ago illustrates how much damage one violent repeat offender can do to a community, and how law enforcement agencies can prevent crime by working together. The defendant committed more than 50 burglaries and nine armed home invasion robberies. During one robbery, he sexually assaulted a child. Authorities who executed a search warrant at the suspect's home discovered an arsenal of stolen weapons and ammunition. They also uncovered evidence that the defendant was a vicious serial killer known as the "mother-daughter killer." Although the federal charges did not include murder, the judge imposed a life sentence. After our conviction was upheld on appeal, the defendant confessed to murder in state court. The surviving victims were relieved to see justice done. The federal agents and local police officers who caught that sociopathic criminal almost certainly saved lives.

The hardworking men and women of the U.S. Attorney's Office and our partner agencies achieved notable results in many priority areas during my tenure, including corruption, fraud, child exploitation, civil rights, human trafficking, narcotics, organized crime and national security prosecutions; as well as in false claims act and other civil litigation.

Corruption and civil rights cases are among our most sensitive and important matters, particularly when other agencies have not vindicated the rights of victims. Iconic photographs from the 1960s show Justice Department lawyers and U.S. Marshals protecting students from racist attacks on their way to school. Modern cases may not be as dramatic, but they continue to illuminate and address the harm caused when government officials disregard the rule of law.

Last Wednesday, our U.S. Attorney's Office announced charges against seven Baltimore City police officers for allegedly abusing their authority by robbing citizens, filing false police reports and defrauding taxpayers. Prosecuting corrupt police officers is essential both to protect victims and to support honorable officers whose reputations are unfairly tarnished.

Our office also has prosecuted dozens of correctional officers who abused their power and mistreated inmates, and we recently filed corruption charges against elected officials for allegedly betraying their constituents by taking bribes.

Gathering the evidence for those cases required thousands of hours of painstaking work by talented federal agents and prosecutors, over many months and sometimes years. Their efforts pay off in several ways: criminals are held accountable; crime is deterred; and policy changes sometimes are adopted to prevent corruption from reoccurring.

Enforcement is our primary tool, but we also engage directly in crime prevention. One of our employees works full-time educating school groups and community organizations about gangs, child exploitation and drug abuse. Another employee focuses on monitoring reentry programs for ex-offenders and arranging for prosecutors to speak with school students. We also

hold “call-in” sessions; joining with local officials, we meet with groups of ex-offenders to warn them about the potential consequences they will face if they are caught with guns.

The most significant change in the Justice Department this century is the high priority we now place on preventing terrorism. On September 11, 2001, I was a prosecutor based in the federal courthouse in Greenbelt, Maryland. From our office windows, we saw smoke rising over the Pentagon. We later learned that some of the terrorists had used a gym just two miles away from our courthouse, in a mall that we often visited for lunch. Preventing terrorism was not my responsibility then, but it is our top priority now. Our Anti-Terrorism Advisory Council works with all stakeholders, and the Maryland Coordination and Analysis Center is a model fusion center for sharing national security and law enforcement intelligence.

My office includes 160 employees, and we receive additional support from volunteers and detailees. Our Special Assistant U.S. Attorney program supplements our staff, provides valuable experiences for the lawyers, and builds useful relationships. Our student intern program is another point of pride. A law school internship in Boston fueled my interest in the Justice Department, and we have given hundreds of aspiring lawyers a similar opportunity in Baltimore and Greenbelt. Many of them go on to pursue public service careers.

The mission of pursuing justice attracted me to law enforcement, but the people who carry out the mission are what I treasure most about my job. With few exceptions, they are honorable, principled and trustworthy. I emphasize that point when I teach in classrooms and speak in public forums. If I become the Deputy Attorney General, I will draw on my personal experience with thousands of upstanding law enforcement officers as I seek to build public trust in our criminal justice system and to implement change where needed.

Law enforcement officers need to be role models. I remind police and prosecutors that we do not just represent the government. From the perspective of many citizens, we are the government. Contacts with law enforcement officers create indelible memories. That gives us a special responsibility to adhere to ethical and professional standards.

When faced with difficult issues, wise Justice Department veterans taught me to ask the right questions. The first question is: What *can* we do? It is essential to understand the extent of our power and the boundaries of the law. The second question is: What *should* we do? Our decision how to achieve justice must be informed by an appreciation of the intended and unintended consequences. The final question is: How will we explain it? Inspiring public confidence is part of our job, and that requires us to be as forthcoming and transparent as possible about our rationale.

The public may sometimes judge us only by whether we secure a conviction. But we hold ourselves to a higher standard. Justice is our name, and justice is our mission. Attorney General Robert Jackson famously said that “the citizen’s safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.”

With those words in mind, we seek to hire and promote men and women who demonstrate exceptional integrity, because the rule of law is not about words on paper. It depends upon the character of the people who enforce the law. I encourage prosecutors to remember how they felt the first time they announced to the court, “I represent the United States,” and stay in the job only so long as they are grateful to have that opportunity.

I continue to serve because the awe that I experienced the first time I entered the Main Justice building has never waned. But the grand hallways are familiar now. They echo with the voices of mentors and friends. I strive to live by the principles they taught me.

If my nomination is confirmed, I will approach the job with deep respect for the institution and employees of the Department of Justice, with acute understanding of our role in the constitutional structure, and with profound appreciation of our weighty responsibilities.

The oath of office is an obligation. It requires me to support and defend the Constitution of the United States; to bear true faith and allegiance to the Constitution; and to well and faithfully discharge the duties of my office. I have taken that oath several times, and I have administered it many times. I know it by heart. I understand what it means, and I intend to follow it.

If you confirm my nomination, I will work to defend the integrity and independence of the Justice Department; to protect public safety; to preserve civil rights; to seek justice; to advance the rule of law; and to promote public confidence.

Our predecessors worked hard to build trust in the Justice Department. Now it falls to us to preserve, protect and defend that legacy, and bequeath it to our successors. The members of this committee are indispensable partners in pursuing those goals.

Thank you for considering my nomination.

Rosenstein, Rod (USAMD)

From: Rosenstein, Rod (USAMD)
Sent: Wednesday, April 26, 2017 5:15 PM
To: Bui, Lynh
Subject: Re: Farewell

I hope so.

On Apr 26, 2017, at 5:13 PM, Bui, Lynh (b) (6) > wrote:

Congratulations on your new position and thank you for always taking the time to chat with us. Your exit interview is scheduled to run this weekend. Good luck and I'm sure we'll cross paths again.

—
Lynh Bui
The Washington Post
(b) (6)
@ByLynhBui
washingtonpost.com/LynhBui

From: Rosenstein, Rod (USAMD (b) (6))
Sent: Wednesday, April 26, 2017 4:55:46 PM
To: Bui, Lynh
Subject: Fwd: Farewell

Duplicative Material (Document ID: 0.7.22218.13609)

Rosenstein, Rod (USAMD)

From: Rosenstein, Rod (USAMD)
Sent: Tuesday, May 2, 2017 12:54 AM
To: (b) (6) [redacted]
Subject: McKenzie at the DAG swearing in



*Please delete (b) (6) [redacted] from your contacts and use my new DOJ email address instead (b) (6) [redacted]

Rosenstein, Rod (USAMD)

From: Rosenstein, Rod (USAMD)
Sent: Thursday, May 4, 2017 7:57 AM
To: Horwitz, Sari
Subject: Re: Talk

My schedule is pretty busy. Are you looking for off the record background or reportable details? If the latter, I should include OPA.

**Please delet (b) (6) from your contacts and use my new DOJ email address instead:
(b) (6).*

On May 3, 2017, at 12:50 PM, Horwitz, Sari (b) (6) > wrote:

Thanks for getting back to me. As soon as possible.

Thanks,
Sari

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Ce (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

-----Original Message-----

From: Rosenstein, Rod (USAMD (b) (6))
Sent: Wednesday, May 03, 2017 11:05 AM
To: Horwitz, Sa (b) (6)
Subject: Re: Talk

When is the deadline?

**Please delet (b) (6) > from your
contacts and use my new DOJ email address instead:
(b) (6)*

On May 3, 2017, at 10:09 AM, Horwitz, Sari
(b) (6) > wrote:

Good morning Rod,

Any chance I could sit down with you for about ten minutes and talk about the department's criminal charging policy for a story I'm writing?

Best,
Sari

Sari Horwitz
Washington Post Staff Writer

(b) (6)

Cel (b) (6)

@sarihorwitz

Bio and stories: wapo.st/sarihorwitz<<http://wapo.st/sarihorwitz>>

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Thursday, May 4, 2017 7:11 PM
To: Horwitz, Sari; Rosenstein, Rod (ODAG)
Subject: RE: Talk

OK

From: Horwitz, S (b) (6)
Sent: Thursday, May 4, 2017 5:41 PM
To: Rosenstein, Rod (ODAG (b) (6)
Subject: Re: Talk

I am not. A different reporter went over for the briefing. Do you want to try to talk tomorrow?

Sent from my iPad

On May 4, 2017, at 5:35 PM, Rosenstein, Rod (ODAG (b) (6) > wrote:

Are you in the building?

**Please delete my old .gov email address if it is in your contacts list.*

On May 4, 2017, at 10:15 AM, Horwitz, Sa (b) (6) > wrote:

I know you're really busy! So appreciate your getting back to me. If you have time this afternoon, I'd like to talk to you off the record or on background.

Sent from my iPhone

Horwitz, Sari

From: Horwitz, Sari
Sent: Friday, May 5, 2017 4:52 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Talk

Hi Rod,

Sorry for the delayed response. So, you can only speak in generalities and not on what DOJ is currently doing?

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cel (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Friday, May 05, 2017 12:04 PM
To: Horwitz, Sar (b) (6) >
Subject: RE: Talk

OK. I can't give you any scoop on where it stands, but I am always willing to talk off the record about the history of DOJ charging policies in general.

From: Horwitz, Sar (b) (6)]
Sent: Thursday, May 4, 2017 5:41 PM
To: Rosenstein, Rod (ODAG) (b) (6)
Subject: Re: Talk

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Sent from my iPad

On May 4, 2017, at 5:35 PM, Rosenstein, Rod (ODAG (b) (6)) > wrote:

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I know you're really busy! So appreciate your getting back to me. If you have time this afternoon, I'd like to talk to you off the record or on background.

Sent from my iPhone

Terwilliger, Zachary (ODAG)

From: Terwilliger, Zachary (ODAG)
Sent: Monday, May 08, 2017 5:15 PM
To: Rosenstein, Rod (USAMD); Crowell, James (ODAG) (JMD)
Subject: FW: FBI Director's testimony - transcript
Attachments: Transcript - Oversight of the FBI.docx

Summary is keyed to this transcript.

Senate Judiciary Committee Holds Hearing on FBI Oversight»

LIST OF PANEL MEMBERS AND WITNESSES

GRASSLEY:

I don't know whether the time is 10:30 or 10:45, but there is a vote scheduled on the Senate floor. It's my intention to keep the meeting going during that vote and we'll take turns going. So somebody needs to be here presiding while I go vote and I won't to -- I'll run over and run back and -- and we'll -- we'll do the questioning according to the fall of the gavel or -- or early birds, whichever rule applies.

Director Comey, welcome. We thank the FBI for what it does to keep America safe. There's been a lot of controversy surrounding the FBI since the last time you were here in 2015. In March, you publicly acknowledged that the FBI is investigating allegations of coordination between the Trump campaign and Russia's efforts to interfere in the 2016 election.

Under President Obama's order, former DNI Clapper had been in charge of the intelligence community's review of that inference. Mr. Clapper testified that President Obama asked the intelligence community to compile all available information. After he left office, Mr. Clapper said there was no evidence of collusion whatsoever. The New York Times reported that American officials found no proof of collusion.

So where is all this speculation about collusion coming from? In January, BuzzFeed published a dossier spinning wild conspiracy theories about the Trump campaign. BuzzFeed acknowledged that the claims were unverified and some of the details were clearly wrong. BuzzFeed has since been sued for publishing them. Since then, much of the dossier has been proven wrong and many of his outlandish claims have failed to gain traction.

For example, no one's looking for moles or Russian agents embedded in the DNC. Yet some continue to quote parts of this document as if it were gospel truth. And according to press reports, the FBI has relied on the document to justify his current «investigation». There have been reports that the FBI agreed to pay the author of the dossier, who paid his sources, who also paid their sub sources. Where did the money come from and what motivated the people writing the checks?

The company that oversaw the dossiers creation of Fusion GSP won't speak to that point either. Its founder Glenn Simpson is refusing to cooperate with this company's -- the committee's «investigation» and inquiry. His company is also the subject of a complaint to the Justice Department.

That complaint alleges that Fusion worked as a non-registered foreign agent for Russian interest and with the former Russian intelligence agency at the time it worked on the dossier. It was filed with the Justice Department in July, long before the dossier came out. The man who wrote the dossier admitted in court that it has unverified claims. Does that sound like a reliable basis for law enforcement or intelligence actions?

Unfortunately, the FBI has provided me materially inconsistent information about these issues. That is why we need to know more about it, how much FBI (sic) relied on it. Once you buy into the claim of collusion then suddenly every interaction with a Russian can be twisted to seem like confirmation of a conspiracy theory.

Now I obviously don't know what the FBI will find. For the good of the country, I hope that the FBI gets to the truth soon, whatever that truth or that answer may be. If there are wrongdoers, they should be punished and the innocent should have their names cleared. And in the meantime, this committee is charged with the «oversight» of the FBI. And we can't wait until this is all over to ask the hard questions, otherwise too many people will have no confidence in FBI's conclusions.

GRASSLEY:

The public needs to know what role the dossier has played and where it came from, and we need to know whether there was anything improper going on between the Trump campaign and the Russians. Or are these mere allegations, just a partisan smear campaign that manipulated our government into choosing -- chasing a conspiracy theory.

Now, before the election and before we knew about this notorious dossier, you, Chairman Comey, publicly released his findings that Secretary Clinton was extremely careless in the handling of highly classified information. And this recommendation has no one -- and -- and his recommendation that no one be prosecuted.

According to a recent New York Times article, he did it partly because he knew the Russians had a hacked e-mail from a Democrat operative that might be released before the election. That e-mail reportedly provided assurances that Attorney General Lynch would protect Secretary Clinton and make sure the FBI "didn't go too far."

Despite Attorney General Lynch's prior connections to the Clintons and her now famous private conversation with former President Clinton during the «investigation», she failed to recuse herself from that. The and (ph) directors announcement effectively gave her cover to have it both ways. She would appear publicly uninvolved, but remain in control of the ultimate outcome.

Moreover, in its haste to end a tough, politically charged «investigation», the FBI failed to follow-up on credible evidence of the intent to hide -- hide «federal» records from the Congress and the public. It is a «federal» crime, as we know, to willfully and unlawfully conceal, remove or destroy a «federal» record.

Director Comey said that, quote, "the FBI also discovered several thousands work related e-mails, end of quote, that Secretary Clinton did not turn over to the State Department." He said that Secretary Clinton's lawyers, quote, "cleaned their devices in such a way as to preclude complete forensic recovery," end of quote, of additional e- mails.

The Justice Department also entered in to immunity agreements limiting the scope of the FBI «investigation». Some of these agreements prohibited the FBI from reviewing any e-mails on the lap tops of the Clinton aides that were created outside of Secretary Clinton's tenure at State. But of course, any e-mails related to alienating records would not have been created until after she left office during the Congressional and FBI reviews. And even though these records were subject to congressional subpoena and preservation records, the Justice Department agreed to destroy the laptops.

So a cloud of doubt hangs over the FBI objectivity. The Director says that the people at the FBI don't give a rip about politics, but the director installed -- as deputy director, a man whose wife ran for elected

office and accepted almost \$1 million from Governor Terry McAuliffe, a longtime friend and fundraiser of the Clintons and the Democratic Party.

Andrew McCabe also reportedly met a person with Governor McAuliffe's office about his wife's political plans and he did not recuse himself from the Clinton «investigations» or the Russian matter despite the obvious appearance of conflict. The Inspector General is reviewing these issues but once again the people deserve answers and the FBI has not provided those answers.

We need the FBI to be accountable because we need the FBI to be effective. Its mission is to protect us from the most dangerous threats facing our nation and as the director was last here -- since the director was last here, the drumbeat of attacks on the United States from those directed or inspired by ISIS and other radical Islamic terrorist has continued.

For example, in June 2016, a terrorist killed 49 and wounded another 53 in Orlando -- frequently -- frequented by gay and lesbian community. It was a most deadly attack in the United States soil since 9/11. But long -- afterwards in September a terrorist stabbed 10 at a mall in Minneapolis and another terrorist injured 31 after he detonated bombs in New Jersey and New York City and in November a terrorist injured 13 after driving into students and teachers at Ohio State University.

Our allies haven't been immune either as we read in the newspaper frequently. We all recall the tragedy of July 2016 when terrorists plowed the truck through a crowd in France, killing over 80 people. So we in the Congress need to make sure that the FBI has the tools it needs to prevent investigate terrorism as well as other series violent crimes. And these tools must be -- must adapt to both evolving technology and threats while preserving our civil liberties.

I hope we can also hear from the director about the FBI's use of some of these tools that may require congresses attention and most obviously the FISA section 702 authority is up for reauthorization at the end of the year. This authority provides a government the ability collect the electronic communications of foreigners outside the United States, with a compelled assistance of American companies. And Bush and Obama administrations were strongly supportive of 702 and now the Trump administration is as well.

From all accounts, the law has proven to be highly effective in helping to protect the United States and her allies. The privacy and civil liberties «oversight» board and many other «federal» courts have found section 702 constitutional and consistent with our fourth amendment. Yet, questions and concerns persist for many about its effects on our civil liberties, specifically in the way the FBI queries data collected under Section 702.

In order -- in addition, the director has spoken out often about how the use of encryption by terrorists and criminals is eroding the effectiveness of one of the FBI's core investigative tools, a warrant based on probable cause. I look forward to an update from you, Director Comey on the Going Dark problem.

I'm also waiting for answers from the FBI's advance knowledge of an attempted terrorist attack 2015 Garland, Texas. Fortunately, the attack was interrupted by local police officer, but not before a guard was shot. After the attack, the director claimed that the FBI did not have advanced knowledge of it. But it was recently revealed that an undercover FBI agent was in close communication with one of the attackers in the weeks leading up to the attack. The undercover agent was in a car directly behind the attackers when they started shooting and fled the scene.

The committee needs clarity on what the FBI knew, whether there was plans to disrupt any attack, and whether it shared enough information with local law enforcement. And obviously, you expect me to always remind you about whistleblowers.

Finally, as you know, the FBI Whistleblower Protection Enhancement Act became law December, 2016. It clarified that FBI employees are protected when they disclose wrongdoing to their supervisors. In April, we learned that the FBI still has not updated its policies and done much to educate employees on the new law. The Inspector General gave the FBI updated training this past January.

Employees who know that they are protected are more likely to come forward with evidence of waste, fraud and abuse. They should not have to wait many months to be trained on such a significant change in their rights and their protections. And these are all important issues and I look forward to discussing them with you, Director Comey, the public's faith of the FBI, Congress and our Democratic process has been tested lately, «oversight» and transparency hopefully will restore that faith.

You may take as long as you want, Senator.

FEINSTEIN:

Thanks very much, Mr. Chairman.

Mr. Chairman, as you stated, this is the committee's annual «oversight» hearing to conduct that «oversight» of the FBI. So usually, we review and ask questions about the FBI's work that ranges from major «federal» law enforcement priorities, to the specific concerns of individual members of the committee.

However, this hearing takes place at -- at unique time. Last year, for the first time, the FBI and its «investigation» of a candidate for president became the center of the closing days of a presidential election. Before voters went to the polls last November, they had been inundated with stories about the FBI's «investigation» of Senator Clinton's e-mails. The press coverage was wall-to-wall.

Every day, there was another story about Secretary Clinton's e-mails. Every day, questions were released -- everyday questions were raised about whether classified information had been released or compromised. And over and over again, there was commentary from the FBI about its actions and «investigation».

On July 5, 2016, two months before the election, Director Comey publicly announced that the FBI had concluded its «investigation» and determined that no reasonable prosecutor would bring a case against Secretary Clinton. That should have been the end of the story, but it wasn't. Eleven days before the election, on October 28, 2016, Director Comey then announced that the FBI was reopening the Clinton «investigation» because of e-mails on Anthony Weiner's computer.

This explosive announcement -- and it was -- came unprompted and without knowing whether a single e-mail warranted a new «investigation». It was, in fact, a big October surprise. But in fact, as it turned out, not one e-mail on the laptop changed the FBI's original conclusion that no prosecution was warranted. And only two days before the election, the FBI sent another public letter to Congress affirming its original conclusion.

This was extraordinary, plain and simple. I join those who believe that the actions taken by the FBI did, in fact, have an impact on the election. What's worse is that while all of this was going on in the public spotlight, while the FBI was discussing its «investigation» into Senator Clinton's e-mail server in detail, I cannot help, but note that it was noticeably silent about the «investigation» into the Trump campaign and Russian interference into the election.

In June 2016, the press reported that Russian hackers had infiltrated the computer system of the Democratic National Committee. In response, then candidate Trump and his campaign began goading the Russian government into hacking Secretary Clinton. Two months later, in August, on Twitter, Roger Stone declared, "trust me it will soon be Podesta's time in the barrel," end quote.

He then bragged that he was in communication with WikiLeaks -- and this was during a campaign -- the campaign in Florida. He told a group of Florida Republicans that founder Julian Assange said -- that founder Julian Assange and that there would be no telling what the October surprise might be, end quote. Clearly he knew what he was talking about.

Two months later, on October 7, thousands of e-mails from John Podesta's account were published on WikiLeaks. We now know that through the fall election the FBI was actively investigating Russia's efforts to interfere with the presidential campaign and possible involvement of Trump campaign officials in those efforts. Yet, the FBI remained silent.

In fact, the FBI summarily refused to even acknowledge the existence of any «investigation». It's still very unclear, and I hope, Director, that you will clear this up; why the FBI's treatment of these two «investigations» was so dramatically different. With the Clinton e-mail «investigation», it has been said that, quote, exceptional circumstances, end quote, including the high interest in the matter and the need to reassure the public required public comment from the FBI.

However I can't imagine how an unprecedented big and bold hacking interference in our election by the Russian government did not also present exceptional circumstances. As I said at the beginning we're in a unique time. A foreign adversary had actively interfered with a presidential election. The FBI was investigating not just that interference. But whether campaign officials associated with the president were connected to this interference, and the Attorney General has recused himself from any involvement in this «investigation».

At the same time, the FBI must continue to work with its state and local law enforcement partners and the intelligence community as well to investigate crime of all types violent crime, increased narcotic trafficking, fraud, human trafficking, terrorism, child exploitation, public corruption and yesterday this committee had a very important hearing on hate and crimes against specific religions and races which are off the charts.

In order to do all of that, I firmly believe it is of the utmost importance that the American people have faith and trust in the nation's top law enforcement agency. We must be assured that all of the FBI's decisions are made in the interest of justice, not in the interest of any political agenda or reputation of any one agency or individual.

So Mr. Director, today we need to hear how the FBI will regain that faith and trust. We need straightforward answers to our questions and we want to hear how you're going to leave the FBI going forward. We never ever want anything like this to happen again.

Thank you, Mr. Chairman.

GRASSLEY:

Director Comey, I'd like to swear you in at this point. Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth and nothing but the truth so help you God?

COMEY:

I do.

GRASSLEY:

Thank you very much.

As the old saying goes, for somebody as famous as you, you don't need any introduction. So I'm just going just introduce you as director of the «Federal»«Bureau» of «investigation». But to once again thank you for being here today and we look forward to your testimony and answer to our questions. You may begin.

COMEY:

Thank you, Mr. Chairman, Senator Feinstein, members of the committee. Thank you for having this annual «oversight» hearing about the FBI. I know that sounds little bit like someone saying looking forward to going to the dentist, but I really do mean it.

I think «oversight» of the FBI of all parts of government, especially the one I'm lucky enough to lead is essential. I think it was John Adams, who wrote to Thomas Jefferson, that power always thinks it has a great soul. The way you guard against that is having people ask hard questions, ask good questions and demand straightforward answers and I promise you will do my absolute best to give you that can answer today.

I also appreciate the conversation I know we're going to have today and over the next few months about reauthorizing section 702 of the foreign intelligence surveillance act that you mentioned Mr. Chairman. This is a tool that is essential to the safety of this country. I did not say the same thing about the collection of telephone dialing information by the NSA. I think that's a useful tool.

702 is an essential tool and if it goes away we will be less safe as a country and I mean that and would be happy to talk more about that. Thank you for engaging on that so we can tell the American people why this matters so much and why we can't let it go away. As you know, the magic of the FBI that you oversee is it's people. And we talk, as we should, a lot about our counterterrorism work, about our counterintelligence work and I'm sure we'll talk about that today.

But I thought I would just give you some idea of the work that's being done by those people all over the country, all over the world, every day, every night, all the time. And I pulled three cases that happened that were finished in the last month just to illustrate it.

The first was something I know that you followed closely, the plague of threats against Jewish community centers that this country experienced in the first few months of this year. Children frightened, old people frightened, terrifying threats of bombs at Jewish institutions, especially the Jewish community centers.

The entire FBI surged in response to that threat, working across all programs, all divisions, our technical wizards using our vital international presence. And using our partnerships, especially with the Israeli national police. We made that case and the Israelis locked up the person behind those threats and stopped that terrifying plague against the Jewish community centers.

Second case I wanted to mention is all of you know what a botnet is. These are the zombie armies of computers that have been taken over by criminals lashed together in order to do tremendous harm to innocent people. Last month, the FBI working with our partners with the Spanish national police took down a botnet called the Kelihos botnet and locked up the Russian hacker behind that botnet, who made a mistake that Russian criminals sometimes make of leaving Russia and visiting the beautiful city of Barcelona. And he's now in jail in Spain and the good people's computers who had been lashed to that zombie army have now been freed from it and are no longer part of a huge criminal enterprise.

And the last one I'll mention is, this past week for the first time since Congress passed a statute making it a crime in the United States to engage in female genital mutilation to mutilate little girls, it's been a felony in the United States since 1996, we made the first case last week against doctors in Michigan for doing this terrifying thing to young girls all across the country.

With our partners in the Department of Homeland Security, we brought a case against two doctors who were doing this to children. This is among the most important work we do, protecting kids especially, and it was done by great work that you don't hear about a lot all across the country by the FBI. It is the honor of my life.

I know you look at me like I'm crazy for saying this about this job. I love this work. I love this job. And I love it because of the mission and the people I get to work with, some of whose work I just illustrated by pulling those three cases from last month, but it goes on all the time, all around the country, and we're safer for it. I love representing these people speaking on their behalf, and I look forward your questions today.

Thank you, Mr. Chairman.

GRASSLEY:

And thank you for your opening statement. I'm going to start out probably with a couple subjects you wish I didn't bring up, and then a third one that I think everybody needs to hear your opinion on a policy issue. It is frustrating when the FBI refuses to answer this committee's questions, but leaks relevant information to the media. In other words, they don't talk to us, but somebody talks to the media.

Director Comey, have you ever been an anonymous source in news reports about matters relating to the Trump «investigation» or the Clinton «investigation»?

COMEY:

Never.

GRASSLEY:

Question two on relatively related, have you ever authorized someone else at the FBI to be an anonymous source in news reports about the Trump «investigation» or the Clinton «investigation»?

COMEY:

No.

GRASSLEY:

Has any classified information relating to President Trump or his association -- associates been declassified and shared with the media?

COMEY:

Not to my knowledge.

GRASSLEY:

You testified before the House Intelligence Committee that a lot of classified matters have ended up in the media recently. Without getting into any particular article -- I want to emphasize that, without getting into any particular article -- is there an «investigation» of any leaks of classified information relating to Mr. Trump or his associates?

COMEY:

I don't want to -- I don't want to answer that question, senator, for reasons I think you know. There have been a variety of leaks -- well, leaks are always a problem, but especially in the last three to six months.

And where there is a leak of classified information, the FBI -- if it's our information -- makes a referral to the Department of Justice. Or if it's another agency's information, they do the same. And then DOJ authorizes the opening of an «investigation». I don't want to confirm in an open setting whether there any «investigations» open.

GRASSLEY:

You -- I want to challenge you on that because the government regularly acknowledges when it's investigating classified leaks. You did that in the Valerie Plame case. What's the difference here?

COMEY:

Well, the most important difference is I don't have authorization from the department to confirm any of the «investigations» they've authorized. And it may be that we can get that at some point, but I'm not going to do it sitting here in an open setting without having talked to them.

GRASSLEY:

And I can -- you can expect me to follow up on that offer.

COMEY:

Sure.

GRASSLEY:

There are several senior FBI officials who would've had access to the classified information that was leaked including yourself and the deputy director. So how can the Justice Department guarantee the integrity of the «investigations» without designating an agency, other than the FBI, to gather the facts and eliminate senior FBI officials as suspects?

COMEY:

Well, I'm not going to answer about any particular «investigations» but there are -- I know of situations in the past where if you think the FBI or its leadership are suspects, you have another investigative agency support the «investigation» by «federal» prosecutors. It can be done. It has been done in the past.

GRASSLEY:

OK, moving on to another subject, The New York Times recently reported that the FBI had found a troubling e-mail among the ones the Russians hacked from Democrat operatives. The e-mail reportedly provided assurances that Attorney General Lynch would protect Secretary Clinton by making sure the FBI «investigation» "didn't go too far."

How, and when, did you first learn of this document? Also, who sent it and who received it?

COMEY:

That's not a question I can answer in this forum, Mr. Chairman, because it would call for a classified response. I have briefed leadership of the intelligence committees on that particular issue, but I can't talk about it here.

GRASSLEY:

You can expect me to follow-up with you on that point.

COMEY:

Sure.

GRASSLEY:

What steps did the FBI take to determine whether Attorney General Lynch had actually given assurances that the political fix was in no matter what? Did the FBI interview the person who wrote the e-mail? If not, why not?

COMEY:

I have to give you the same answer. I can't talk about that in an unclassified setting.

GRASSLEY:

OK, then you can expect me to follow-up on that. I asked the FBI to provide this e-mail to the committee before today's hearing. Why haven't you done so and will you provide it by the end of this week?

COMEY:

Again to react to that, I have to give a classified answer and I can't give it sitting here.

GRASSLEY:

So that means you can give me the e-mail?

COMEY:

I'm not confirming there was an e-mail sir. I can't -- the subject is classified and in an appropriate forum I'd be happy to brief you on it. But I can't do it in an open hearing.

GRASSLEY:

I assume that the other members of the committee could have access to that briefing if they wanted? I want talk about going dark. Director Comey a few years ago, you testified before the committee about going dark problem in the inability of law enforcement to access encrypted data despite the existence of a lawfully issued court order. You continue to raise this issue in your public speeches most recently Boston College.

My question, you mentioned it again in your testimony briefly -- but can you provide the committee with a more detailed update on the status of going dark problem and how it affected the FBI's ability to access encrypted data? Has there been any progress collaborating with the technology sector to overcome any problems?

At our hearing in 2015 you said you didn't think legislation was necessary at that time. Is that still your view?

COMEY:

Thank you, Mr. Chairman. The shadow created by the problem we call going dark continues to fall across more of our work. Take devices for example. the ubiquitous default full disk encryption on devices is affecting now about half of our work.

First six months of this fiscal year FBI examiners were presented with over 6000 devices for which we have lawful authority search warrant or court order to open and 46 percent of those cases we could not open those devices with any technique. That means half of the devices that we encounter in terrorism cases, in counter intelligence cases, in gang cases, in child pornography cases cannot be opened with any technique, that is a big problem. And so the shadow continues to fall.

I'm determined to continue to make sure the American people and Congress know about it. I know this is important to the President and the new Attorney General. I don't know yet how the new administration intends to approach it, but it's something we have to talk about. Because like you I care a lot about privacy. I also care an awful lot about public safety there continues to be a huge collision between those two things we care about.

So I look forward to continuing in that conversation, Mr. Chairman.

GRASSLEY:

You didn't respond to the part about do you still have the view that legislation is not needed.

COMEY:

I don't know the answer yet. As I think I said -- I hope I said last time we talked about this it may require a legislative solution at some point. The Obama administration was not in a position where they were seeking legislation. I don't know yet how President Trump intends to approach this. I know he spoke about it during the campaign. I know he cares about it, but it's premature for me to say.

GRASSLEY:

Senator Feinstein.

FEINSTEIN:

Thank you Mr. Chairman.

Director I have one question regarding my opening comment and I view it as a most important question and I hope you will answer it. Why was it necessary to announce 11 days before a presidential election that you were opening an «investigation» on a new computer without any knowledge of what was in that computer?

Why didn't you just do the «investigation» as you would normally with no public announcement?

COMEY:

A great question Senator. Thank you. October 27th, the investigative team that had finished the «investigation» in July focused on Secretary Clinton's e-mails asked to meet with me.

So I met with them that morning, late morning, in my conference room. And they laid out for me what they could see from the metadata on this fella Anthony Weiner's laptop that had been seized in an unrelated case. What they could see from the metadata, was that there were thousands of Secretary Clinton's e-mails on that device, including what they thought might be the missing e-mails from her first three months of Secretary of State.

We never found any e-mails from her first three months. She was using a Verizon BlackBerry then and that's obviously very important, because if there was evidence that she was acting with bad intent, that's where it would be in the first three months.

FEINSTEIN:

But they weren't there.

COMEY:

Look, can I just finish my answer, Senator?

FEINSTEIN:

Yes.

COMEY:

And so they came in and said, we can see thousands of e-mails from the Clinton e-mail domain, including many, many, many, from the Verizon Clinton domain, BlackBerry domain. They said we think we got to get a search warrant to go get these and the Department of Justice agreed we had to go get a search warrant.

So I agreed, I authorized them to seek a search warrant. And then I faced a choice. And I've lived my entire career by the tradition that if you can possibly avoid it, you avoid any action in the run-up to an election that might have an impact. Whether it's a dogcatcher election or president of the United States, but I sat there that morning and I could not see a door labeled no action here.

I could see two doors and they were both actions. One was labeled speak, the other was labeled conceal. Because here's how I thought about not it, I'm not trying to talk you into this, but I want you to know my thinking. Having repeatedly told this Congress, we are done and there's nothing there, there's no case there, there's no case there, to restart in a hugely significant way, potentially finding the e-mails that would reflect on her intent from the beginning and not speak about it would require an active concealment, in my view.

And so I stared at speak and conceal, speak would be really bad. There's an election in 11 days, Lordy, that would be really bad. Concealing in my view would be catastrophic, not just to the FBI, but well beyond. And honestly, as between really bad and catastrophic, I said to my team we got to walk into the world of really bad. I've got to tell Congress that we're restarting this, not in some frivolous way, in a hugely significant way.

And the team also told me, we cannot finish this work before the election. And then they worked night, after night, after night, and they found thousands of new e-mails, they found classified information on Anthony Weiner. Somehow, her e-mails are being forwarded to Anthony Weiner, including classified information by her assistant, Huma Abedin. And so they found thousands of new e-mails and then called me the Saturday night before the election and said thanks to the wizardry of our technology, we've only had to personally read 6,000. We think we can finish tomorrow morning, Sunday.

And so I met with them and they said we found a lot of new stuff. We did not find anything that changes our view of her intent. So we're in the same place we were in July. It hasn't changed our view and I asked them lots of questions and I said OK, if that's where you are, then I also have to tell Congress that we're done. Look, this terrible. It makes me mildly nauseous to think that we might have had some impact on the election. But honestly, it wouldn't change the decision.

Everybody who disagrees with me has to come back to October 28th with me and stare at this and tell me what you would do. Would you speak or would you conceal? And I could be wrong, but we honestly made a decision between those two choices that even in hindsight and this has been one of the world's most painful experiences, I would make the same decision.

I would not conceal that, on October 28th from the Congress. And I sent the letter to Congress, by the way, people forget this, I didn't make a public announcement. I sent a private letter to the chairs and the rankings of the «oversight» committees.

FEINSTEIN:

Did you...

COMEY:

I know it's a distinction without a difference in the world of leaks, but it is -- it was very important that I tell them instead of concealing. And reasonable people can disagree but that's the reason I made that choice and it was a hard choice. I still believe in retrospect the right choice, as painful as this has been. And I'm sorry for the long answer.

FEINSTEIN:

Well, let me respond. On the letter, it was just a matter of minutes before the world knew about it. Secondly, my understanding -- and staff has just said to me -- that you didn't get a search warrant before making the announcement.

COMEY:

I think that's right. I think I authorized and the Department of Justice agreed we were going to seek a search warrant. I actually don't see it as a meaningful distinction.

FEINSTEIN:

Well, it's very -- it's very hard -- it would've been -- you took an enormous gamble. The gamble was that there was something there that would invalidate her candidacy and there wasn't. So one has to look at that action and say did it affect the campaign? And I think most people who have looked at this say, yes, it did affect the campaign, why would he do it. And was there any conflict among your staff, people saying do it, people saying don't do it; as has been reported?

COMEY:

No, there was a great debate. I have a fabulous staff at all levels and one of my junior lawyers said, should you consider that what you're about to do may help elect Donald Trump president. And I said, thank you for raising that, not for a moment because down that path lies the death of the FBI as an independent institution in America. I can't consider for a second whose political fortunes will be affected in what way.

We have to ask ourselves what is the right thing to do and then do that thing. I'm very proud of the way we debated it, and at the end of the day, everyone on my team agreed we have to tell Congress that we are restarting this in a hugely significant way.

FEINSTEIN:

Well, there's a way to do that. I don't know whether work or not, but certainly in a classified way carrying out your tradition of not announcing «investigations». And you know, I look at this, exactly the opposite way you do. Everybody knew it would influence the «investigation» before, that there was a very large percentage of chance that it would. And yet, that percentage of chance was taken and there was no information and the election was lost.

So it seems to me that before your department does something like this, you really ought to -- because Senator Leahy began to talk about other -- other «investigations». And I think this theory does not hold up when you look at other «investigations», but let me go on to 702 because you began your comment saying how important it is. And yes, it is important. We've got a, I think, a problem and the issue that we're going to need to

address is the FBI's practice of searching 702 data using U.S. person identifiers as query terms. And some have called this an unconstitutional back door search, while others say that such queries are essential to assuring that potential terrorists don't slip through the cracks as they did before. So could you give us your views on that, and how it might be handled to avoid the charge which may bring down 702?

COMEY:

No, thank you, Senator, it's a really important issue. The way 702 works is under that provision of the statute the FISA court, «federal» judges, authorize us as U.S. agencies to collect the communications of non-U.S. people that we believe to be overseas, if they're using American infrastructure.

The criticism the FBI has gotten and the feedback we've gotten consistently since 9/11 is, you have to make sure you're in a position to connect the dots. You can't have stove piped information. And so we've responded to that over the last 10 years, mostly to the great work of my predecessor Bob Mueller and we have confederated databases so that if we collect information under 702 it doesn't sit in a separate stovepipe.

It sits in a single cloud type environment so that if I'm hoping an «investigation» United States in a terrorism matter, an intelligence matter or a criminal matter and I have a name of the suspect and their telephone number and their e-mail addresses. I search the FBI's databases. That search necessarily will also touch the information that was collected under 702 so that we don't miss a dot, but nobody gets access to the information that sits in the 702 database, unless they've been trained correctly.

If there is -- let's imagine that terrorists overseas were talking about a suspect in the United States or someone's e-mail address in the United States was in touch with that terrorist and that information sits in the 702 database, and we open the case in United States and put in that name in that e-mail address. It will touch that data and tell us his information in the 702 database that's relevant.

If the agent doing the query is properly trained on how to handle that he or she will be able to see that information. If they're not properly trained they'll be alerted that there is information then have to go to the appropriate training and the appropriate «oversight» to be able to see it. But to do it otherwise is to risk us where it matters most in the United States failing to connect dots.

So my view is the information that's in the 702 databases has been lawfully collected carefully overseen and checked and our use of it is also appropriate and carefully overseen and checked.

FEINSTEIN:

So you are not masking the data -- unmasking the data?

COMEY:

I'm not sure what that means in this context. What we do is we combine information collected from any lawful source in a single FBI database so we don't miss a dot when we're conducting «investigations»

the United States. What we make sure of though is, nobody gets to see FISA information of any kind unless they've had the appropriate training and have the appropriate «oversight».

FEINSTEIN:

My time is up. Thank you.

Senator Hatch?

HATCH:

Thank you Senator.

Director Comey, in January I introduced a S139, the rapid DNA act. It's bipartisan cosponsors include Senators Feinstein, Cornyn, coons, Flake, Klobuchar and me on this committee and maybe more.

Mr. Chairman, I want to thank you for putting this bill on the agenda for tomorrow's business meeting. This is the same bill that the Senate Unanimously passed last year, and this technology allows developing a DNA profile and performing database comparisons in less than two hours. Following standards and procedures approved by the FBI. It would allow law enforcement to solve crimes and innocent advocates to exonerate the wrongfully accused.

Now Mr. Director you came before this committee in December 2015, and I asked you then about this legislation, you said it would quote "help us change the world in a very very exciting way," unquote. Is that still your view of the value of this legislation? And you believe the Congress should enact it on its own without getting tangled up in other criminal justice reform issues?

COMEY:

I agree very much, Senator Hatch. The rapid DNA will materially advance the safety of the American people. So that if a police officer somewhere United States has in his or her custody someone who is a rapist, before letting them go on some lesser offense, they'll able to quickly check the DNA database and get a hit. That will save lives. That will protect all kinds of people from pain and I think it's a great thing.

HATCH:

Well, thank you. And your prepared statement touches on what the FBI is doing to protect children from predators. Personnel and youth serving organizations such as employees, coaches or volunteers, often work with unsupervised -- or with youth unsupervised. That magnifies the need for a thorough evaluating and vetting at the time they join such organizations.

Along with Senators Franken and Klobuchar, I introduced the Child Protection Improvement Act, which gives youth serving organizations greater access to the nationwide FBI fingerprint background check system. Now, do you believe that providing organizations like the YMCA and the Girl Scouts of America greater access to FBI fingerprint background checks is an important step in keeping job predators and violent criminals away from our children?

COMEY:

I do, Senator. I don't know enough about the legislation to react, but I think the more information you can put in the hands of the people who are vetting, people who are going to near children, the better. We have an exciting new feature of the FBI's fingerprint system called Rap Back, that once you check someone's identification; check them to see if they have no record. If they later develop one, you can be alerted to it if it happens thereafter, which I think makes a big difference.

HATCH:

Well, thank you. You have spoken at length about the so-called Going Dark program, whereby strong encryption technology hinders the ability of law enforcement to excess communication in other personal -- personal data on smart phones and similar devices. Your prepared testimony for today's hearing addresses this issue, as well.

Now, I've expressed significant concern about proposals that would require device or software manufacturers to build a back door into their programming to allow law enforcement to excess encrypted data in the course of «investigations». Now, I remain convinced that such backdoors can be created without seriously compromising the -- the security of encrypted devices.

Now, I believe this is an issue where law enforcement and stakeholders need to work together to find solutions rather than coming to Congress with one-size-fits-all legislative fixes. What are you doing to engage with stakeholders on this issue and what kind of progress are you making, if you can tell us?

COMEY:

Thank you, Senator. I think there's good news on that front. We've had very good, open and productive conversations with the private sector over the last 18 months about this issue, because everybody realized we care about the same things. We all love privacy. We all care about public safety. And none of -- at least people that I hang around with, none of us want backdoors. We don't want access to devices built-in in some way.

What we want to work with manufacturers on is to figure out how can we accommodate both interests in a sensible way? How can we optimize the privacy, security features of their devices and allow court orders to be complied with? We're having some good conversations. I don't know where they're going to end up, frankly. I could imagine a world that ends up with legislation saying, if you're going to make devices in the United States, you figure out how to comply with court orders, or maybe we don't go there. But we are having productive conversations, right now I think.

HATCH:

Right, Section 702 of the FISA Amendments Act is up for reauthorization this year. We now have almost a decade of experience, using the statute. So we have much more to go on than simply speculation or theory.

Now, the intelligence value of Section 702 is well-documented and it has never been intentionally misused or abused. Every «federal» court, including the FISA Court that has addressed the issue has concluded that Section 702 is lawful. Administrations of both parties have strongly supported it. Describe for us the targeting and minimization procedures that Section 702 requires and how each agency's procedures are subject «oversight» within the executive branch.

COMEY:

Thank you, Senator. As I said in my opening, 702 is a critical tool to protect this country and the way it works is we are allowed to conduct surveillance -- again, under the supervision of the Foreign Intelligence Surveillance Court on non-US. persons who are outside the United States if they're using American infrastructure; an e-mail system in the United States, a phone system in the United States.

So it doesn't involve U.S. persons and doesn't involve activity in the United States. And then each agency, as you said, has detailed procedures for how we will handle this information that are approved by the FISA Court and so become court orders that -- that govern us. But not only are we overseen by the FISA Court, we're overseen by our inspectors general and by Congress checking on her work.

And you're exactly correct, there have been no abuses. Every court that has looked at this has said, this is appropriate under the Fourth Amendment, this is appropriate under the statute. It was an act passed by a Democratically controlled Congress for a Republican president, then renewed by a Republican controlled Congress for a Democratic president, and upheld by every court that's looked at it.

And -- and I'm telling you what the rest of the intelligence community has said, we need this to protect the country. This should be an easy conversation to have, but often people get confused about the details and mix it up with other things. So it's our job to make sure we explain it clearly.

HATCH:

Well, thank you, my time is up.

Senator Leahy, I turn to you.

LEAHY:

Thank you.

Welcome back, Director Comey, you had mentioned you liked these annual meetings. Of course, we didn't have an annual meeting last year. It's been, I think -- last year is the first time in 15 years that the FBI did not testify before this committee. But there's been a lot that's happened last year and half as noted.

Senator Feinstein noted that Americans across the country have been confused and disappointed by your judgment in handling the «investigation» into Secretary Clinton's e-mails. On a number of occasions you told us to comment directly and extensively on that «investigation». You even released internal FBI memos and interview notes.

I may have missed this, but my 42 years here I've never seen anything like that. But you said absolutely nothing regarding the «investigation» into the Trump campaign's connections to Russia's illegal efforts to help elect Donald Trump. Was it appropriate for you to comment on one «investigation» repeatedly and not say anything about the other?

COMEY:

I think so. Can I explain, senator? Pardon me...

LEAHY:

Briefly, I only have so much time.

COMEY:

OK, I'll be quick. The department -- I think I treated both «investigations» consistently under the same principles. People forget we would not confirm the existence of the Hillary Clinton e-mail «investigation» until three months after it began, even though it began with a public referral and the candidate herself talked about it.

In October of 2015, we confirmed it existed and then said not another word -- not a peep about it until...

LEAHY:

Until the most critical time...

COMEY:

... we were finished.

LEAHY:

... possible, a couple weeks before the election. And I think there are other things involved in that election, I'll grant that. But there is no question that that had a great effect.

Historians can debate what kind of an effect it was. But you -- you did do it. The -- in October, the FBI was investigating the Trump campaign's connection to Russia. You sent a letter informing the Senate and House (inaudible) reviewing additional e-mails. It could be relevant to this but both «investigations» are open but you've have still only commented on one.

COMEY:

I commented as I explained earlier, on October 28 in a letter that I sent to the chair and Rankings of the «oversight» committees that we were taking additional steps in the Clinton e-mail «investigation» because I had testified under oath repeatedly that we were done that we were finished there.

With respect to the Russian «investigation», we treated it like we did with the Clinton «investigation». We didn't say a word about it until months into it and then the only thing we've confirmed so far about this is the same thing with the Clinton «investigation». That we are investigating. And I would expect, we're not going to say another peep about it until we're done. And I don't know what will be said when we're done, but that's the way we handled the Clinton «investigation» as well.

LEAHY:

Let me ask you this. During your «investigation» into Hillary Clinton's e-mails, a number of surrogates like Rudy Giuliani claim to have a pipeline to the FBI. He boasted that, and I quote, numerous agents talk to him all the time. (Inaudible) regarding the «investigation». He even said that he had -- insinuated he had advanced warning about the e-mails described in your October letter. Former FBI agent Jim Kallstrom made similar claims.

Now either they're lying or there's a serious problem within the «Bureau». Anybody in the FBI during the this 2016 campaign have contact with Rudy Giuliani about -- about the Clinton «investigation»?

COMEY:

I don't know yet. But if I find out that people were leaking information about our «investigations», whether it's to reporters or to private parties, there will be severe consequences.

LEAHY:

Did you know of anything from Jim Kallstrom?

COMEY:

Same answer. I don't know yet.

LEAHY:

Do you know any about -- from other former agents?

COMEY:

I don't know yet. But it's a matter that I'm very very interested in.

LEAHY:

But you are looking into it?

COMEY:

Correct.

LEAHY:

And once you've found that answer, will you provide it to us?

COMEY:

I'll provide it to the committee in some form. I don't whether I would say publicly, but I'd find some way to let you know.

LEAHY:

OK. Now there are reports a number of the senior officials in the Trump campaign administration are connected to the Russian «investigation». In fact the Attorney General was forced to recuse himself.

Now many members of this committee have urged the deputy attorney general and he has that authority to appoint a special counsel to protect the independence of the «investigation». I recall I was here in December 2003, shortly after your confirmed as deputy attorney general then Attorney General Ashcroft recused himself from the «investigation» into the Valerie Plame leak. You immediately appointed special counsel. I believe you appointed Patrick Fitzgerald. What lead you to that decision?

COMEY:

In that particular «investigation», my judgment was that it -- that the appearance of fairness and independence required that it be removed from the political chain of command within the Department of Justice, because as you recall, it seems like a lifetime ago. But that also involved the conduct of people who were senior level people in the White House and my judgment was that even I as an independent minded person, was a political appointee and so I ought to give it to a career person like Pat Fitzgerald.

LEAHY:

What about the situation now? We have a deputy attorney general, and I voted for his confirmation, but should he be not the one to be investigating campaign contacts, when his boss the attorney general was a central figure in that campaign?

COMEY:

That's a judgment he'll have to make. He is -- as I hoped I was, as deputy attorney general a very independent minded, career-oriented person, but it'd be premature for me to comment on that.

LEAHY:

The past week President Trump again said the hacking on the DNC and other efforts who influenced the election could've been China, could've been a lot of different groups. Is that contrary to what the intelligence community has said?

COMEY:

The intelligence community with high confidence concluded it was Russia. In many circumstances, it's hard to do attribution of a hack, but sometimes the intelligence is there. We have high confidence that the North Koreans hacked Sony, we have high confidence that the Russians did the hacking of the DNC and the other organizations.

LEAHY:

I have a lot of other questions which I'll submit, but I -- before it sounds totally negative, I want to praise the response of the FBI in South Burlington, Vermont. We had anonymous e-mails coming in, threatening serious action against students at a high school, escalating cyber threats, including detailed death threats, multiple lockdowns and all.

The FBI worked closely to the Champlain College's Leahy Center for Digital «Investigation», which you visited a couple years ago. It was a textbook example of collaboration between state, local and «federal» authorities. And I want to thank all those, it turned out to be a very disturbed young man who was doing it. But you know when you turn on the TV and see what happens in different parts of the country how worried we were in Vermont. I just want to thank your FBI agents for their help.

COMEY:

Yes. Thank you for that, Senator.

GRASSLEY:

Senator Graham would be next, so we'll go to Senator Cornyn.

CORNYN:

Thank you.

Morning, Director Comey. I'm disappointed to see that former secretary of State Hillary Clinton was in the news yesterday, essentially blaming you and blaming everything other than herself for her loss on November the 8th. I find it ironic because you're not the one who made the decision to handle classified information on a private e-mail server.

You're not the one who decided to have a private meeting with Secretary Clinton's husband in the middle of the Justice Department's ongoing «investigation» into Secretary Clinton's server. I use the word «investigation» here because according to a recent piece in the New York Times, you were forbidden from using the word «investigation» and were instead told to refer to the «investigation», which it was, as a matter.

Of course, it was the former Attorney General Loretta Lynch, who up until that meeting with President Clinton was the person responsible for making the decision whether to convene a grand jury, involving the allegations against Secretary Clinton. And it was former Attorney General Loretta Lynch who apparently forbade you from using the word «investigation». Indeed, if the New York Times story is true, a Democratic operative expressed confidence that the former Attorney General would keep that «investigation» from going very far.

I think you were given an impossible choice to make and you did the best you could, in light of the situation that you were presented with. And it -- it strikes me as somewhat sad for people here and elsewhere to condemn you for notifying Congress, shortly before the election that you'd uncovered even more e-mails related «investigation», including classified e-mails. Again, because Secretary Clinton had made the decision to use a private e-mail server.

And I think it's important to remind folks that you were not the one who decided to do business this way, keep State Department e-mails on a computer of someone suspected of child pornography. Again, I believe you were placed in an incredibly difficult position and you could. You may recall I was one of those who felt like given the nature of the «investigation» and the concerns that a special counsel should have been appointed to conduct «investigation» -- but of course Attorney General Lynch and the Obama administration opposed that effort.

So I just wanted to express to you my my disappointment that this continued seeking of a reason -- any reason other than the flawed campaign and the candidate herself -- for Secretary Clinton losing the presidential election.

If I can turn to a couple of other substantive items here. You mentioned 702 of FISA and the reauthorization. And I believe you've referred to this as the crown jewels of the FBI and of counterterrorism «investigations», could you explain why this provides such a unique tool and why you regard it as literally the crown jewels of the -- of the FBI?

COMEY:

Thank you, Senator. The -- every time I talk about this publicly I wince a little bit because I don't want bad people around the world to focus on this too much. But really bad people around the world because of the genius of American innovation use our products and infrastructure for their e-mails, for their communications.

And what 702 allows us to do is quickly target terrorists, weapons of mass destruction, proliferators, spies, cyber hackers, non- Americans who are using our infrastructure to communicate; to target them quickly and collect information on them. And it is vital to all parts of the intelligence community because of its agility, its speed and its effectiveness.

And again, in an open setting we can't explain what you already know from classified briefings about what a difference this makes. But again, because America is the mother of all this innovation, they use a lot of our equipment, a lot of our networks to communicate with each other. If we were ever required to establish the normal warrant process for these non-Americans who aren't in our country just because the photons they're using to plan attacks cross our country's lands we'd be tying ourselves in knots for reasons that make no sense at all and the courts have said are unnecessary under the Fourth Amendment.

So this is a tool -- we talked a lot last year about the telephony metadata database, I think that's a useful tool. It does not compare in importance to 702. We can't lose 702.

CORNBYN:

Well, I agree and it -- it is a little bit difficult to talk about things that do involve classified matters in public. But I think the public needs to know that there are multiple «oversight» layers, including the FISA Court, congressional «oversight», internal «oversight» within the FBI and intelligence community, that protects Americans from -- under -- their -- their privacy rights while targeting terrorists and people who are trying to kill us.

I want to talk a minute about the electronic communication transactional records, something and I have discussed before as well. The FBI can use national security letters, I believe, to get financial information and telephone numbers now in the conduct of a terrorist «investigation». But because of a typo in the law, the FBI has not been allowed access to Internet metadata in national security cases, to the extent that -- that is necessary.

Can you talk to us about the importance of that particular fix -- the electronic communications transactional records fix or active ECTA (ph) fix?

COMBYN:

Yes, thank you so much, Senator. This seems like a boring deal. This makes a big impact on our work and here's why; in our counterterrorism cases and our counterintelligence cases, we can issue with all kinds of -- of layers of approval in the FBI, a national security letter to find out the subscriber to a particular telephone number and to find out what numbers that telephone number was in contact with. Not the content of those communications, but just the connection.

Again, because of what I believe is a typo in the law and if I'm wrong congress will tell me that they intended this, the companies that provide the same services but on the Internet resist and say we don't have the statutory authority to serve in an NSL necessary letter to find out the subscriber to particular e-mail handle or what addresses were in contact with what addresses.

Although we could do the same with telephone communications. I don't think Congress intended that distinction. But what it does to us is in our most important «investigations», it requires us if we want to find out the subscriber to a particular e-mail handle to go and get an order from a «federal» judge in Washington as part of the FISA court, an incredibly long and difficult process. And I'm worried about that slowing us down.

But I'm also worried about it becoming a disincentive for our investigators to do it at all because if you're working a case in San Antonio or in Seattle, you're moving very -- very quickly. And if I have to go to get subscriber information for heaven sakes on an e-mail address to a «federal» court in Washington.

I'm probably going to try and find some other way around it. If that's what Congress wants, sure we'll follow law. I don't think that was ever intended. And so I would hope the Congress will fix what I believe is a typo.

CORNYN:

Thank you Mr. Director. I have other questions for the record. Thank you.

GRASSLEY:

Are going over to vote now. And I'd also like to have both Democrat and Republicans notifying me if they want a second round, so I can get an inventory of that.

Senator Klobuchar.

KLOBUCHAR:

Thank you.

Welcome back Director Comey. As you are well aware Russia is actively working to undermine our democracy and hurt American businesses at the same time. Now more than ever Americans are looking to Congress for leadership and we must be a united front. And I've appreciated some of the members of this committee on the Republican side who have spoken out about this. We must be united as we seek information from the administration.

Last month during a hearing at the House Intelligence Committee, you confirmed that the FBI is investigating the Russian government's efforts to interfere in the 2016 presidential election, including any links between the Trump campaign and the Russian government. I know that you cannot discuss that ongoing «investigation», but just one question to clarify.

Will you commit to ensuring that the relevant congressional committees receive a full and timely briefing on that «investigations» findings?

COMEY:

In general, I can Senator. I need Department of Justice approval to brief on particular people that we're investigating. We've briefed the Chairs and the Rankings, including of this committee on who we have cases open on and exactly what we're doing and how we're using various sources of information. I don't know whether the department will approve that for the entire intelligence committees, but I'll lean as far forward as I can.

KLOBUCHAR:

And then because and -- Attorney General Sessions is recused from that and now Rod Rosenstein is approved, you go to him then to get that approval?

COMEY:

Yes, I've already briefed him. I think his first day in office I briefed him on where we are, and so he would be the person to make that decision.

KLOBUCHAR:

Thank you. In your testimony, you note that the Justice Department brought charges against Russian spies and criminal hackers in connection with the 2014 Yahoo cyber attack in February. An example of a cyber attack on our economy.

In December 2016, the FBI and the Department of Homeland Security released a 13 page report providing technical details about how «federal» investigators linked Russia to the hacks against U.S. political organizations.

Does Russia use the same military and civilian tools they've used to hack our political organizations in order to do things like hack into U.S. companies, steal identities and so the credit card information of Americans on the black market. And how is the FBI working to fight against hackers supported by foreign governments like Russia?

COMEY:

The answer is yes, both their government organizations, and then they have a relationship that's often difficult to define with criminals and that the Yahoo hack's actually an example of that. You had some of the Russia's greatest criminal hackers and intelligence agency hackers working together.

So the answer is yes. And what we're doing is trying to see if we can impose costs on that behavior in a lot of different ways, but including one I mentioned in my opening which is locking up people. If we can get them outside of Russia, Russia's not too great about cooperating with us when there are criminals inside their borders, but all of them like to travel. And so if they travel grabbing them and -- and locking and putting handcuffs on them to send a message that that's not a freebie.

KLOBUCHAR:

In your testimony, you also discussed a threat that transnational organized crime poses to our safety and our security. Russia has vast criminal networks that the Kremlin uses to sew instability across the world. I heard these concerns firsthand when Senator Graham and McCain and I were in the Baltics, Ukraine and Georgia.

There have been recent concerns that organized criminals, including Russians, are using the luxury real estate market to launder money. The Treasury Department has noted a significant rise in the use of shell companies in real estate transactions, because foreign buyers use them as a way to hide their identity and find a safe haven for their money in the U.S. In fact, nearly half of all homes in the U.S. worth at least \$5 million are purchased using shell companies.

Does the anonymity associated with the use of shell companies to buy real estate hurt the FBI's ability to trace the flow of illicit money and fight organized crime? And do you support efforts by the Treasury Department to use its existing authority to require more transparency in these transactions?

COMEY:

Yes and yes.

KLOBUCHAR:

OK very good, because I think this is a huge problem. When you hear that over \$5 million of homes, half of them purchased by shell companies, that is a major problem.

In March, this committee Subcommittee on Crime and Terrorism held its first hearing. I thank Senator Graham and Senator Whitehouse for that. I raised the issue of protecting our election infrastructure with former Bush Department of Justice Official Ken Wainstein. And he agreed that this is a very important issue.

As a ranking -- as the ranking member of the Rules Committee, I'm particularly concerned about ensuring our elections are safe from foreign interference. I recently led a group of 26 senators in calling for full account of the Election Assistance Commission's efforts to address Russian cyber security threats in the 2016 election. I'm also working on legislation in this area.

Can you discuss how the FBI has coordinated with the Election Assistance Commission, Department of Homeland Security, and state and local election officials to help protect the integrity of our election process?

COMEY:

Thank you, Senator. In short, what we've done with DHS is share the tools, tactics and techniques we see hackers, especially from the 2016 election season, using to attack voter registration databases and -- and try and engage in other hacks. And we've pushed that out to all the states and to the Election Assistance Commission so they can harden their networks. That's one of the most important things we can do is equip them with the information to make their systems tighter.

KLOBUCHAR:

Very good because as you know, we have different equipment all over this country. There is some advantage to that I think. I think it's good when we have paper ballot backups, of course but we have to be prepared for this and this certainly isn't about one political party or one candidate.

Last -- the last time you came before the committee in December, 2015, just one week after the San Bernardino attacks since then, as was noted by the chair. We've seen other attacks in our country. We had a -- a -- a tragedy in a shopping mall in Saint Cloud, Minnesota; 10 wounded at a shopping mall. Thankfully a brave off-duty cop was there. He was able to stop further damage from being done. And I would also like to thank you and the FBI for your «investigation», having talked to the chief up there, Senator Franken and I were briefed by him, as well as Congressman Emmer, right after this attack.

The local police department is a midsize department and they had to do a lot with working with the community; they have a significant Somali community there, that's a big part of their community that they're proud to have there. So they're working with them, they're working with the community, they're helping; but the FBI really stood in and did the «investigation».

And I guess I want to thank you for that and just -- and with one question, it's been reported that ISIS has encouraged lone wolf attacks like what we saw in Orlando, it's murkier the facts in Saint Cloud. What challenges do these type of attacks present for law enforcement and what is the FBI doing to prevent these kinds of tragedies?

COMEY:

The -- thank you, senator. The central challenge is not just finding needles in a nationwide haystack but trying to figure out which pieces of hay might become a needle.

And that is which of the troubled young people -- or sometimes it's older people -- are consuming poisonous propaganda -- some ISIS, some Anwar al-Awlaki, some other sources -- and are moving towards thinking an act of violence like a stabbing at a shopping mall is some way to achieve meaning in their lives. And a huge part of it is building relationships with the communities you mentioned because those folks do not want anyone committing violence -- committing violence in the name of their faith.

And so they have the same incentives we do and making sure they see us that way and we see them that way is at the heart of our response because we're not going to see some troubled kid going sideways and thinking he should stab people anywhere near as easily as the people around that kid are going to see it. And so getting in a position where they feel comfortable telling us or telling local law enforcement is at the heart of our ability to find those needles, evaluate those pieces of hay and stop this.

KLOBUCHAR:

Appreciate it, thank you.

GRASSLEY:

Senator Graham.

GRAHAM:

Thank you, Director Comey, could you pass on to your agents and all support personnel how much we appreciate their efforts to defend the country. We're going to set a record for questions asked and answered in six minutes and 54 seconds if I can.

Do you agree with me if sequestration goes back into affect next year it would be devastating to the FBI?

COMEY:

Yes.

GRAHAM:

And it's due to do so unless Congress changes it.

COMEY:

That's -- I've been told that.

GRAHAM:

OK, do you agree with me that ISIL loses the caliphate these people will go out throughout the world and become terrorist agents and the threat of terrorism to the homeland is going to get greater over time, not smaller.

COMEY:

Yes, it will diminish in that -- that their power to put out there media to the troubled people in the country will decrease but the -- the hardened killers flowing out of the caliphate will be a big problem.

GRAHAM:

So from a funding point of view, terrorism is not going to get better, it's probably going to get worse.

COMEY:

I think that's fair to say.

GRAHAM:

Did you ever talk to Sally Yates about her concerns about General Flynn being compromised?

COMEY:

I did, I don't whether I can talk about it in this forum. But the answer is yes.

GRAHAM:

That she had concerns about General Flynn and she expressed those concerns to you?

COMEY:

Correct.

GRAHAM:

We'll talk about that later. Do you stand by your house testimony of March 20 that there was no surveillance of the Trump campaign that you're aware of?

COMEY:

Correct.

GRAHAM:

You would know about it if they were, is that correct?

COMEY:

I think so, yes.

GRAHAM:

OK, Carter Page; was there a FISA warrant issued regarding Carter Page's activity with the Russians.

COMEY:

I can't answer that here.

GRAHAM:

Did you consider Carter page a agent of the campaign?

COMEY:

Same answer, I can't answer that here.

GRAHAM:

OK. Do you stand by your testimony that there is an active «investigation» counterintelligence «investigation» regarding Trump campaign individuals in the Russian government as to whether not to collaborate? You said that in March...

COMEY:

To see if there was any coordination between the Russian effort and peoples...

GRAHAM:

Is that still going on?

COMEY:

Yes.

GRAHAM:

OK. So nothing's changed. You stand by those two statements?

COMEY:

Correct.

GRAHAM:

But you won't tell me about Carter Page?

COMEY:

Not here I won't.

GRAHAM:

OK. The Chairman mentioned that fusion -- are you familiar with fusion?

COMEY:

I know the name.

GRAHAM:

OK. Are they part of the Russian intelligence apparatus?

COMEY:

I can't say.

GRAHAM:

Do you agree with me that a fusion was involved in preparing the dossier against Donald Trump? That would be interfering in our election by the Russians?

COMEY:

I don't want to say.

GRAHAM:

OK. Do you agree with me that Anthony Weiner of 2016 should not have access to classified information?

COMEY:

Yes. That's a fair statement.

GRAHAM:

Would you agree with me that if that's not illegal, we've got really bad laws.

COMEY:

Well, if he hadn't...

GRAHAM:

Well he got it somehow.

COMEY:

It would be illegal if he didn't have appropriate clearance...

GRAHAM:

Well, do agree with me he didn't have appropriate clearance?

COMEY:

He...

GRAHAM:

If he did have appropriate clearance that'd be even worse.

COMEY:

I don't believe at the we found that on his laptop that he had any kind of...

GRAHAM:

I agree. So for him to get it should be a crime. Somebody should be prosecuted for letting Anthony Weiner have access to classified information. Does that make general sense?

COMEY:

It could be a crime. It would depend up what the...

GRAHAM:

Well, do you agree with me it should be. That anybody that allows Anthony Weiner to have classified information probably should be prosecuted? If our laws don't cover that, they probably should...

COMEY:

There's not Anthony Weiner statute, but it is -- there's already...

GRAHAM:

Well, maybe we need -- good one.

COMEY:

There's already a statute.

GRAHAM:

All right good.

COMEY:

There's already a statute to cover it.

GRAHAM:

I just wonder how he didn't get classified information and it not be a crime by somebody. Unmasking, are you familiar with that?

COMEY:

I'm familiar with that term.

GRAHAM:

OK. Has the «Bureau» ever request unmasking of an American citizen caught up in incidental collection?

COMEY:

Yes. In fact I did it this week in connection with an intelligence report.

GRAHAM:

All right. Before I authorize -- reauthorize 702 and I'm a pretty hawkish guy. I want to know how unmasking works. Are you aware of any request by the White house? Anybody in the Obama administration to unmask American citizens that were caught up in incidental serveilances in 2015 or 2016?

COMEY:

I'm not. I'm not aware of any request to the FBI.

GRAHAM:

Would you know -- who would they make the request to?

COMEY:

Well they could make it to anyone in the FBI who was...

GRAHAM:

What about the NSA, wouldn't you make it to the NSA?

COMEY:

Sure if was an NSA report.

GRAHAM:

OK.

COMEY:

I mean I've read in the media, and heard about NSA reports...

GRAHAM:

When you ask for unmasking, who do you ask, do you go to the NSA to ask that somebody be unmasked?

COMEY:

When I want -- for example -- I'll give you an example -- I got a report this week that said, U.S. company number one. It has been removed and I said I believe I need to know the name of that company, so I asked my intelligence briefer who works for the (PDB) staff, say I'd like to know that, and then she goes and asks the owner of the information...

GRAHAM:

Which would be the NSA?

COMEY:

Well, in this case, I think it was CIA information saying the Director...

GRAHAM:

OK. Does the owner of the information record requests for unmasking?

COMEY:

I believe the NSA does. I don't know about CSA (ph), NSA definitely does.

GRAHAM:

But there should be a record, somewhere in our government, for a request to unmask, regardless of who made the request?

COMEY:

I think that's right.

GRAHAM:

Is it fair to say that very few people can make requests for unmasking? I mean it's -- I can't go and make that request as a Senator, can I?

COMEY:

Sure it's a fairly group -- the consumers, which I am, of that small set.

GRAHAM:

Is the National Security Council within that group that can make this request, or do you know?

COMEY:

I don't know for sure, I think the National Security Advisor certainly can.

GRAHAM:

OK. When it comes to Russia, is it fair to say that the government of Russia actively provides safe haven to cyber criminals?

COMEY:

Yes.

GRAHAM:

Is it fair to say that the Russian government still involved in American politics?

COMEY:

Yes.

GRAHAM:

Is it fair to say we need to stop them from doing this?

COMEY:

Yes, fair to say.

GRAHAM:

Do you agree with me the only way they're going to stop this for them to pay a price for interfering in our political process?

COMEY:

I think that's a fair statement.

GRAHAM:

Yes, OK. So what we're doing today that is not working. They're still doing it. They're doing it all the world, aren't they?

COMEY:

Yes.

GRAHAM:

So what kind of threat do you believe Russia presents to our Democratic process, given what you know about Russia's behavior of late?

COMEY:

Well, certainly in my view, the greatest threat of any nation on earth, given their intention and their capability.

GRAHAM:

Do you agree that they did not change the actual vote tally, but one day they might?

COMEY:

I agree that -- I very much we found no indication of any change in vote tallies. There was efforts aimed at voter registration systems, but I suppose in theory, part of the United States, the -- the beauty of our system is it's a bit of a hairball. And all different kinds of systems and -- and you know...

GRAHAM:

Have they done this in other countries where they actually tampered with the vote?

COMEY:

My -- my understanding is they have attempted it in other countries.

GRAHAM:

And there's no reason they won't attempted here if we don't stop them over time?

COMEY:

I think that's fair.

GRAHAM:

Thank you.

GRASSLEY:

Senator Whitehouse?

WHITEHOUSE:

Thank you, Chairman.

Welcome back, Director Comey. What is the policy of the Department and the «Bureau» regarding the release of derogatory investigative information about an uncharged subject?

COMEY:

The general practices we don't talk about, completed «investigations» that didn't result in charges, as a general matter.

WHITEHOUSE:

And what is the policy regarding a release of derogatory information about charged subjects beyond the derogatory investigative information disclosed either in the charging document or in further court proceedings?

COMEY:

Well, I think you summarized it. The gist of the policy is you don't want to do anything outside the charging documents of the public record that might prejudice the trial proceeding.

WHITEHOUSE:

And one of the reasons you do that is if you had a police chief say, we have investigated the contract between the mayor and the contractor and we've decided there were no misdeeds. But we found out that the mayor was sleeping with her driver, just wanted to let you know that.

That would be kind of a blow to the integrity the prosecutor function and would probably tend to diminish the support for the prosecutor function if were played by those rules, correct?

COMEY:

I think that's fair, that's why the policy exists.

WHITEHOUSE:

Yes. With respect to «oversight» questions, let's hypothesize that an «investigation» exists and the public knows about it, which could happen for a great number of legitimate reasons. What questions are appropriate for senators to ask about that «investigation» in their «oversight» capacity?

COMEY:

They can ask anything they want...

WHITEHOUSE:

But what -- what questions are appropriate for you to answer?

COMEY:

Very few while a matter is pending and...

WHITEHOUSE:

While we know it's pending, is it appropriate for you to tell us whether it's adequately resourced and to ask questions about for instance, are there actually agents assigned to this or has this been put in somebody's bottom drawer?

COMEY:

Sure, potentially, right...

WHITEHOUSE:

And...

COMEY:

... how's it being supervised, who's working on it, that sort of thing.

WHITEHOUSE:

And are there benchmarks in certain types of cases where departmental approvals are required or the involvement of certain department officials is required to see whether those steps have actually been taken?

COMEY:

I'm not sure I'm following the question, I'm sorry.

WHITEHOUSE:

Let's say you've got a hypothetically, a RICO «investigation» and it has to go through procedures within the department necessary to allow a RICO «investigation» proceed if none of those have ever been invoked or implicated that would send a signal that maybe not much effort has been dedicated to it.

Would that be a legitimate question to ask? Have these -- again, you'd have to know that it was a RICO «investigation». But assuming that we knew that that was the case with those staging elements as an «investigation» moves forward and the internal department approvals be appropriate for us to ask about and you to answer about?

COMEY:

Yes, that's a harder question. I'm not sure it would be appropriate to answer it because it would give away what we were looking at potentially.

WHITEHOUSE:

Would it be appropriate to ask if -- whether any -- any witnesses have been interviewed or whether any documents have been obtained pursuant to the «investigation»?

COMEY:

That's -- that's also a harder one. I'd be reluctant to answer questions like that because it's a slippery slope to giving away information about exactly what you're doing.

WHITEHOUSE:

But if we're concerned that «investigation» gets put on the shelf and not taken seriously, the fact that no witnesses have been called and no documents have been sought would be pretty relevant and wouldn't reveal anything other than a lack of attention by the «bureau», correct?

COMEY:

It could, but we're very careful about revealing how we might use a grand jury, for example. And so, if we start answering...

WHITEHOUSE:

Well, you've got 6E (ph), I understand that.

COMEY:

Yes.

WHITEHOUSE:

This is a separate thing.

COMEY:

Yes, so that's a harder call.

WHITEHOUSE:

Well, we'll pursue it. What is the department's or the «bureau»'s policy regarding witnesses who are cooperating in «investigation» who have some form of ongoing compliance problem?

Let's say they haven't paid their taxes for the last year. Is it the policy of the department or the «bureau» that they should get those cooperating witnesses to clean up their act so that their noncompliance does not become an issue later on in the case?

COMEY:

Yes, I don't know whether it's a written -- I know I should know this. I can't remember sitting here whether there's a written policy. It's certainly a long standing...

WHITEHOUSE:

Certainly practice isn't it?

COMEY:

... practice.

WHITEHOUSE:

Long standing practice, exactly. When are tax returns useful in investigating a criminal offense?

COMEY:

Well, they're useful in showing unreported income, motive -- If someone hides something that's -- should otherwise be a tax return indicates they might know it was criminal activity.

WHITEHOUSE:

It's not uncommon to seek and use tax returns in a criminal «investigation»?

COMEY:

Not uncommon, it's -- it's a very difficult process, as it should be. But especially in complex financial cases, it's a relatively common tool.

WHITEHOUSE:

The hearing that Senator Graham and I held with respect to Russia's infiltration and influence in the last election raised the issue of Russia intervening with business leaders in a country, engaging them in bribery or other highly favorable business deals with a view to either recruiting them as somebody who has been bribed or being able to threaten them by disclosing the illicit relationship. They're perfectly happy to blow up their own cut out, but it also blows up the individual.

Have you seen any indication that those are Russian strategies in their election influence toolbox?

COMEY:

In general?

WHITEHOUSE:

In general.

COMEY:

My -- my understanding is those are tools that the Russians have used over many decades.

WHITEHOUSE:

And lastly, the European Union is moving towards requiring transparency of incorporations so that shell corporations are harder to create. That risks leaving the United States as the last big haven for shell corporations. Is it true that shell corporations are often used as a device for criminal money laundering?

COMEY:

Yes.

WHITEHOUSE:

Is it true that shell corporations are often used as a device for the concealment of criminally garnered funds?

COMEY:

Yes.

WHITEHOUSE:

And to avoid legitimate taxation?

COMEY:

Yes.

WHITEHOUSE:

What do you think the hazards are for the United States with respect to election interference of continuing to maintain a system in which shell corporations -- that you never know who's really behind them are common place?

COMEY:

I suppose one risk is it makes it easier for illicit money to make its way into a political environment.

WHITEHOUSE:

And that's not a good thing.

COMEY:

I don't think it is.

WHITEHOUSE:

Yeah, me neither. OK. Thank you very much.

GRASSLEY:

Senator Sasse.

SASSE:

Thank you Chairman.

Director thank you for being here. Given the FBI's extensive responsibilities and expertise in cyber and counterintelligence «investigations», how likely do you think it is that Senate IT systems have been targeted by foreign intelligence surfaces -- services?

COMEY:

I would estimate it's a certainty.

SASSE:

Inside the IC who -- who would talk about that problem and who at the Senate would they inform?

COMEY:

Well, there have been -- I don't want to talk about particular matters, but it often is the FBI alerting a U.S. government institution or private sector. DHS might come across it, or -- or other parts of the intelligence community, especially NSA.

SASSE:

When we talk about things like cyber «investigations» right now, so often on cable TV it becomes a shirts and skins exercise. So without asking you to comment about anything that's retrospective about 2016, do you think it's likely that in 2018 and beyond you're going to see more targeting of U.S. public discourse and elections?

COMEY:

I do. I think one of the lessons that particularly the Russians may have drawn from this is that this works. And so as I said last -- a month or so ago I expect to see them back in 2018, especially 2020.

SASSE:

You regularly testify -- and correct me if I've -- if I've misheard you but I think you've regularly testified that you don't think the «Bureau» is short of resources. You don't come before us and make big increased appropriations requests. And yet those of us who are very concerned about cyber look at the U.S. government writ large and think were not at all prepared for the future.

Can you tell us what the FBI is doing to prepare for that 2018 and 2020 circumstance that you envision?

COMEY:

Without giving to much detail, we have a -- enormous part of the FBI in our counter intelligence division and in our cyber division that focuses on just that threat and making sure that we do everything that we can to understand how the bad guys might come at us. And as I talked about earlier to equip the civilian agencies that are responsible for hardening our infrastructure with all the information we have about how they're going to come at us.

SASSE:

And if you had international security domain increased resources, how would you spend another marginal dollar beyond what you expect to receive now?

COMEY:

I probably have a tie between investing more in upgrading our systems to make sure we're keeping pace with the bar of excellence. And probably to hire additional cyber agents and analysts.

SASSE:

And if you had your druthers, what kind of increased funding request would you make?

COMEY:

I wouldn't make any sitting here.

SASSE:

I'd like to talk a little bit about WikiLeaks. In January the FBI contributed to an IC assessment that concluded that WikiLeaks is a known outlet of foreign propaganda. Do you stand by that assessment?

COMEY:

Yes.

SASSE:

Do you believe that WikiLeaks has released sensitive and classified information?

COMEY:

Yes.

SASSE:

Do you believe any of WikiLeaks disclosures have endangered American lives and or put at risk American interests?

COMEY:

I believe both have been the result of some of their releases.

SASSE:

Can you help me understand why Julian Assange has not been charged with a crime?

COMEY:

Well I don't want to comment on the particular case, because I don't want to confirm whether or not there are charges pending. He hasn't been apprehended because he's inside the Ecuadorian embassy in London.

SASSE:

I sent a letter to the Attorney General a number of weeks ago, asking questions about the status of the «investigation» and it seems pretty clear though individuals were polite and kind and responsive to our request. It seemed that across the I.C., there wasn't much deliberation about WikiLeaks and about Julian Assange and this question, is the FBI participating in any interagency dialogue about whether or not Assange has committed crimes?

COMEY:

I don't know where you got that impression, but WikiLeaks is a important focus of our attention.

SASSE:

I intentionally left the almost half of my time for you to sort of wax broadly for a minute. There is room for reasonable people to disagree about at what point an allegedly journalistic organization crosses a line to become some sort of a tool of foreign intelligence. There are Americans, well-meaning, thoughtful people who think that WikiLeaks might just be a journalistic outfit. Can you explain why that is not your view?

COMEY:

Yes and again, I want to be careful that I don't prejudice any future proceeding. It's an important question, because all of us care deeply about the First Amendment and the ability of a free press, to get information about our work and -- and publish it.

To my mind, it crosses a line when it moves from being about trying to educate a public and instead just becomes about intelligence porn, frankly. Just pushing out information about sources and methods without regard to interest, without regard to the First Amendment values that normally underlie press reporting. And simply becomes a conduit for the Russian intelligence services or some other adversary of the United States just to push out information to damage the United States. And I realize, reasonable people as you said, struggle to draw a line.

But surely, there's conduct that so far, to the side of that line that we can all agree there's nothing that even smells journalist about some of this conduct.

SASSE:

So if you could map that continuum, there are clearly members of the I.C. that of at different points in the past, leaked classified information. That is an illegal act, correct?

COMEY:

Correct.

SASSE:

When American journalists court and solicit that information, have they violated any law by asking people in the I.C. to potentially leak -- to leak information that is potentially classified?

COMEY:

That conduct is not treated by the U.S. government as criminal conduct. I've been asked in other contexts, isn't it true that the espionage statute has no carve out for journalists? That's true, but at least in my lifetime, the Department of Justice's view has been newsgathering and legitimate news reporting is not covered, is not going to be investigated or prosecuted as a criminal act. That's how it's thought of.

SASSE:

So an investigative reporter, taking advantage of and celebrating the liberties that we have under the First Amendment at the Washington Post or the Omaha World-Herald or at the Lincoln Journal Star, at the New York Times, trying to talk to people in the I.C. and get the maximum amount of information that they possibly can out of them to inform the public.

It is not the burden of an American journalist to discern whether or not the member of the I.C. is leaking information that might be classified, the journalist can legitimately seek information? And it's not their job to police it. The member of U.S. I.C. that leaks classified information has broken a law?

COMEY:

Right. The -- the clear legal obligation rests on those people who are in the government in possession of -- of intelligence, you know, classified information. It's not the journalist's burden.

SASSE:

OK.

COMEY:

Our focus is and should be on the leakers, not those that are obtaining it as part of legitimate newsgathering.

SASSE:

So I want to hear this part one more time and I know that the chairman has indulged me, I'm -- I'm at and past time. But the American journalist who's seeking this information differs from Assange and WikiLeaks how?

COMEY:

In that, there's at least a portion and people can argue that maybe this conduct WikiLeaks has engaged in, in the past that's closer to regular newsgathering. But in my view, a huge portion of WikiLeaks's activities has nothing to do with legitimate newsgathering, informing the public, commenting on important public controversies, but is simply about releasing classified information to damage the United States of America. And -- and -- and people sometimes get cynical about journalists.

American journalists do not do that. They will almost always call us before they publish classified information and say, is there anything about this that's going to put lives in danger, that's going to jeopardize government people, military people or -- or innocent civilians anywhere in the world.

And then work with us to try and accomplish their important First Amendment goals while safeguarding those interests. This activity I'm talking about, WikiLeaks, involves no such considerations whatsoever. It's what I said to intelligence porn, just push it out in order to damage.

SASSE:

Thank you.

FEINSTEIN:

Thank you, Senator.

Senator Franken.

FRANKEN:

Thank you, Senator Feinstein.

Good to see you, Mr. Director. I'm going to kind of pick -- pick up where I think Sheldon Whitehouse, Senator Whitehouse, was going. Are you familiar with the report called the Kremlin playbook?

COMEY:

No.

FRANKEN:

OK, this is a expert report that exhaustively documents Russia's past efforts to undermine European democracies. According to the report Russia is known to cultivate close ties with business and political leaders in target countries. This is stuff you acknowledged to Senator Whitehouse that you knew happened. The report explains that, quote, Russia has cultivated an opaque network of patronage across the region that it uses to influence and direct decision- making.

In other words, Russia has a strategy of creating the conditions that give rise to corruption, then exploiting that corruption to its own benefit. And the intelligent -- intelligence communities unclassified assessment of the Russia -- Russian campaign to influence the American election -- our nation's intelligence agencies write, quote, "Putin has had many positive experiences working with Western political leaders whose business interests made them more disposed to deal with Russia." That seems to jive with your understanding of what Russia has done.

COMEY:

Correct.

FRANKEN:

Now in that same assessment, the FBI, CIA and the NSA all concluded that Russia did in fact interfere in the 2016 election in order to, quote, help President-elect Trump's election chances when possible by discrediting Secretary Clinton. And the agencies concluded that the Russians had a clear preference for President Trump.

What is your assessment of why the Russian government had a clear preference for President Trump?

COMEY:

The intelligence communities' assessment had a couple of parts with respect to that. One is he wasn't Hillary Clinton, who Putin hated and wanted to harm in any possible way, and so he was her opponent, so necessarily they supported him.

And then also this second notion that the intelligence community assessed that Putin believed he would be more able to make deals, reach agreements with someone with a business background than with someone who'd grown up in more of a government environment.

FRANKEN:

OK, well, I'm curious about just how closely Russia followed the Kremlin playbook when it meld (ph) in our democracy, specifically whether the Russians had a preference for President Trump because he had already been ensnared in their web of patronage -- web of patronage is a quote from the report. Is it possible that in the Russian's views -- view Trump's business interests would make him more amenable to cooperating with them, quote, more disposed to deal with Russia as the I.C. report says?

COMEY:

That was not the basis for the I.C.'s assessment.

FRANKEN:

OK, well, is it -- I just said is it possible?

COMEY:

I see.

FRANKEN:

You don't want to speculate.

COMEY:

Yes, because possible questions are hard for me to answer.

FRANKEN:

Yes. Well, in order for us to know for certain whether President Trump would be vulnerable to that type of exploitation, we would have to understand his financial situation. We'd have to know whether or not he has money tied up in Russia, or obligations to Russian entities, do you agree?

COMEY:

That you would need to understand that to evaluate that question? I don't know.

FRANKEN:

Well, it seems to me that there is reason to believe such connections exist. For example the President's son Donald Trump Junior told real estate developers in 2008 that quote, Russians make up a pretty disproportionate cross section of a lot of our assets. He said quote, "we see a lot of money pouring in Russia." This is a report on the family business.

In 2013 President Trump held the Ms. Universe pageant in Moscow. And the pageant was financed by Russian billionaire who is close to Putin. And President Trump sold a Palm Beach mansion to a Russian oligarch for \$95 million in 2008. That's \$54 million more than he paid for it just four years prior. Those are three financial ties that we know of and they're big ones.

Director Comey, the Russians have a history of using financial investments to gain leverage over influential people and then later calling in favors. We know that. We know that the Russian's interfered in our election and they did it to benefit President Trump. The intelligence agencies confirmed that.

But what I want to know is why they favored President Trump. And it seems to me that in order to answer that question any «investigation» into whether the Trump campaign or Trump operation colluded with Russian operatives would require a full appreciation of the president's financial dealings.

Director Comey, would President Trump's tax returns be material to such an «investigation»?

COMEY:

That's not something Senator that I'm going to answer.

FRANKEN:

Does the invest -- does the «investigation» have access to President Trump's tax returns?

COMEY:

I'm going to have to give you the same answer. Again I hope people don't over interpret my answers, but I just don't want to start talking about anything -- what we're looking at and how.

FRANKEN:

Director Comey, we continue to learn about ties between Russia and former members of the President's campaign and current senior members of his administration.

Jeff Sessions; attorney general and former campaign advisor Carter Page, former campaign advisor Paul Manafort, I'm a former campaign manager Paul Manafort, and also his chief strategist, Rex Tillerson; secretary of State, Roger Stone; political mentor and former campaign advisor Michael Flynn; former national security advisor, Jared Kushner; White House senior advisor and son in law.

Now we don't even know if this list is exhaustive, but I think you might see where I'm going and these connections appear against a backdrop of proven Russian interference in the election and interference that the intelligence community has concluded was designed to favor President Trump. From a -- I know I'm hitting my time, but let me ask one question (inaudible)

FRANKEN:

Thank you Mr. Chairman. From an investigative standpoint, is the sheer number of connections unusual or significant? What about each individual's proximity to the president, it is unusual for individuals in these important roles to have so many unexpected and often undisclosed ties to a foreign power.

COMEY:

I'll have to give you the same answer, that's not something I can comment on.

FRANKEN:

OK. I thank you, Mr. Chairman.

GRASSLEY:

Senator Flake?

FLAKE:

Thank you, Mr. Chairman and thank you, Director Comey.

With regard to 702 reauthorization, last -- the -- in 2014, the Privacy and Civil Liberties «Oversight» Board recommended that agencies develop mechanisms to limit the potential scope of incidental

collection. Under your leadership, what has the «bureau» done to comply with these recommendations?

COMEY:

What we've done is make sure that we have tightened up our training and our -- and making sure that nobody with unauthorized access gets to see the content of a 702 collection. That's probably a good way of summarizing it, there's a lot more beneath that but that's the gist of it. Just to make sure, we're still -- we're collected under -- under 702, just to make sure that nobody gets access to it, doesn't have a need to know and hasn't been trained on how to handle FISA information.

FLAKE:

OK. Can you briefly describe the process for incidental collection or minimizing those who were involved?

COMEY:

Yes. Incidental collection is the name given to, if you're targeting a terrorist, let's say who's in Yemen and he happens to be using an American e-mail provider to communicate.

So under 702, the U.S. intelligence community can collect that terrorist communications. He's outside the United States and he's not an American. If an American contacts that terrorist, sends him an e-mail at his, let's imagine it's a Gmail account, his Gmail, that will be incidentally collected, that American who sent the e-mail to the terrorist is not the target.

But because he or she communicated with the terrorist, that is collected as part of that lawful collection. That's what incidental collection means. And if the FBI is doing that 702 collection, those communications from the terrorist and to the terrorist would sit in our database. If we open an «investigation» on that person who happened to be the communicant and we search our systems, we will hit on that 702 collection and the investigating agent will know holy cow, there's an American was in touch with that terrorist in Yemen.

If that agent has been trained and has access to the information, they'll be able to know it. That's how our systems are designed. FLAKE: Well, thank you. I should say the same review that was conducted in 2014 does point out the value of the program. I certainly think and I think most of us do here see the incredible value 702 and the need for reauthorization, there.

With regard to, just a different topic completely, polygraph testing. As you're aware, any applicant for a law enforcement position with the «Federal» Government is required to undergo a polygraph. It's worth noting that CPB experiences a significantly high -- higher failure rates of around 65 percent than -- than any other «federal» law enforcement agency. The FBI does pretty well with this.

Has the «Bureau» ever conducted any benchmarking with other «federal» agencies as to the process, where if you require a polygraph for -- for employment? It seems that -- I mean given FBI success with this instrument, that you could inform some of the other agencies who are having difficulties.

COMEY:

I don't know whether we have, Senator, but I'll find out.

FLAKE:

All right.

COMEY:

I think we have with other members of the intelligence community, but I don't know whether we've talked to CBP about our program.

FLAKE:

All right. It would be helpful with regard to CPB if you could look into that, we appreciate it. With regard to data breaches falling on what Senator Sasse was asking, given the amount of sensitive data held by the FBI, what are you doing to protect your own systems.

COMEY:

A whole lot I don't want to talk about too much...

FLAKE:

Understood.

COMEY:

... in an open forum, but it is a constant worry of all of us. Under -- since I've been director, we've stood up something called the Insider Threat Center, and I've put a senior executive -- FBI executive in charge of it because I want someone waking up every morning worrying about how might we lose data, who might be penetrating us, either our systems or as a human asset.

And so a ton of work has gone into protecting our systems, but the weakest link is always the people because you can have the greatest firewalls and the greatest intrusion detection system. But if your people are engaging in either negligent or intentional misconduct, all of that's defeated.

So we're spending a lot of time trying to make sure we have a rich picture of our people that is constant and doesn't depend upon five-year polygraph reinvestigations but that shows us flags of a troubled employee in real time. That's hard to do and build. Technically it is a matter of law and policy, but we're working very hard on it.

FLAKE:

In your opinion, is Congress doing enough to protect itself and our systems from outside -- outside threats?

COMEY:

I don't mean this is a wise guy answer, surely not because none of us can be doing enough, frankly. Again, it's not just about the -- the perimeter we build, it's about the security culture inside our organizations. And -- and look, I'm part of the FBI and I still don't think ours is good enough. I'm sure Congress's is not good enough.

FLAKE:

Do you know the Freedom of Information Act allows access -- citizens have the right to get information from the «federal» government. Can you talk about how the «bureau» promptly and fully responds to FOIA requests at the same time you level -- or maintain some level of security over sensitive and classified data?

COMEY:

We have an enormous FOIA operation as you might imagine. It's working, I think, 24 hours a day outside of Washington D.C. Great people who this is their life. They know the regulations, they know the security sensitivities, and work as hard as we can to comply with the FOIA deadlines. It is -- it's a huge pain but it's an essential part of being a public institution.

FLAKE:

All right, thank you, Mr. Chairman.

GRASSLEY:

Senator Coons.

COONS:

Thank you, Chairman Grassley, thank you, Director Comey, for your service and for your return in front of the Senate Judiciary Committee.

I want to start by asking about a letter -- and Mr. Chairman, I'll submit this for the record, if I might. Senator Whitehouse and I in early of August last year sent a letter to our colleague, Senator Cruz, who then served as the «Oversight» Subcommittee chairman, expressing our grave concern about the potential for foreign interference in our upcoming presidential election.

We asked for an «oversight» hearing to consider whether existing «federal» criminal statutes and court jurisdiction were sufficient to address conduct related to foreign entities posing a threat to our election. We didn't have that hearing, but I'd like to ask you that same question now. Are existing «federal» criminal statutes sufficient to prosecute conduct related to foreign entities that seek to undermine our elections?

COMEY:

I think so is my answer. But someone smarter than I may have spotted something where there's a gap. But my reaction is we have the statutory tools. It's a question of gathering the evidence and then applying it under those statutory tools.

COONS:

Well, in response to questions from Senator Sasse and Senator Graham earlier, you stated that you fully expect Russia to continue to be engaged in efforts to influence our elections and you expect them to be back in 2018 and 2020. What more should we be doing both to defend our election infrastructure and our future elections against continuing Russian interference?

And what more are you doing -- is the agency doing to help our allies in countries like France and Germany that have upcoming elections where there's every reason to believe the Russians are actively interfering there as well?

COMEY:

Thank you, Senator. I think two things we can do and that we are doing, both in the United States and with our allies is telling the people responsible for protecting the election infrastructure in the United States, everything we know about how the Russian's and others try to attack those systems, how they might come at it, what IP addresses they might use, what phishing techniques they might use and then we've shared the same thing with our allies that one.

Two, to equip the American people and our allies to understand that this going on because a big part of what the Russians did was pushing out false information, echoing it with these troll farms that they use and I think one of the most important things we can do is tell the American voter this is going on.

You should be skeptical, you should ask questions, you should understand the nature of the news that you're getting and we've delivered that same message to our European colleagues, and an interesting thing is happening, the marketplace of ideas is responding to this.

Because it's not a role for government, people are out there using the power of social media to push back against this kind of thing in France, in the Netherlands, in Germany and I hope it will happen here in the United States, where ordinary citizens will see this bogus stuff going on and push back -- kind of have good troll armies pushing back the other way. So the market place of information is better educated frankly.

COONS:

Well, it's an optimistic vision and I appreciate it. And I also appreciate the work the FBI continues to do to push back and to strengthen our defenses. But I think there's more to do. You certainly, as you've testified before made a great deal of news just before our own election. And I'm struck that you chose to make public statements about one «investigation» and not another.

The «investigation» we now know that was ongoing into the Trump campaign and the «investigation» ongoing into Secretary Clinton. I'm concerned about what the future practice will be. How has the approach taken with regard to the Clinton «investigation» been memorialized and have you modified in any way, FBI or department procedures regarding disclosure of information concerning «investigations» particularly close to an election?

COONS:

We have not. And the reason for that is, everything that we did -- that I did, was in my view consistent with existing Department of Justice policy. That is we don't confirm the existence of «investigations» except in unusual circumstances.

We don't talk about closed -- we don't talk about «investigations» that don't result in criminal charges unless there is a compelling public interest. And so those principles should still govern. We also whenever humanly possible avoid any action that might have an impact on an election. I still believe that to be true and an incredibly important guiding principle. It's one that I labored under here.

Frankly as I said earlier, I didn't think I had a choice, because I could only have two actions. Before me I couldn't find a door labeled no action. So those principles still exist, they're incredibly important. The current «investigation» with respect to Russia, we've confirmed it.

The Department of Justice has authorized me to confirm that it exists. We're not going to say another word about it until we're done. Then I hope in league with the Department of Justice, we'll figure out if it doesn't result in charges, what if anything will we say about it and we'll be guided by the same principles.

COONS:

Well, Director, I do think there was a third door available to you in late year just before the election and that was to confirm the existence of an ongoing «investigation» about the Trump campaign, which I think was of compelling interest and was an unusual circumstance, an activity by a known adversary to interfere in our election.

Had there been public notice that there was renewed «investigation» into both campaigns, I think the impact would have been different, would you agree?

COONS:

No. I thought a lot about this and my judgment was a counter -- we have to separate two things. I thought it was very important to call out what the Russians were trying to do with our election. And I offered in August myself to be a voice for that in a public piece calling it out. The Obama administration didn't take advantage of that August. They did it in October, but I thought that was very important to call out.

That's a separate question from -- do you confirm the existence of a classified «investigation» that has just started to try and figure out are there any connections between that Russian activity and U.S. persons that started in late July and remember, the Hillary Clinton «investigation», we didn't confirm it existed until three months after it started and started publicly.

So I thought the consistent principle would be, we don't confirm the existence of certainly any «investigation» that involves a U.S. person but a classified «investigation» in its early stages, we don't know what we have, what is there. And so I -- my judgment was consistent with the principles I've always operated under, that was the right thing to do. Separately, I thought it was very important to callout and tell the American people the Russians are trying to mess with your elections.

COONS:

Well, I hope that in the future that attempt to draw attention to Russian interference or an election, which you've testified you expect to continue, will be effective. Let me ask one last question, if I might. There's a lot of ways that the FBI helps state and local law enforcement. One I've been grateful for was the Violence Reduction Network through which the FBI provided much needed assistance to Wilmington Police Department, this is my hometown, where we've had a dramatic spike in violence.

I'd be interested in hearing how you imagine or how you intend that the FBI will continue to assist local law enforcement in combating unprecedented spikes in violent crime in a few of our communities, such as Wilmington, where they've happened?

COMEY:

Yes, we're trying to thank you for that, Senator. The VRN, the Violence Reduction Networker, was piloted in Wilmington and -- and a small number of other places and we believe it works, where the FBI brings to a fight that's primarily a state local fight our technology, our intelligence expertise at figuring out how to connect dots and which of the bad guys we should focus on. And then our enforcement, our agents and their ability to make cases.

And so we're trying to do what we've done in Wilmington, in cities around the country, those cities that are seeing spikes in violence. And -- and the depressing fact is, about half of America's biggest cities saw another rise in violence the first quarter of this year. And so we're trying to lean forward and do what we've done in Wilmington in those places, as well.

COONS:

Well, we appreciate your efforts to support local law enforcement. Thank you, Director.

GRASSLEY:

Senator Kennedy?

KENNEDY:

Morning, Mr. Director, I guess afternoon, now. I'll assume for second that I'm not a United States senator and that I don't have a security clearance to look at classified information. If someone sends me classified information, and I know or should know which classified information, and I read it, have I committed a crime?

COMEY:

Potentially.

KENNEDY:

Has the person who sent me the information committed a crime?

COMEY:

Potentially, if they knew you didn't have appropriate clearance and a need to know.

KENNEDY:

OK. Was there classified information on -- on former Congressman Weiner's computer?

COMEY:

Yes.

KENNEDY:

Who sent it to him?

COMEY:

His then spouse, Huma Abedin, appears to have had a regular practice of forwarding e-mails to him, for him I think to print out for her so she could then deliver them to the Secretary of State.

KENNEDY:

Did Congress -- former Congressman Weiner read the classified materials?

COMEY:

I don't -- I don't think so. I think it is descriptive -- I don't think we've been able to interview him because he has pending criminal problems of other sorts. But my understanding is that his role would be to print them out as a matter of convenience.

KENNEDY:

If he did read them, would he have committed a crime?

COMEY:

Potentially.

KENNEDY:

Would his spouse have committed a crime?

COMEY:

Again, potentially, it would depend upon a number of things.

KENNEDY:

Is there an «investigation» with respect to the two of them?

COMEY:

There was, it is -- we completed it.

KENNEDY:

Why did you conclude neither of them committed a crime?

COMEY:

Because with respect to Ms. Abedin in particular, we -- we didn't have any indication that she had a sense that what she was doing was in violation of the law. Couldn't prove any sort of criminal intent. Really, the central problem we have with the whole e-mail «investigation» was proving that people knew -- the secretary and others knew that they were doing -- that they were communicating about

classified information in a way that they shouldn't be and proving that they had some sense of their doing something unlawful. That was our burden and we weren't able to meet it.

KENNEDY:

So she thought it was OK to send her husband the information?

COMEY:

Well, I think -- well, I don't want to get too much into what she thought. We could not prove that the people sending the information, either in that case or in the other case with the secretary, were acting with any kind of the mens rea, with any kind of criminal intent.

KENNEDY:

Assume for second -- again, I'm not a United States Senator -- I'm working for a -- for a presidential campaign, and I'm contacted by a Russian agent. And he just wants to talk about the campaign in general and strategy. Am I committing a crime?

COMEY:

Harder to answer. One, I want to be -- I probably don't want answer in the -- in the -- even in the hypothetical given the work that they we're doing.

KENNEDY:

All right, well, let me try it this way. Let's assume that I'm not a United States Senator, I'm working for a presidential campaign, and I'm contacted by an Russian agent who says I've got some hacked e-mails here and I want to visit with you about them. Am I committing a crime?

COMEY:

Also, senator, I think I should resist answering that hypothetical.

KENNEDY:

OK, can you explain to me, not the law but just in your personal opinion, when interrogation techniques become torture?

COMEY:

You mean not the law?

KENNEDY:

That's right.

COMEY:

There is a statute that defines ...

KENNEDY:

I know.

COMEY:

... torture in the United States. And so, that, as a lawyer and as a member of law enforcement organization, that is where I would start. That the definition of torture is laid out in American statutes. I'm not sure I understand what you mean beyond that.

KENNEDY:

I'm -- I'm just asking your personal opinion about what you think constitutes torture. Where you would - where you personally would draw the line drawing on your substantial experience?

COMEY:

I'd say in general, any conduct that involves the intentional infliction of physical pain or discomfort in order to obtain information is, in a colloquial sense, torture. It may not be torture under the statute, which Congress chose to define at -- at a fairly high level, but as a human being and a -- and a FBI director, I consider the infliction of physical pain and discomfort to be by large colloquially torture.

KENNEDY:

Any kind of physical pain or discomfort? Suppose you just served someone bad food.

COMEY:

Well, again, tricky for us because the FBI is very careful never to inflict -- intentionally inflict physical pain or discomfort of -- of any sort to try and question somebody so ...

KENNEDY:

I understand.

COMEY:

... I'd say, yes, that's conduct you should stay way clear of.

KENNEDY:

Mr. Director, do you ...

COMEY:

It's also ineffective, frankly, but that's a whole other deal.

KENNEDY:

Sure. Do you think it is possible, from a -- from a law enforcement perspective, to -- to properly vet a non-American -- non-citizen, I should say, coming to the United States from a conflict area such as Syria?

COMEY:

It is difficult to do it perfectly and I have concerns about the ability to vet people coming from areas where we have no relationship on the ground with the government there. And so I suppose it's possible to do it reasonably. There's a number of tools you could bring to bear but there are always risks associated with that.

KENNEDY:

I mean how do you do it. You can't call -- you can't call the chamber of commerce in Syria. How do you do it?

COMEY:

Well you -- and we do it now. We query the holdings of the entire American intelligence community to see if any -- what we call selectors, phone numbers, emails, addresses associate with that person have ever shown up anywhere in the world in our holdings. That's a pretty good way to do it. Getting into the person's social media to see what they have there.

KENNEDY:

Yes sir.

COMEY:

... Is another pretty good way to do it. The way we rely on in most cases is, the host government will have information about them and (inaudible) the host government ...

KENNEDY:

Just looking up my article here go ahead.

COMEY:

Yes, and in Iraq, we had a United States military presence for many years and collected a whole lot of biometrics. So we can query that to see if the person's fingerprints ever showed up of any ...

KENNEDY:

I'm going to stop you for moment, I've got 10 seconds.

COMEY:

Sure. I'm sorry.

KENNEDY:

How about Yemen?

COMEY:

Similarly difficult.

KENNEDY:

I yield back my three seconds Mr. Chairman.

GRASSLEY:

Thank you. Senator Hirono.

HIRONO:

Thank you. You've been getting a lot of questions surrounding your decision to make certain statements about the «investigation» into Secretary Clinton's emails. And to many of us, you treated the «investigation» of a Clinton email «investigation» or matter whatever you want to call it differently than how you treated the ongoing «investigation» of the Trump campaign and the Russian attempts to interfere with their elections.

And while you've and if I can understand correctly that there is a -- you felt free to speak about the Clinton «investigation» because it had been completed when you're press conference in July ...

COMEY:

Correct.

HIRONO:

... of 2016 and you do confirm that -- that there is still an ongoing «investigation» of the Trump campaign and their conduct with regard to -- to Russian efforts to undermine her elections.

COMEY:

We're conducting an «investigation» to understand whether there was any coordination between the Russian efforts and anybody associated with the Trump campaign.

HIRONO:

So since you've already confirmed that such an «investigation» is ongoing, can you tell us more about what constitutes that «investigation»?

COMEY:

No.

HIRONO:

In July of 2016, when you announced that you were not going to be bringing criminal charges against Secretary Clinton because you did need to show intent, and there was no intent discovered, you -- spoke for 15 minutes. And not only did you say that you were going to bring criminal charges against her by the, which you said at the end of your 15 minutes, but you went on to chastise her, saying that she had been extremely careless. You raise questions about her judgment. You contradicted statements she had made about her email practices. And said that possibly that hostile foreign agents or governments had gained access to her server and that had she still been employed by the government, she could have faced disciplinary action for what she did.

I just wanted to -- I didn't know whether -- when you made all of those public statements chastising her, which amounts to editorializing on your decision not to bring about criminal charges.

It had to occur to you that this public chastisement put Secretary Clinton in a negative light. So did you consider whether this public chastisement might affect her campaign?

COMEY:

I have to respectfully disagree with your characterization of my intention as chastising or editorializing. My goal was to say what is true. What did we do, what did we find, what do we think about it and I tried to be as complete and fair as I could be and tell the truth about what we found and what we think about it and what we're recommending...

(CROSSTALK)

HIRONO:

So when you said that she was behaving in an extremely -- was that extremely careless, can you cite me to other examples where you made some -- those kinds of comments that elaborated on an FBI's decision not to bring about criminal charges?

COMEY:

I can't as director. I know the department has in the IRS e-mail «investigation», they wrote a report after they were done chastising Lois Lerner, I think the woman's name was, for her behavior in a similar way. And so it happens, it's very unusual, but it happens.

HIRONO:

But we know that you were very concerned about what might happen if it came to light that you had possibly gone easy on Ms. Clinton and that therefore, that you were concerned about the political ramifications of your decisions and yet...

COMEY:

I was not.

HIRONO:

So you do not consider that your statements about a person who was running for president would not have a negative effect on her?

COMEY:

I tried very hard not to consider what effect it might have politically. I tried very hard to credibly complete an «investigation» that had gotten extraordinary public attention and my judgment and people can disagree about this, was that offering as much transparency as possible about what we did, what we found, and what we think of it was the best way to credibly complete the «investigation». I wasn't thinking about what effect it might have on a political campaign.

HIRONO:

I find that very hard to -- to really and you know, I find that hard to believe that you did not contemplate that there would be political ramifications to your comments.

COMEY:

I knew there would be...

HIRONO:

I'm just wondering why you...

COMEY:

I knew there would be ramifications. I just tried not to care about them. I knew there'd be a huge storm that would come, but I tried to say what is the right thing to do in this case?

HIRONO:

Yes, the right thing would've been that you did not have enough evidence to bring about criminal charges, and that should've been the end of it I would I think. I don't understand why you chose to go forward with all kinds of characterizations about her actions, that I find hard to believe. And that you had not had interested in the political ramifications so that it did not -- you may not have considered it, but the thought should've occurred to you. And that, I would think that you would've bent over backwards not to say anything that would have an impact on the campaign or on the election because you seem to do that, that that was a concern for you.

Let me turn to the Trump administration's vetting and security clearances in that process. In recent days, there have been numerous reports of Trump administration officials failing to disclose foreign contacts in their security clearance forms. What is the role of the FBI invading the security clearances of White House personnel, if any?

COMEY:

Well, sometimes the FBI is assigned to do background checks on people who are coming into government in the executive office of the president. Other times, not. A lot of times there are people who are arriving with clearances that already exist.

HIRONO:

So in the case of the Trump administration officials and there have been a number of them, was the FBI asked to participate in the vetting process?

COMEY:

The FBI has done background checks for some appointees in the Trump administration.

HIRONO:

Can you disclose who these appointees were or are?

COMEY:

I can't -- I'm not comfortable sitting right here, I don't know them for sure, but I shouldn't talk about individuals in an open forum, at least without thinking about it better.

HIRONO:

What would be the consequences for a White House staffer or personnel who fails to disclose their foreign contacts on a security clearance forum?

COMEY:

Well, hard to say, it could include losing your clearances. If conduct is intentional, it could subject some of the criminal liability. HIRONO: And is that something that the Department of Justice would investigate and pursue?

COMEY:

Potentially, it -- I think it would depend upon who owned the clearance as well. In the first instance, it might be another part of the intelligence community.

HIRONO:

So, since there have been these concerns raised about the clearances not appropriately vetted, is there an ongoing FBI «investigation» into what happened with the vetting process and whether any crimes may have been committed?

COMEY:

It's not something I can comment on sitting here.

GRASSLEY:

Senator Cruz.

HIRONO:

Thank you.

CRUZ:

Thank you, Mr. Chairman. Director Comey, welcome, thank you for your service, thank you for your testimony. You know, I have to say I found your answer to -- to Senator Kennedy a few minutes ago puzzling. In -- in that you describe the reason why the case was closed against Ms. Abedin as that you could not determine she was aware her conduct was unlawful.

And the reason that answer is puzzling is -- is you're a very accomplished lawyer and -- and as you're well aware every first-year law student learns in criminal law that ignorance of the law is no excuse and that mens rea does not require knowledge that conduct is unlawful.

And in fact, the governing statutes 18 USC 790(3)(f) and 18 USC 798(f) -- 798(a) have no requirement of a knowledge of unlawful. 798(a) provides whoever knowingly and willfully communicates, furnishes, transmits or otherwise makes available to an unauthorized person classified information shall be fined under this title or imprisoned not more than 10 years or both.

Under the terms of that statute, the fact pattern you described in this hearing seems to fit that statute directly, in that -- if I understand you correctly -- you said Ms. Abedin forwarded hundreds or thousands of classified e-mails to her husband on a non-government non-classified computer. How is -- how does that conduct not directly violate that statute?

COMEY:

First, senator, I -- I -- I -- if I said that I misspoke. She forwarded hundreds and thousands of e-mails, some of which contain classified information. In the -- for generations -- generations I think is a fair way to say it -- the Department of Justice has understood that statute to require in practice -- and I believe they think in law --

require a general sense of criminal intent.

That is not a specific intent, but a general criminal intent and a sense -- a knowledge that what you're doing is unlawful, not violating a particular statute but some general criminal mens rea. I can't find a case that's been brought in the last 50 years based on negligence, based on -- without some showing or indicia of intent.

CRUZ:

You and I have both worked in a number of jobs that require dealing with classified information. And on its face, anyone dealing with classified information should know that that conduct is impermissible. Let me ask you, how would you handle an FBI agent who forwarded thousands of classified e-mails to his or her spouse on a non-government computer?

COMEY:

Well, there would be significant administrative discipline. I'm highly confident they wouldn't be prosecuted. I'm also highly confident there would be discipline.

CRUZ:

All right, let's -- let's shift to another topic. In the previous Congress, I -- I chaired a hearing on -- on the willful blindness of the Obama administration to radical Islamic terrorism, where testimony from a whistleblower at the Department Homeland security that described a purge DHS had -- had undergone of editing or deleting over 800 records at DHS to remove references to radical Islam, to the Muslim Brotherhood. And the purge indeed was the word used by the White House that directed DHS to conduct that purge.

We obviously have a new administration now, a new White House, a new Attorney General. Has the approach of the FBI to radical Islamic terrorism changed in any respect with the new administration?

COMEY:

Not that I'm aware of no.

CRUZ:

Let me ask you about one specific terror attack, which is on May 15th, on -- in May of 2015, the terrorist attack in Garland Texas, where two terrorist open fire on a peaceful gathering and thankfully no innocent people were killed, thanks to the heroic action of Garland police officer Greg Steven's who fatally shot the two terrorists.

But a security officer was shot in the leg and it could have been much -- much worse. At the time of the incident, you stated publicly that the FBI did not know that the terrorists were on their way to the event and that -- or that they planned on attacking the event. Recently there have been media reports suggesting otherwise. Specifically media reports that have stated that an undercover FBI agent was in close communication with the two terrorists in the weeks leading up to the attack, explicitly discussed plans for the attack and was in a car directly behind the two terrorists outside the event and took photos of the terrorists moment before the attack but then left the scene when the shooting began and that that agent was detained by the garland police.

Are those media reports correct?

COMEY:

No. I stand by what I said originally. I can't go into the details of it here, because they're classified, but I think a fair thing to say is the media reports are highly misleading. And in a classified setting I could explain to you how.

CRUZ:

OK. I would appreciate you or your designee sharing those in a classified setting so that ...

COMEY:

I'll get you that.

CRUZ:

So that I can learn more of what occurred. This committee has had substantial focus also on the practice of the previous IRS of targeting citizens and citizen groups based on their political speech, political views and perceived political opposition to president Obama. And the previous Department of justice both Attorneys General Holder and Lynch in my view stonewalled that «investigation».

Is the FBI currently investigating the FBI's -- rather the IRS's unlawful targeting of citizens for exercising political speech?

COMEY:

I think you're referring to the original -- the «investigation» focusing on particularly groups allegedly associated with tea party.

CRUZ:

Yes.

COMEY:

We completed that «investigation» and the Department declined prosecution. We worked very hard on it, put a lot of people on it, could make what we thought was a case, and to my knowledge it has not been reopened.

CRUZ:

So that did the FBI recommend prosecution? You said he could make the case?

COMEY:

Now we couldn't prove -- again the challenge is of intent. We couldn't prove that anybody was targeting these folks because they were conservatives or associated with the tea party. We worked very hard to see if we could make that case, we couldn't get there.

CRUZ:

Thank you.

GRASSLEY:

Senator Blumenthal.

BLUMENTHAL:

Thanks. Thank you Mr. Chairman. Thank you Director Comey for being here and thank you to you and the men and women who work with you at the FBI for their extraordinary service to our country, much of it unappreciated as you've wrote so powerfully in your opening statement. You have confirmed, I believe, that the FBI is investigating potential ties between Trump Associates and the Russian interference in the 2016 campaign, correct?

COMEY:

Yes.

BLUMENTHAL:

And you have not, to my knowledge, ruled out anyone in the Trump campaign as potentially a target of that criminal «investigation», correct?

COMEY:

Well, I haven't said anything publicly about who we've opened «investigations» on, I briefed the chair and ranking on who those people are. And so I can't -- I can't go beyond that in this setting.

BLUMENTHAL:

Have you ruled out anyone in the campaign that you can disclose?

COMEY:

I don't feel comfortable answering that, Senator because I think it puts me on a slope to talking about who we're investigating.

BLUMENTHAL:

Have you -- have you ruled out the president of the United States?

COMEY:

I don't -- I don't want people to over interpret this answer, I'm not going to comment on anyone in particular, because that puts me down a slope of -- because if I say no to that then I have to answer succeeding questions.

So what we've done is brief the chair and ranking on who the U.S. persons are that we've opened «investigations» on. And that's -- that's as far as we're going to go, at this point.

BLUMENTHAL:

But as a former prosecutor, you know that when there's an «investigation» into several potentially culpable individuals, the evidence from those individuals and the «investigation» can lead to others, correct?

COMEY:

Correct. We're always open-minded about -- and we follow the evidence wherever it takes us.

BLUMENTHAL:

So potentially, the president of the United States could be a target of your ongoing «investigation» into the Trump campaign's involvement with Russian interference in our election, correct?

COMEY:

I just worry -- I don't want to answer that -- that -- that seems to be unfair speculation. We will follow the evidence, we'll try and find as much as we can and we'll follow the evidence wherever it leads.

BLUMENTHAL:

Wouldn't this situation be ideal for the appointment of a special prosecutor, an independent counsel, in light of the fact that the attorney general has recused himself and, so far as your answers indicate today, no one has been ruled out publicly in your ongoing «investigation». I understand the reasons that you want to avoid ruling out anyone publicly. But for exactly that reason, because of the appearance of a potential conflict of interest, isn't this situation absolutely crying out for a special prosecutor?

COMEY:

That's a judgment for the -- the deputy attorney general, the acting attorney general on this matter and -- and not something I should comment on.

BLUMENTHAL:

You had some experience in this kind of decision. In 2003, you admirably appointed a special prosecutor Patrick Fitzgerald when the attorney general, then John Ashcroft, recused himself from involvement in

the «investigation» concerning whether the Bush administration officials illegally disclosed the identity of an undercover CIA official. Are there any differences materially between that situation and this one, so far as the reasons to appoint a special counsel?

COMEY:

Well, I think both situations as with all «investigations» that touch on people who have been actors in a political world involved considerations of actual conflict of interest and appearance of conflict of interest. And I'm not going to talk about the current situation in that situation.

My judgment was that the credibility of the «investigation» into the leak of the CIA officer's identity would be best served by not having it overseen by myself, because I was a political appointee, and appointing someone, giving him the authority to run it separate from the political leadership of the Department of Justice.

That was my judgment in that circumstance. I don't know what judgment the acting attorney general will make. I'm sure he'll consider many of the same things ...

BLUMENTHAL:

Has he asked for your advice?

COMEY:

I'm not -- I'm not gonna say, senator. Because I wouldn't. When I was DAG (ph), I didn't want people talking about what their conversations with me so I'll -- I'll do the same for him.

BLUMENTHAL:

So far as the «investigation» -- the ongoing «investigation» into Trump associates and their potential collusion with the Russian meddling in our election, will you be providing any updates to the American people?

COMEY:

Certainly not before the matter is concluded, and then depending upon how the matter's concluded -- some matters are concluded with criminal charges and then there's a public accounting and a charging document. Other matters, as was the case with the e-mail «investigation», end with no charges but some statement of some sort.

Others end with no statement. I don't know yet. And obviously I'd want to do that in close coordination with the department.

BLUMENTHAL:

Will you make recommendations to -- presumably it would be the deputy attorney general or the special prosecutor, if one is appointed, as to whether criminal charges should be brought?

COMEY:

I don't know in this case in particular, but in general we almost always do, especially the highest profile matters.

BLUMENTHAL:

But you cannot, yourself, pursue criminal charges, correct?

COMEY:

Correct.

BLUMENTHAL:

I think that's important for the American people to understand because it bears on the question of whether a special prosecutor ought to be appointed. The FBI may inspire great credibility and trust, but the FBI cannot bring charges. Neither can the intelligence committees do so. Nor can an independent commission. Only the deputy attorney general or a special prosecutor designated by him, correct?

COMEY:

Correct.

BLUMENTHAL:

Let me close because I am running out of time. Have you been questioned at all by the Inspector General in connection with the inquiry, that I understand, is ongoing into a number of the topics that we've been discussing here?

COMEY:

Yes, I've been interviewed. The Inspector General's inspecting me look and looking at my conduct in the course of e-mail «investigation». Which I know this sounds like a crazy thing to say, I encourage.

I want that inspection because I want my -- I want my story told because some of its classified but, also, if I did something wrong, I want to hear that. I don't think I did, but, yes, I've been interviewed and I'm sure I'll be interviewed again.

BLUMENTHAL:

Do you have any regrets or are there any things you would do differently in connection with either the comments you made at the time you closed the «investigation» or when you then indicated to Congress that you were in effect reopening it?

COMEY:

Yes, the honest answer is no. I've asked myself that a million times because, Lordy (ph), has this been painful. The only thing I regret is that (ph) maybe answering the phone when they called to recruit me to be FBI director when I was living happily in Connecticut.

(LAUGHTER)

BLUMENTHAL:

We would welcome you back to you Connecticut ...

COMEY:

Yes, but I -- really I can't. And I've -- I've gotten all kinds of rocks thrown at me and this has been really hard but I think I've done the right thing at each turn. I'm not on anybody's side. So hard for people to see that. But I -- look, I've asked that a million times.

Should you have done this, should you have done that, and I -- the honest answer -- I don't mean to sound arrogant -- I wouldn't have done it any differently. Somehow I'd have prayed it away, wished it away, wished that I was on the shores of the Connecticut sounds, but failing that I don't have any regrets.

I want to ask one last question unrelated to this topic on the issue of gun violence. Would you agree that universal background checks would help with law enforcement and prevention of gun violence?

COMEY:

The more able we are to keep guns out the hand so criminals and spouse abusers all the -- the better. So the more information we have the better for law enforcement perspective.

BLUMENTHAL:

I'll take that as a yes. Thank you.

(OFF MIC)

GRASSLEY:

Before I call on :Senator Tillis, I think we have one member -- if that member's going to come back for first round then we have three or four, maybe five of us that want a second round. So I hope that people

will get back here so we know exactly how many people we have out of courtesy to the Senator -- or Director Comey. Senator Tillis.

TILLIS:

Director Comey, thank you for being here. I'm always impressed with your composure and your preparation. And I want to get to a couple of other things, maybe first and then if I have time come back to what the hearing has been predominantly about. When you briefed us last year, I think that you said that there were some -- that there were ongoing «investigations» on homeland -- on Homeland Security potential terrorist, either home grown or foreign inspired «investigations» in every state. Is that still the case?

COMEY:

Yes.

TILLIS:

Do you have roughly an -- can you give me roughly an idea of the number of «investigations» that is?

COMEY:

Yes it's just north of 1,000.

TILLIS:

Just north of 1,000.

COMEY:

Yes. That case load has stayed about the same since we last talked about it. Some have closed, some have opened. But about 1,000 home grown violent extremist «investigations» in the United States.

TILLIS:

And do -- at the time I also asked the question about -- to what extent that you can discuss in this setting -- were people where the target of those «investigations» -- persons who came in through various programs where questions about vetting have been raised as to whether or not they're accurate. At the time there were a dozen a half I think that you may have estimated. Do you have any rough numbers about that?

COMEY:

Yes I do. If -- we have about 1,000 home grown violent extremist «investigations» and we probably have another 1,000 or so that are -- I should define my terms. Home grown violent extremists, we mean somebody -- we have no indication that they're intouch with any terrorists.

TILLIS:

Any foreign touch. Right.

COMEY:

Yes. Then we have another big group of people that we're looking at who we see some contact with foreign terrorists. So you take that 2,000 plus cases, about 300 of them are people who came to the United States as refugees.

TILLIS:

OK. And to what extent in all of those «investigations» -- you mentioned earlier that there are probably about half of the various computing devices that you've accessed that you can't get into with any technology that the FBI has, which I assume is some of the most advanced available. To what extent is the access to that information relevant in these «investigations», of potential homeland threats.

COMEY:

Oh it's a feature of all of our work, but especially concerning here. Because we're trying through lawful process to figure out are they consuming this poison on the internet and are they in touch with anybody. And so it's true in terrorism cases, about half of the devices we can't open. About 90 some percent of our subjects are using at least one encrypted app as well that we can't ...

TILLIS:

So Mr. Director, just because of physical and technological constraints, half of the base of information you'd like to harvest you can't get to. Without 702, how much more of the remaining half would be -- would be harmed?

COMEY:

Well the 702 actually addresses a different challenge. Losing 702 would be disastrous because it would lose our window...

TILLIS:

It is relevant in these «investigations», though (ph), yes.

COMEY:

It is because...

TILLIS:

That's what means (ph) so half of the physical assets you can already get access to, then there's the metadata and all the other information that would be instructive to these «investigations». So by Going Dark, do we mean 100 percent?

COMEY:

Well, we're headed towards 100 percent, if -- 702 is our window into the really bad guys overseas. And if we close that -- I don't know why on one earth we would close that window...

TILLIS:

So we have thousands of «investigations» of potential homeland security threats evenly split by either people who have self radicalized or some who have been influenced, some who have come over in refugee programs that we will basically pull the rug out from under you in terms of being able to actively investigate -- I should say expeditiously investigate them?

COMEY:

Will certainly significant imperatively to investigate them. And that's what -- folks often say why don't you get metadata? You can't convict somebody and incapacitate them based on...

TILLIS:

You got to drill down. Director Comey, in my remaining time, I want to go back to the -- to the «investigation», I just want to give you another opportunity to maybe finish by explaining the context that you were operating in. But I want to -- I want to create a context going back to when the «investigation» first began, it was already a part of media attention.

I think on June the 27th, the then attorney general met with the spouse of someone who's subject to an active «investigation» which was that at the very least an unusual encounter, which also spun up the media. And then I think it was July 5th that you made the statement that I think a few of the things you've said that I guess based on the evidence you were gathering, there was one component, it was like removing a frame from a huge vintage (ph) jigsaw puzzle and dumping pieces on the floor, something else that the media ties into.

Then you said there is evidence of potential violations of statutes regarding the handling of classified information. And you went on to say that under similar circumstances, a person who's engaged in these

activities would likely be subject to security or administrative sanctions. I mean that was the tough part of the statement that you made.

But you went on to -- to say that you didn't believe a reasonable minded prosecutor would bring a case even though there was evidence of potential violations. And that you were expressing your view that the Justice Department should not proceed. Is that -- is that typical for you to go to a point and say I've gathered this information, there may be evidence of violations, but we don't think any reasonable prosecutor in the DOJ would pursue it therefore, we're going to recommend not pursuing it? Is that common?

COMEY:

For an FBI director to do that?

TILLIS:

Yes.

COMEY:

I've never heard of it, I never imagined it ever until this circumstance, when I...

TILLIS:

Was there some logic in that at the time that you were making that decision based on the information that you were provided, was there the same sort of thought process that you're going through there to have it rise to that level that then lead to your October 28th notification of Congress that you had to look at other evidence that had been identified on Anthony Weiner's PC?

What I'm trying to do is say it looks like you were trying to provide as much transparency and as much real-time information as you had.

COMEY:

Yes.

TILLIS:

And then on -- on November the 6th, the FBI apparently moved heaven and earth and got something done in a matter of days that they thought was going to take beyond the election. But you were in that pressure cooker.

I just wanted to give you an opportunity to glue together, I think, the decision for your actions on July the 5th and -- and how think there's parallels between that and what you ultimately did on October the 28th and then November the 6th.

And I'll yield back the remaining of my time for the answer.

COMEY:

And I -- I -- I've lived my whole life caring about the credibility and the integrity of the criminal justice process, that the American people believe it to be and that it be in fact fair, independent and honest. And so what I struggled with in the spring of last year was how do we credibly complete the «investigation» of Hillary Clinton's e-mails if we conclude there's no case there?

The normal way to do it would be to the Department of Justice announce it. And I struggled as we got closer to the end of it with the -- a number things had gone on, some of which I can't talk about yet, that made me worry that the department leadership could not credibly complete the «investigation» and declined prosecution without grievous damage to the American people's confidence in the -- in the justice system.

And then the capper was -- and I'm not picking on the -- the Attorney General Loretta Lynch, who I like very much -- but her meeting with President Clinton on that airplane was the capper for me. And I then said, you know what, the department cannot by itself credibly end this.

The best chance we have as a justice system is if I do something I never imagined before, step away from them and tell the American people, look, here's what the FBI did, here's what we found, here's what we think. And that that offered us the best chance of the American people believing in the system, that it was done in a credible way.

That was a hard call for me to make to the call the attorney general that morning and say I'm about to do a press conference and I'm not going to tell you what I'm going to say. And I said to her, hope someday you'll understand why I think I have to do this. But look, I wasn't loving this.

I knew this would be disastrous for me personally, but I thought this is the best way to protect these institutions that we care so much about.

having done that, and then having testified repeatedly under oath we're done, this was done in a credible way, there's no there there.

That when the Anthony Weiner thing landed on me on October 27 and there was a huge -- this is what people forget -- new step to be taken, we may be finding the golden missing e-mails that would change this case. If I were not to speak about that, it would be a disastrous, catastrophic concealment.

It was an incredibly painful choice, but actually not all that hard between very bad and catastrophic. I had to tell Congress that we were taking these additional steps. I prayed to find a third door. I couldn't find it. Two actions speak or conceal. I don't think many reasonable people would do it differently than I did, no matter what they say today.

If you were standing there staring at that on October 28, would you really conceal that. So I spoke. Again, the design was to act credibly, independently and honestly so the American people know the system's not rigged in any way. And that's why I felt transparency was the best path in July.

And that I wasn't seeking transparency. In October, I sent that letter only to the chairs and rankings. Yes, did I know they really going to leak it? Of course, I know how Congress works, but I did not make an announcement at that point.

And then my amazing people moved heaven and earth to do what was impossible to get through those e-mails by working 24 hours a day and then said, honestly, sir, we found tons of new stuff doesn't change our view. And I said, are you sure, don't do it just because you're under pressure.

They said, we're sure, we don't believe there's a case against Hillary Clinton. I said, then by God, I got to tell Congress that and know I'm going to get a storm at me for that. But what I can promise you all along is I said to people, you may think we're idiots, we're honest people.

We made judgments trying to do the right thing and I believe, even with hindsight, we made the right decisions. And I'm sorry for that long answer.

GRASSLEY:

Director Comey. I -- we have -- seven times six is 42 minutes. I hope you won't want to take a break.

COMEY:

I'm made of stone.

GRASSLEY:

Thank you.

(LAUGHTER)

GRASSLEY:

On -- on March 6, I wrote to you asking about the FBI's relationship with the author of the trip -- Trump-Russia dossier Christopher Steele. Most of these questions have not been answered, so I'm going to ask them now. Prior to the «bureau» launching the «investigation» of alleged ties between the Trump campaign and Russia, did anyone from the FBI have interactions with Mr. Steele regarding the issue?

COMEY:

That's not a question that I can answer in this forum. As you know, I -- I briefed you privately on this and if there's more that's necessary then I'd be happy to do it privately.

GRASSLEY:

Have you ever represented to a judge that the FBI had interaction with Mr. Steele whether by name or not regarding alleged ties between the Trump campaign and Russia prior to the «Bureau» launching its «investigation» of the matter?

COMEY:

I have to give you the same answer Mr. Chairman.

GRASSLEY:

This one I'm going to expect an answer on. Do FBI policies -- just the policies allowed to pay an outside investigator for work, another source is also paying him for as well?

Want me to repeat it? Do FBI policies allow it to pay an outside investigator for work that another source is also paying that investigator for?

COMEY:

I don't know for sure as I sit here. Possibly is my answer. But I'll get you a precise answer.

GRASSLEY:

In writing?

COMEY:

Sure.

GRASSLEY:

OK. Did the FBI provide any payments whatsoever to Mr. Steele related to the «investigation» of Trump Associates?

COMEY:

I'm back to my first -- I can't answer this forum.

GRASSLEY:

Was the FBI aware -- was the FBI aware that Mr. Steele reportedly paid his sources who in turn paid their sub sources to make the claim in the dossier?

COMEY:

Same answer sir.

GRASSLEY:

Here's one you ought to be able to answer. Is it vital to know whether or not sources have been paid in order to evaluate their credibility and if they have been paid doesn't that information need to be disclosed if you're relying on that information in seeking approval for investigative authority?

COMEY:

I think in general yes. I think it is vital to know.

GRASSLEY:

The FBI and the Justice Department have provided me material inconsistent answers in closed setting about its reported relationship with Mr. Steele, will you commit to fully answering the questions from my March 6 and April 28 letter and providing all requested documents so that we can resolve those inconsistencies, even if in a closed session, being necessary?

COMEY:

Because as I sit here I don't know all the questions that are in the letters. I don't want to answer that specifically. But I commit to you to giving you all the information you need to address just that challenge, because I don't believe there's any inconsistency. I think there's a misunderstanding but in a classified setting I'll give you what you need.

GRASSLEY:

OK. Well I hope to show you those inconsistencies.

COMEY:

Now and I think I know what you're -- where the confusion is, but I think in a classified setting we can straighten it out.

GRASSLEY:

Question -- next question, according to a complaint filed with the Justice Department, the company that oversaw dossiers creation was also working with the former Russian intelligence operate -- operative on a pro Russian lobbying project at the same time. The company Fusion GPS allegedly failed to register as a foreign agent for his work to undermine the Magnitsky gait Act, which is a law that lets the president punish Russian officials who violate human rights.

Before I sent you a letter about this, were you aware of the complaint against Fusion was acting as on registered agent for Russian interest?

COMEY:

That's not a question I can answer in this forum.

GRASSLEY:

You can't answer that?

COMEY:

No. No I can't.

GRASSLEY:

Uh huh. Go on to something else. Last week, the FBI filed a declaration in court pursuant to a freedom of information act litigations. The FBI said that a grand jury issued subpoenas for Secretary Clinton's e-mails, yet you refuse to tell this committee whether the FBI sought or had been denied access to grand jury processed from the Justice Department.

So I think a very simple question, why does the FBI give more information to someone who files a lawsuit, then to an «oversight» committee in the Congress, and that has happened to me several times.

COMEY:

I'm not sure Senator, whether that's what happened here. But you're right, I refuse to confirm in our hearings as to whether we'd used a grand jury and how. I think that's the right position, because I don't know it well enough.

I don't think I can tell you -- I don't think I can distinguish the statements made in the FOIA case, as I sit here, but yes.

GRASSLEY:

Just as a matter of proposition, then. If -- if I, Chuck Grassley as a private citizen, filed a freedom of information act and you give me more information than you'll give to Senator Chuck Grassley, how do you justify that?

COMEY:

Yes its a good question. I don't...

GRASSLEY:

What do you mean it's a good question, how do you justify it?

COMEY:

Well, I was going to say, it's a good question, I can't as I sit here.

GRASSLEY:

Egads (ph). Was the Clinton «investigation» named Operation Midyear because it needed to be finished before the Democratic National Convention. If so, why the artificial deadline? If not, why was that the name?

COMEY:

Certainly not because it had to be finished by a particular date. There's an art and a science to how we come up with codenames for cases. They -- they assure me its done randomly.

Sometimes I see ones that make me smile and so I'm not sure. But I can assure you that -- that it was called Midyear Exam, was the name of the case. I can assure you the name was not selected for any nefarious purpose or because of any timing on the «investigation».

GRASSLEY:

Last question; when was a grand jury convened? Was it before you -- your first public statement about closing the case?

COMEY:

I'm still not a position where I'm comfortable confirming whether and how we used a grand jury in -- in an open setting. I don't know enough about what was said in the FOIA case to know whether that makes my answer silly, but I just want to be so careful about talking about grand jury matters. So I'm not going to answer that, sir.

GRASSLEY:

Senator Feinstein?

FEINSTEIN:

Thanks very much, Mr. Chairman.

Mr. Director, first of all, thank you for your fortitude going through this, appreciate it. In your testimony, you noted that the first half of the fiscal year, the FBI was unable to access the content of more than 3,000 mobile devices, even though the FBI had the legal authority to do so.

I'm familiar with one of those and that is the Southern California terrorist attack, which -- where 14 people were killed in San Bernardino. Of those 3,000 devices that you weren't able to access, can you say how many of these were related to a counterterrorism event?

COMEY:

I don't know as I sit here, Senator but we can get you that information.

FEINSTEIN:

Yes, I really very much appreciate that. We had looked at legislation that would take into consideration events of national security and provide that devices -- there must be some way of even going before a judge and getting a court order to be able to open a device. Do you think that would work?

COMEY:

Boy, that would sure, to my mind, be a better place for us to be from a public safety perspective, but we aren't there now.

FEINSTEIN:

In terms -- this week, the British Parliament's Home Affairs Select Committee released a report finding that social media platforms such as Facebook, Twitter and YouTube failed to remove extremist material posted by banned jihadists and neo-Nazi groups even when that material was reported.

The committee urged tech companies to pay for and publicize online content monitoring activities and called on the British government to strengthen laws related to the publication of such material. Last year, I worked with Senators Burr, Rubio and Nelson to introduce a bill to require tech companies to report terrorist activity on their platforms to law enforcement.

What do you advise? The provision, we modeled it after an existing law, which requires tech companies to notify authorities about cases of child pornography, but does not require companies to monitor any user, subscriber or customer. I plan to reintroduce the provision in separate legislation.

So here are two questions. Would the FBI benefit from knowing when technology companies see terrorist plotting and other illegal activity online?

COMEY:

Yes.

FEINSTEIN:

Would the FBI be willing to work with the judiciary committee going forward on this provision?

COMEY:

Yes, senator. I don't know it well enough to offer you a view, but we'd be happy to work with you on it.

FEINSTEIN:

Well I -- I was so struck when San Bernardino happened and you made overtures to allow that device to be opened, and then the FBI had to spend \$900,000 to hack it open. And as I subsequently learned of some of the reason for it, there were good reasons to get into that device.

And the concern I have is that once people had been killed in a terrorist attack and that there may be other DNA, there may be other messages that lead an investigative agency to believe that there are others out there, isn't to the -- for the protection of the public that one would want to be able to see if a device could be opened.

And I've had a very hard time -- I've tried -- I've gone out, I tried to talk to the tech companies that are in my state. One -- Facebook was very good and understood the problem. But most do not have. Has the FBI ever talked with the tech companies about this need in particular?

COMEY:

Yes, senator. We've had a lot of conversations, and as I said earlier, they're -- in my sense, they've been getting more productive because I think the tech companies have come to see the darkness a little bit more. My -- my concern was privacy's really important but that they didn't see the public safety costs.

I think they're starting to see that better and what -- what nobody wants to have happen is something terrible happen in the United States and it be connected to our inability to access information with lawful authority. That we ought to have the conversations before that happens and the companies more and more get that. I think over the last year and half, and -- but it's vital, we weren't picking on Apple in the San Bernardino case.

FEINSTEIN:

Right.

COMEY:

There were real reasons why we needed to get into that device. And that is true in case after case after case, which is why we have to figure out a way to optimize those two things, privacy and public safety.

FEINSTEIN:

Well to be candid my understanding about some of this was that the European community, had special concerns about privacy and that some of the company in our country were concerned -- well they would lose business. That European concern is changing. I think what I read about the U.K. -- what I understand is happening in France and Germany, increased sharing of intelligence, the realization I think that they have very dangerous people in large numbers, possibly plotting at any given time to carry out an attack has had some palliative effect. And there maybe a change of view point. So it would be very helpful if our law enforcement community could help us and this is not to monitor. This is something that's very basic.

If there is a piece of evidence that say hey there may be a cell -- there may be another individual out there, you have a chance of getting into that piece of evidence to see if that's true.

COMEY:

All right, with a judges permission.

FEINSTEIN:

With a judges permission. That's correct. So I thank you for that.

COMEY:

Thank you Senator ...

FEINSTEIN:

Thank you Mr. Chairman.

GRASSLEY:

Senator Lee hasn't had first round. So I've got to go to Senator Lee.

LEE:

Thank you Mr. Chairman. Thank you Mr. Comey for being here today. And thanks for your service to our country. I want to talk to you about something raise by one of my colleagues a little while ago about electronic communications transaction records. Would it be fair to say that electronic communications transaction records includes such things as browsing history? Ones history of websites that one might have visited on the internet?

COMEY:

yes.

LEE:

And would it be fair to say also that what one views, what pages one has visited might in some ways be indicative of what one is reading?

COMEY:

Potentially. Right. Even if you don't have -- see where they went on the page that they went to ESPN or - or fishing magazine gives you some indication of their interests, yes.

LEE:

Individually and collectively you can find out a fair amount about their person, especially if you are able to review what it is that they've been reading for a certain period of time.

COMEY:

Right. I -- the only reason I'm hesitating, is as I understand it, we can't look at -- all we can get is the websites visited not where they went on the page or what they clicked on. But it does give some indication of your interest.

Just like who you call gives you some indication of your interests.

LEE:

But where they went on the website will also be indicative of what they did on the website, would it not? I mean if you can get that granular information about what subpart, not just that they went to ESPN but they went ESPN and read this or that article.

COMEY:

Right. My understanding is that we can't within NSL -- as we understand the statute get that sub content. We can get the webpage visited, we can't get where they navigated within the website. That's - I may be wrong about that, but I think that's how we are.

LEE:

Within the existing confines of the law?

COMEY:

Correct.

LEE:

And so for those who are proposing that we change existing law, so as to allow you to use a national security letter to go further as was suggested by one of my colleagues earlier today that then would allow you to get this more granular information?

COMEY:

No I'm sorry. I may have screwed this up. As we understand the way ECTR was intended to be used, that our NSL authority under ECTR as we thought it was and as we hoped it will be changed, is limited to that top level website visit address.

LEE:

Correct.

COMEY:

So even if it's changed, the way we hope it will be, we don't get any deeper into what -- what you looked at on a page. It's as if we're able to see what sporting goods store you called. We can't tell from the call record what you asked about. We can see what sporting page you visited, what website, but we can't see where you went within that.

LEE:

Yes. Based on the legislation that I've reviewed, it's not my recollection that that is the case. Now, what - what I've been told is that -- it would not necessarily be the policy of the government to use it, to go to that level of granularity. But that the language itself would allow it, is that inconsistent with your understanding?

COMEY:

It is and my understanding is we -- we're not looking for that authority.

LEE:

You don't want that authority...

(CROSSTALK)

COMEY:

That's my understanding. What -- what we'd like is, the functional equivalent of the dialing information, where you -- the address you e-mailed to or the -- or the webpage you went to, not where you went within it.

LEE:

Even if you look it at the broad level of abstraction, so if you're suggesting it would be used only at the domain name level, somebody went to ESPN.com. If you follow someone's browsing history over a longer period of time, you could still find out a fair amount about that person, could you not?

COMEY:

Yes, sure and again, I keep saying this, but I mean it. As you can from their telephone dialing history.

LEE:

Yes. Let's talk about Section 702, for a minute. Section 702 of the Foreign Intelligence Surveillance Amendments Act authorizes the surveillance, the use of U.S. signals surveillance equipment to obtain foreign intelligence information.

The definition includes information that is directly related to national security, but it also includes quote, "information that is relevant to the foreign affairs of the United States," close quote, regardless of whether that foreign affairs related information is relevant to a national security threat. To your knowledge, has the attorney general or has the DNI ever used Section 702 to target individuals abroad in a situation unrelated to a national security threat?

COMEY:

Not that I'm aware of. I think -- I could be wrong, but I don't think so, I think it's confined to counterterrorism to espionage, to counter proliferation. And -- those -- those are the buckets. I was going to say cyber but cyber is fits within...

LEE:

That's where it has typically used those things.

COMEY:

Yes.

LEE:

Does it -- so to your knowledge, it doesn't currently use Section 702 to target people abroad in -- in instances unrelated to national security threats?

COMEY:

I don't think so, like a diplomat to find out how someone feels about a particular foreign policy issue or something, I don't think so.

LEE:

Right. So if Section 702 were narrowed to exclude such information, to exclude information that is relevant to foreign affairs, but not relevant to a national security threat, would that mean that the government would be able to obtain the information it needs in order to protect national security?

COMEY:

Would seem so logically. I mean to me, the value of 702 is -- is exactly that, where the rubber hits the road in the national security context, especially counterterrorism, counter proliferation.

LEE:

Yes. Now, when Section 702 is used, typically what we're talking about here is not metadata. It's not this call was made to -- from this number to this number. This is content. And so if -- if we were talking about two U.S. persons, two American citizens, if I were calling you, typically that's not something that Section 702 would be used to collect.

But if it's -- if it's me calling someone else and if that person is not a U.S. person, if that person ends up being an agent of a foreign government and if somebody has determined that communications involving that person might be connected to a national security «investigation». There's a chance that that communication could be intercepted, not just the fact the call was made, but also the content of the call.

COMEY:

Correct, that -- that's what we call incidental collection.

LEE:

And that incidental collection is then aggregated, you have databases that store all these things and so there are lots of U.S. persons who have had communications, conversations that themselves have been recorded that are out there and in a database. Can you search that database for communications involving specific U.S. persons without getting a warrant?

COMEY:

Yes.

LEE:

And the fact that these communications were intercepted without necessarily any showing of wrongdoing on the part of the U.S. person without necessarily showing that that U.S. person had anything to do with the foreign -- with the national security «investigation» at issue.

Does that cause you concern that that could involve almost a backdoor way of going after communications by U.S. persons in which they have a reasonable expectation of privacy?

COMEY:

It doesn't cause me concern, but that may be because of the way -- what I can see from where I am. I understand the question, though. But it's true, whether it's 702 or other court authorized domestic surveillance in the United States, if we are covering a particular embassy of a foreign power, and Americans call in and speak to them, we record that because we were authorized to collect the communications in and out of that embassy.

And we store all of those in a database where we have lawfully collected those, even though the American called wasn't a target. The same happens with 702. If you contact or call a terrorist or -- or someone we're targeting overseas, you're an American, you have a conversation.

Even though you're not the target, that's going to be collected and stored in a database. What matters is how we treat that data and they were careful with it and we don't use it willy-nilly. And we protected it in -- in important ways. That's true whether we collect it in 702 or collect it domestically.

I don't know how we would operate otherwise. And that's -- you know, I don't how we would operate otherwise. I think what the American people want us to do is make sure we hold it so we can connect dots if it turns out there's something bad in there, but treat it like the U.S. person information that it is; protect it and make sure that it's handled in a responsible way.

GRASSLEY:

Senator Leahy.

LEE:

Thank you.

LEAHY:

Thank you. Thank you, Mr. Chairman. Director, let me (OFF-MIC) let me tell you a story about a hundred years ago, literally, my Italian grandparents and my Irish grandparents faced discrimination because of their religion -- now that discrimination wasn't violence, it was economic.

This was not unusual in this country at that time. I like to think that's gone. I like to think of my grandparents -- the Italian grandparents, the Irish grandparents -- discrimination they faced because of

both their race and their religion as not here. But now we see alarming rise in hate crimes among minority communities.

Yesterday, this committee heard some important testimony from Department of Justice, from the International Association of Chiefs of Police -- I believe our nation's largest civil rights organization. The law enforcement and political leaders must send the message that toxic, hateful rhetoric will not be tolerated.

They must denounce bigotry wherever they encounter it. Even as a child, I was taught that we are never to discriminate against anybody because of their race or their religion. Now, what bothers me -- let me show you this. On the campaign trail President Trump promises supporters a Muslim ban.

A campaign press release entitled Donald J Trump's statement on preventing Muslim immigration. It says that he called for a total and complete shutdown of Muslims entering into the United States. Now I can understand that dumb things are said during a campaign. That's on his website today. That goes beyond being stupid. Do you agree with me that messages like that can cast suspicion on our Muslim neighbors, can perpetuate division and hatred? And if it does, does that make America less safe?

COMEY:

Well Senator thank you. I'm not going to comment on the particular statement. But I do agree that a perception or a reality of hostility towards any community -- but in this particular the Muslim American community makes our jobs harder, because as I said in response to an earlier question, those good people don't want people engaging in acts of violence in the name of their faith or in their neighborhood and so our interest are aligned. But if anything gets in the way of the that and chills the their openness to talk to us and to tell us what they see, it makes it harder for us to find those threats.

So we've been spending a ton of time -- you're right about the increase in hate crimes. We've seen those numbers start to go up in 2014, they've been climbing since then. To redouble our efforts to get in those communities and show them our hearts and what we're like. To encourage people not to fear contact with us.

LEAHY:

And director Comey, I don't ask this to make a political point. I ask this as a United States Senator. I believe the United States Senate can be and sometimes has been the conscience of the nation. We're a nation that (inaudible) our first amendment. We trust and we believe in all religions, allow you to practice any religion you want or none if you want.

I worry, whether it's a Muslim religion, or any other -- we have religions where people believe in it. They should not be condemned. The actions of a few. I worry very much that the rhetoric and the hatred can bring about things that neither you nor I ever want to see in this country. I think we'd agree on that. Hate crimes, I don't care who it's against, against somebody because of their race or their religion, you as a -- out of the FBI, any one of who have been prosecutors, we abhor all hate crimes. I believe you do, is that not correct?

COMEY:

That's for sure.

LEAHY:

And I worry that we also give the impression that citizenship alone might be a reliable indicator of the terrorist threat posed by an individual to the United States.

I think of the Oklahoma City bombing. One of the greatest acts of terrorism in our country, done by an American citizen who had served I believe honorably in our military.

So would you agree that citizenship alone is not a reliable indicator of a terrorist threat posed by the individual to the United States?

COMEY:

Correct. Most of the people that I talked about that we have open cases on are American citizens.

LEAHY:

Thank you. In fact the Department of Homeland Security, we've heard from them, they have an assessment from the office of intelligence and analysis concluding that citizenship is unlikely to be reliable indicator for potential terrorist activity. Do you agree with that?

COMEY:

Yes.

LEAHY:

Thank you.

Another matter, Chairman Grassley and I have worked to address the concerns related to the FBI's hair and fiber analysis testimony has been flawed, I think we all accept in the past. The «investigation» began I believe 2012, after three men were exonerated here in Washington, D.C. because the FBI almost (ph) gave inadequate testimony. In order to review more than 3,000 cases, the FBI has reached out to officers that originally prosecuted these cases and I appreciate that.

I remain concerned that cases remain closed if you don't find the transcript right away. I've asked you this question in -- in writing. In any case is there -- where there's a missing transcript, do you commit to have an FBI conduct an in-person visit to obtain whether there was any information that was used in possibly faulty analysis by the FBI that might've brought about a conviction?

COMEY:

I'm sorry, an in-person visit?

LEAHY:

Well, to the prosecutor's office or whoever else may be involved, if you don't have a transcript, an in-person visit to say OK, was -- what do your record show, do you -- did you use analysis that may have been faulty from the FBI in bringing about that conviction?

COMEY:

I see. I don't know enough to react to that now and commit to it now. Can I follow-up with you to see how we're thinking about that?

LEAHY:

Will you -- will you follow-up?

COMEY:

I will.

LEAHY:

Referring to you (ph), OK thank you. Thank you.

FEINSTEIN:

Thank you, Senator Leahy.

Senator Whitehouse?

WHITEHOUSE:

Thank you.

A couple of quick matters, for starters. Did you give Hillary Clinton quote, "a free pass for many bad deeds?" There was a tweet to that effect from the president.

COMEY:

Oh, no, not -- that was not my intention, certainly.

WHITEHOUSE:

Well, did you give her a free pass for many bad deeds, whatever your intention may have been?

COMEY:

We conducted a competent, honest and independent «investigation», closed it while offering transparency to the American people. I believed what I said, there was not a prosecutable case, there.

WHITEHOUSE:

The -- with respect to the question of prosecution for classified material, is the question of the consequences of the disclosure, i.e. the harm from the release or the actual secrecy of the material considered in a prosecutive decision?

COMEY:

In my experience it is yes.

WHITEHOUSE:

Because there's a great deal of material that while technically classified is widely known to the public and because over classification is a very significant problem within the executive branch, correct?

COMEY:

Correct and DOJ reserves prosecution for the most serious matters, in my experience.

WHITEHOUSE:

And that would've been evaluated also in looking at Secretary Clinton's e-mails?

COMEY:

Yes.

WHITEHOUSE:

So though they were classified, they may not have caused any harm in terms of who saw them? Well I mean, not I guess specific to that. There are e-mails that could be classified and cause no harm if they were disclosed?

COMEY:

Yes there are -- that is the case.

WHITEHOUSE:

It has been disclosed and publicly reported that there was a two day interval, between the FBI interview of Michael Flynn related to his conversations with Ambassador Kislyak and then deputy attorney general's report to White House Counsel about those calls.

Did you participate in conversations related to this matter during that two day interval and what can you tell us about why that interval took two days, was there some standard operating procedure that needed to be vindicated? Was there -- you'd think that that could've flipped over to a conversation to the White House a good deal quicker than that once the agent's report came back from the interview.

COMEY:

Yes, I don't -- I don't know whether two days is right. I think it might have been a day. I could be wrong. It could have been two days. And I did participate in conversations about that matter, and I think I'll stop there because I don't ...

WHITEHOUSE:

OK.

COMEY:

... I don't know the department's position on -- on speaking about those communications.

WHITEHOUSE:

But as you sit here, you don't have any hesitation about that delay, about it representing any kind of, you know, mischief or misconduct?

COMEY:

No, no and given your experience you know how this works. An agent conducts an interview, they're going back, they write up a 302, they show it to their partner, they make sure they get it right, then they produce the 302, so sometimes it's the next day before it's finished.

WHITEHOUSE:

So the deputy -- Ms. Yates would have seen the 302, and that process would've taken place by the time she went up to see White House counsel McGahn?

COMEY:

I think that's right, yes.

WHITEHOUSE:

OK, thank you. And onto the Weiner laptop. As I understand it, you were informed by agents in the FBI office that there was potentially related or relevant information in Mr. Weiner's laptop. On the basis of that information, you then sent a letter to the members of Congress, before whom you had committed to answer if there were any changes in the status of things.

You also then authorized the agents to pursue a search warrant, which then gave them access to the content, which allowed them to do the search, that you then said came up with nothing so that you could then undo the letter and say, actually we took a look and there's nothing there. Is that the -- do I have the order correctly there?

COMEY:

Right, they came to me, they briefed me on what they could see from the metadata, why it was significant. They thought they ought to seek a search warrant, wanted my approval to do that. I agreed, authorized it. So did the Department of Justice and then they reviewed -- I was just making sure I get the numbers right.

During the -- the following week, they reviewed 40,000 e-mails -- I understated how many they reviewed -- and found the 3,000 of them were work related and came from BlackBerry backups and a bunch of other things ...

WHITEHOUSE:

My question ...

COMEY:

And then 12 -- and then 12 of them were classified, but we'd seen them all before.

WHITEHOUSE:

Yes.

COMEY:

And so, they finished that work, they briefed me on it and say it doesn't change our -- our view, and then I send the second letter.

WHITEHOUSE:

Did any of those classified e-mails create national security damage?

COMEY:

That's a hard one to answer. By definition, the classification is based on the potential national security damage.

WHITEHOUSE:

With respect to our earlier conversation ...

COMEY:

Yes.

WHITEHOUSE:

... that tons of stuff is classified that is on the front page of the New York Times.

COMEY:

I'm not aware that any of these e-mails or any the e-mails in the «investigation» got into the hands of people that were able to exploit them to damage our national security.

WHITEHOUSE:

So let me offer you this hypothetical. They come to you and say the metadata shows that we have potential information here that could be relevant and could cause us to reopen the information.

It would seem to me that it would be as sensible at that moment to say how quickly can you get a search warrant and how quickly can we get an answer that question because I made a promise to people in Congress that I would get back to them with this information.

And if there's anything real here, you need to get on that pronto so that I can answer that question, so that the search warrant precedes the letter rather than the letter preceding the search warrant, particularly in light of the widely adhered to policy the department not to disclose ongoing investigative materials. And their truly exceptional nature of disclosures. Why not the search warrant first?

COMEY:

Well I pressed him very hard on that. And found credible their responses that there was no way -- no way they could review the volume of information they saw on the laptop in the time remaining.

WHITEHOUSE:

Except that they did.

COMEY:

Well they did, and -- because our wizards at our operational technology division came up with a way to de-dupe electronically -- that as I understand it involved writing a custom software program that's going to help us in lots of other areas. But investigative team said, sir we cannot finish this before the election.

So that -- to my mind that then made the judgment appropriate, the one that I made, not waiting -- waiting -- waiting to make the disclosure.

WHITEHOUSE:

OK. And with -- and just with respect to your response to Secretary -- to Senator Tillis, we can talk about it some other time. My time has expired. But lest silence be viewed as consent I have a different view of what took place. I don't doubt your honesty for a minute, but I do think that there were very significant mistakes made through this process.

COMEY:

In which -- in the e-mail case?

WHITEHOUSE:

Yes.

COMEY:

OK.

WHITEHOUSE:

In the Hillary Clinton e-mail case.

COMEY:

Got it.

UNKNOWN:

His time has expired.

FEINSTEIN:

Thank you Senator. Senator (inaudible).

FRANKEN:

Thank you to the ranking member and I admire your hanging in there and being made of stone was it?

COMEY:

Sandstone I think.

FRANKEN:

I just want to clarify something -- some of the answers that you gave me for example in response to director -- I asked you would President Trump's tax returns be material to the -- such an «investigation» -- the Russian «investigation» and does the «investigation» have access to President Trump's tax returns and some other questions you answered I can't say. And I'd like to get a clarification on that. Is it that you can't say or that you can't say in this setting?

COMEY:

That I won't answer questions about the contours of the «investigation». As I sit here I don't know whether I would do it in a closed setting either. But for sure -- I don't want to begin answering questions about what we're looking at and how.

FRANKEN:

OK. So I'll take that as at least in this setting you can't do that, and maybe you can elsewhere. We were talking about some of the number of the -- the unseal number of individuals in important roles in the Trump campaign or in his life and their sort of unexpected often undisclosed ties to Russia. And I'd like to focus on one of those individuals, Roger Stone and his relationship with Guccifer 2.0.

Guccifer 2.0 is an online persona that the I.C. concluded was used by Russian military intelligence to leak documents and e-mails stolen from the democratic national committee to Wikileaks. The U.S. intelligence community including the FBI have concluded that the Russian government directed the breach and that Russian military intelligence used Guccifer 2.0 to ensure that the documents obtained were publicly released.

So while Guccifer has insisted that he or she is not Russian, the intelligence community has concluded that the hacker has strong ties to Moscow and was used by Russian military intelligence, to leak information about the Clinton campaign and the Democrats that was stolen by Russia. Is that, Director Comey, a fair characterization?

COMEY:

Yes, the I.C.'s adjustment was Guccifer 2.0 was an instrument of the Russian intelligence.

FRANKEN:

Thank you. Well, a few months back it was revealed that in August of last year, that's a couple months before the 2016 election, Roger Stone, one of President Trump's long-standing political mentors. And at one time, before formal campaign adviser, exchanged a number of private messages with Guccifer 2.0 via Twitter.

Mr. Stone has since insisted that the relationship was totally innocuous. Now, in this series of messages, Guccifer 2.0 and Mr. Stone exchange a number of bizarre pleasantries. Guccifer thanked Mr. Stone for writing about him. And Mr. Stone expresses delight that Guccifer's Twitter handle was reinstated after having been suspended. But in one message, Guccifer writes to Mr. Stone, quote, "I'm pleased to say that you are a great man. Please tell me if I can help you anyhow, it would be a great pleasure to me."

Director Comey, to me this sounds like a clear offer from a Russian intelligence operative to collaborate with the senior official on the Trump campaign. Is that a throwaway line or an offer to help Stone in some respect? Do we know whether any further communication between Stone and Guccifer took place? And if you can't say here or can't say in -- but you could say in another classified environment, could you make that distinction?

COMEY:

I definitely cannot say here. I don't think I would say in a classified environment because it calls for questions about what we're looking at and -- and how.

FRANKEN:

Yes, sir.

COMEY:

But I definitely can't say here.

FRANKEN:

OK, well at the very least, Stone's conversation with Guccifer demonstrated once again that the Trump campaign officials were communicating with Russian operatives. It was less clear, however, is whether

the Trump campaign ever provided direction to Russian operatives or were aware that specific actions were being carried out to influence the election.

For example, it has been suggested that last year, the Russians use thousands of paid trolls, human trolls. We know this and botnets to flood the Internet, particularly social media and with fake news aimed at influencing the election and favoring President Trump. I'm curious whether such actions were part of a coordinated effort. Is there any evidence that the Trump campaign assisted or directed those efforts?

COMEY:

That's something that I can't answer here, but I would refer you back to what I said, it was the purpose of the «investigation» to understand whether there were any coordination or collusion between elements of the campaign and the Russians.

FRANKEN:

Of course, and I would point out too that -- that right before the Podesta e-mails came out, that Roger Stone said its time -- its soon going to be time for Podesta's time in the barrel. And so I think there may be a little bit of a -- of there (ph) there. Before I end, I just want to -- I only have 30 seconds, so I'm -- I'm -- I want to say this. I know Senator Cornyn isn't here.

I think it's a shame that he said that Hillary yesterday, in this forum, blamed everyone but herself. She took a lot of blame on herself in -- in that forum. And I think she, when she referenced what you did on 11 days before the election, which has been the subject here that and also the Russian interference, I think she was only saying stuff that other people have said that.

I mean I don't think she was saying anything that -- that a lot, a lot of people also think had an effect on the election. So I just think it was a shame that the senator from Texas, I don't know if he meant to leave that out deliberately, but she did not blame everyone but herself.

Thank you, Mr. Chairman.

GRASSLEY:

Say (ph), before I call on the next senator, there's two things I'd like to say. One would be for what you promised Senator Cruz about a briefing on the Garland situation that you would include any of their staff of the committee in on that briefing as well so we have a committee briefing on it as well. At least at the staff level, would you do that?

COMEY:

Assuming they have the clearances for it. I don't think that's a problem at all, I'll do that.

GRASSLEY:

I guess that's -- that's obvious. The second thing is, after we have two more people have a second round, before they get done, I have to go on. I want to thank you for being here, Senator Feinstein will close down the meeting.

Thank you.

COMEY:

OK, thank you Mr. Chairman.

GRASSLEY:

I think under the previous order Senator Hirono was ahead of you.

UNKNOWN:

Mr. Chairman I'm happy to follow Senator Hirono.

GRASSLEY:

OK.

HIRONO:

Thank you. As mentioned earlier, Director in March President issued a revised refugees and visa ban executive order that suspended entry into the U.S. from six majority Muslim countries. The suspicion was this suspension was largely premised on the claim that quote more than 300 person who entered the United States are refugees are currently the subjects of counter terrorism «investigations» by the «Federal»«Bureau» of «Investigation», end quote. Can you provide any additional information on whether the persons under «investigation» are from the six countries subject to the suspension? And are these persons exclusively from the six countries subject to the suspension. And if not what other countries are represented among the population that is currently under «investigation»?

COMEY:

I'm sure we can provide you. What I can tell you here is I think -- I think about a third of them are -- are from the six countries -- so 300. About a third of them are from the six countries. I think two thirds of those were from the seventh country Iraq that was not included. But I'll make sure my staff get to the precise numbers Senator.

HIRONO:

So Iraq is the only other country that was not among the six targeted countries?

COMEY:

I think that's right. Obviously as you ask it I'm wondering whether I'm wrong and so I'll get you the precise numbers.

HIRONO:

Thank you.

COMEY:

But I -- I think it was refugees about 300 about a third from the six countries. And about two thirds from Iraq. That's my ...

HIRONO:

Thank you can provide the information later, thank you very much. And can you provide additional information on the percentage of these individuals who came to the U.S. as children?

COMEY:

I can't as I sit here. I'm sure we get you that information.

HIRONO:

Can you check that? Thank you. And can you provide additional information on the percentage of these individuals who are radicalized after having been in our country for a long period of time? However way you describe a longer period ...

COMEY:

That's a harder one because it's very hard to figure out when someone is radicalized and then when it happened. I'll ask my folks to think about what information we can get you on that. We'll do our best.

HIRONO:

Yes thank you. Probably during the course of your «investigation» you might be able to ascertain when they became radicalized.

We -- I'm turning to the death threats against certain judges. We have an administration that challenges «federal» judges who disagree with President trump's views. We've seen this in the campaign and during his Presidency.

Following Judge Derrick Watson's ruling blocking the president's revised travel ban, judge Watson who sits on the Hawaii district court.

Judge Watson began receiving death threats. I understand the U.S. Marshals have primary responsibility for the protection of «federal» judges, but that the FBI is poised to step in if necessary. Is the FBI investigating the threats made against judge Watson?

COMEY:

I believe we are. It was last week visited the Honolulu field office and got briefed on our work, again to assist the marshals in trying to understand the threats and protect the judge, so I believe we are.

HIRONO:

And then in February the three 9th circuit judges who ruled against the presidents first travel ban also began receiving threats is the FBI investigating those threats?

COMEY:

I don't know that one for sure. I bet we are, but I can't answer with confidence as I sit here.

HIRONO:

So can we say any time «federal» judges are threatened that the FBI would likely be involved in investigating those threats?

COMEY:

Probably in most circumstances, the Marshals have the primary responsibility and in my experience they very very often ask us for assistance on our -- what information we may have some of our technical resources, they're pretty darn good but in most cases I think we offer assistance

HIRONO:

And are the president's continued attacks on the judiciary emboldening individuals to make these sort of threats? We're in an environment where some people might think that it's OK to issue these kinds of threats against judges who disagree with the president.

COMEY:

Yes, that's not something I think I can comment on. It concerning whenever people are directing threats at judges because their independence and insulation from influence whether fear or favor is at the core of the whole justice system, which is why we take them so seriously.

HIRONO:

Yes. And so speaking of the independence of not just the judiciary but I'd like you to clarify the FBI's independence from the DOJ apparatus. Can the FBI conduct an «investigation» independent from the department of Justice. Or does the FBI have to disclose all it's «investigations» to the DOJ? And does it have to get the Attorney General's consent?

COMEY:

Well we work with the Department of Justice, whether that's main justice or U.S. attorney's offices on all of our «investigations».

And so we work with them and so in a legal sense we're not independent of the department of justice. We are spiritually, culturally pretty independent group and that's the way you would want it. But yes, we work with the Department of Justice on all of our «investigations».

HIRONO:

So if the Attorney General or senior officials at the Department of Justice opposes a specific «investigation», can they halt that FBI «investigation»?

COMEY:

In theory yes.

HIRONO:

Has it happened?

COMEY:

Not in my experience. Because it would be a big deal to tell the FBI to stop doing something that -- without an appropriate purpose. I mean where oftentimes they give us opinions that we don't see a case there and so you ought to stop investing resources in it. But I'm talking about a situation where we were told to stop something for a political reason, that would be a very big deal. It's not happened in my experience.

HIRONO:

Well, a number of us have called for an independent investigator or a special prosecutor to investigate the -- the Russian efforts to undermine or to interfere with our elections, as well as the Trump team's relationships with these -- these Russian efforts.

And should the Department of Justice decide that there should be such a independent investigator or a special prosecutor? And you already have an ongoing FBI instigation into these matters. How and the attorney general has already recused himself, so how would -- how would this proceed, when you have the Department of Justice conducting or assigning an independent or special prosecutor and then you're already doing «investigation»? How would this work?

COMEY:

Our investigative team would just coordinate with a different set of prosecutors. It's as if a case was moved from one U.S. attorney's office to another, the investigative team just starts working with a different set of assistant U.S. attorneys. You don't -- you don't...

HIRONO:

So the two «investigations» could proceed, but you would talk to each other, is that what you're describing?

COMEY:

Right, its one -- its one «investigation» and the strength of the justice system at the «federal» level of the United States is, the prosecutors and the agents work together on their «investigations». And so the investigators would disengage from one prosecutor and hook up to another and just continue going.

HIRONO:

So in the «investigations» that you're currently doing on the Russian interference and the Trump team's relationship, are you coordinating with any U.S. attorney's office in these «investigations»?

COMEY:

Yes, well -- two sets of prosecutors, the Main Justice the National Security Division and the Eastern District of Virginia U.S. Attorney's Office.

HIRONO:

So should the A.G. decide to go with this special prosecutor, then you would end your engagement with these other two entities and work with the DOJ special prosecutor?

COMEY:

Well, I could -- yes, potentially or it could be that in some circumstances, an attorney general will appoint someone else to oversee it and you keep the career level prosecutive team. And so to the prosecutors and the agents, there's no change except the boss is different.

HIRONO:

If I could just ask one more follow-up question, so does this -- has this happened before, where you're doing an «investigation» and the attorney general appoints a special prosecutor to conduct the same «investigation»?

COMEY:

It happened to me when I was in what I thought was my last job ever in the government as Deputy Attorney General and I appointed Patrick Fitzgerald, then the U.S. attorney in Chicago to oversee a very sensitive «investigation» involving allegations that Bush administration officials outed a CIA operative.

And so what happened is, the team of agents that had been working for the upper (ph) chain that came to me was just moved over and worked up under Patrick Fitzgerald.

HIRONO:

OK, thank you so it happens.

Thank you, Madam Chair.

FEINSTEIN:

Thank you, Senator.

Last but far from least, Senator Blumenthal.

BLUMENTHAL:

Thank you, Madam Chair.

To take the analogy that you began with, I think we're at the end of a dentist visit, or toward the end of it anyway. And fortunately, there's no unlimited time that the last questioner can take.

COMEY:

My dentist sometimes asks questions, too.

(LAUGHTER)

BLUMENTHAL:

To -- to pursue the line of questioning that Senator Hirono just -- just finished, there is abundant precedent, is there not, for the appointment of a special prosecutor? In fact, there are regulations and guidelines for the appointment of a special prosecutor.

COMEY:

Yes.

BLUMENTHAL:

And that has happened frequently in the history of the Department of Justice. You mentioned one in your experience. Also, then designee Attorney General Richardson, appointed a special prosecutor, Archibald Cox, who then pursued the Watergate «investigation», correct?

COMEY:

Yes, there's been many examples of it.

BLUMENTHAL:

So this would not be a earthshaking, seismic occurrence for a special prosecutor to be appointed, in fact taking your record which is one of dedication to the credibility and integrity of our criminal justice process and your families. I would think that at some point, you might recommend that there be a special prosecutor. Would that be appropriate at some point?

COMEY:

It's possible. I know one of my predecessors did it, Louis Freeh did it, with respect to a Clinton administration issue about Chinese interference in election. So it's possible.

BLUMENTHAL:

And I take your contention that you don't want to talk about your conversations with the current Deputy Attorney General, but my hope is that you will in fact argue forcefully and vigorously for the appointment of special prosecutor.

I think that the circumstances here are exactly parallel to the situation where you appointed Patrick Fitzpatrick and others where routinely, special prosecutors have been appointed. And I know that your recommendation may never be disclosed. But I would urge that -- that you do so.

Going back to the questions that you were asked about your announcement initially, that you were terminating the «investigation» of Hillary Clinton. You said that the matter was one of intense public interest and therefore you were making additional comments about it. Normally there would have been no comments correct?

COMEY:

Correct.

BLUMENTHAL:

And at most, you would have said, as you did just now, there was no prosecutable case, correct?

COMEY:

Correct.

BLUMENTHAL:

And you went beyond that statement and said that she had been extremely careless I believe was the words that you used, which was an extraordinary comment. Would you agree that the «investigation» of the Trump campaigns potential involvement in the Russian interference is also an «investigation» of intense public interest?

COMEY:

Yes I agree.

BLUMENTHAL:

In fact, they're probably very few «investigations» that will be done while you're FBI director that will be of more intense public interest and my question is will you commit to explaining the results of the «investigation» at the time when it is concluded?

COMEY:

I won't commit to it Senator, but I do commit to apply the same principles and reasoning to it. I just don't know where we'll end up so I can't commit sitting here.

BLUMENTHAL:

But you would agree that as the FBI director you would need to go beyond simply saying there's no prosecutable case or there is a prosecutable case?

COMEY:

Potentially.

BLUMENTHAL:

When I was US attorney many years ago, there was actually a rule in the Department of Justice that there could be no report on any grand jury matter or any «investigation» without permission of the Attorney General or main justice.

I don't know whether that rule still applies, but speaking more generally, do you think it's a good idea for prosecutors or yourself to be able to comment in some way to explain the results of an «investigation»?

COMEY:

Not in general I don't. I think it's important that there be -- as there has been for a long time a recognized exception for the exceptional case.

I referred to the IRS alleged targeting «investigation» which was also of intense public interest and then I actually -- I had someone prepare for me a chart. The department has done it infrequently but done it a dozen or more times in the last 5, 10 years. It ought to be reserved for those extraordinary cases, but there are times where the public interest warrants it.

BLUMENTHAL:

With respect to the «investigation» I'm going into the Trump Associates ties to the Russian meddling. Has the White House cooperated?

COMEY:

With the «investigation»?

BLUMENTHAL:

Correct.

COMEY:

That's not something I'm going to comment on.

BLUMENTHAL:

have you had any requests for immunity from anyone, potentially a target of that «investigation»?

COMEY:

I have to give you the same answer Senator.

BLUMENTHAL:

Would you tell this committee if there is a lack of cooperation on the part of the White House?

COMEY:

I won't commit to that.

BLUMENTHAL:

Isn't there again another reason for there to be a special prosecutor because who would you complain to, the Deputy Attorney General? If there were a lack of cooperation on the part of the Trump White House.

COMEY:

If there was a challenge with any «investigation» that I couldn't resolve at the working level, I would elevate it to the Deputy Attorney General whoever was in charge of it.

BLUMENTHAL:

But the Deputy Attorney General is appointed by the president, correct?

COMEY:

Correct.

BLUMENTHAL:

Isn't that a inherent conflict of interest.

COMEY:

It's -- it's a consideration but also the nature of the person in the role is also very important consideration. I think we're lucky to have somebody who thinks about the Justice System, very similar to the way I do and Pat Fitzgerald does and the way you did.

BLUMENTHAL:

And let me ask again to just clarify a question that Senator Hirono asked. The career prosecutors so far involved are in the National security division in Main Justice and the eastern district of Virginia United States attorney's office, correct?

COMEY:

Correct.

BLUMENTHAL:

But the decision about prosecuting would be made by their boss, I think is the word you used correct?

COMEY:

Correct.

BLUMENTHAL:

And that would probably be right now the Deputy Attorney General correct?

COMEY:

Correct. In a matter of a complexity and significance, the ultimate decision in practice is almost always made at the highest level in the Department which would be Rod Rosenstein.

BLUMENTHAL:

And let me ask one last question unrelated. You were asked by Senator Leahy about targets of «investigation». I think your comment was that there were more citizens currently under «investigation for potentially terrorist violence or extremist violence than non citizens, is that correct?

COMEY:

Correct.

BLUMENTHAL:

In terms of sources of information are there many non citizens who have provided such information?

COMEY:

Yes.

BLUMENTHAL:

And are a large number of them undocumented residents of the United States?

COMEY:

I don't know what percentage. I'm sure some significant percentage are.

BLUMENTHAL:

So cooperation from them is important and the fear of apprehension of roundups of mass detention would be a significant deterrent for them, would it not?

COMEY:

In theory, I don't know whether we've seen an impact in practice, though. I just don't know, as I sit here.

BLUMENTHAL:

Could you inquire or do some internal research to the extent it is possible and report back to us about it?

COMEY:

Sure.

BLUMENTHAL:

Thank you, Madam Chairman.

FEINSTEIN:

Thank you very much, Senator.

Director, I think this concludes the hearing. Let me thank you for your ability to last for many hours, its very impressive.

And let me also thank ladies and gentlemen in the audience, many of you have been here from the very beginning. Thank you for your attention and thank you for being respectful, its very much appreciated. And the hearing is adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. CHARLES E. GRASSLEY, R-IOWA CHAIRMAN

SEN. ORRIN G. HATCH, R-UTAH

SEN. LINDSEY GRAHAM, R-S.C.

SEN. JOHN CORNYN, R-TEXAS

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SEN. JEFF FLAKE, R-ARIZ.

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SEN. DIANNE FEINSTEIN, D-CALIF. RANKING MEMBER

SEN. PATRICK J. LEAHY, D-VT.

SEN. RICHARD J. DURBIN, D-ILL.

SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. AMY KLOBUCHAR, D-MINN.

SEN. AL FRANKEN, D-MINN.

SEN. CHRIS COONS, D-DEL.

SEN. RICHARD BLUMENTHAL, D-CONN.

SEN. MAZIE K. HIRONO, D-HAWAII

WITNESSES:

FBI DIRECTOR JAMES COMEY

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Tuesday, May 9, 2017 2:02 PM
To: Horwitz, Sari
Subject: Re: Charging policy

Off the record: probably soon. But no final decision has been made.

On May 9, 2017, at 1:14 PM, Horwitz, Sari (b) (6) wrote:

Thank you. I appreciate your guidance. Do you have a sense of how soon a final decision will be made?

Sent from my iPhone

On May 9, 2017, at 8:50 AM, Rosenstein, Rod (ODAG) (b) (6) wrote:

Off the record: DOJ is reviewing its charging policy. No final decision has been made about how the policy will differ from previous policies.

From: Horwitz, Sari (b) (6)
Sent: Tuesday, May 9, 2017 11:06 AM
To: Rosenstein, Rod (ODAG) (b) (6)
Subject: Charging policy

Rod,

I am being told that DOJ is getting set to tell its prosecutors to disregard the Holder memo when making future charging decisions, and we are getting ready to publish a story saying that. Please tell me if you would like to give me any background guidance to put this in context.

Thanks much,
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, May 11, 2017 11:43 AM
To: Rosenstein, Rod (ODAG)
Subject: CNN reporting

Rod, I know that you replied off the record that you could not respond to my email last night, but can you please tell me on background if this CNN report with Sarah Flores comment is accurate?

CNN: Justice Department spokesperson Sarah Flores, however, said Rosenstein did not threaten to resign over Comey's ouster, contrary to [The Washington Post](#) and other press reports. Flores said she spoke with Rosenstein.

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell: (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

From: Horwitz, Sari
Sent: Wednesday, May 10, 2017 8:55 PM
To: Rosenstein, Rod (ODAG) <(b) (6)>
Subject: Re: Guidance please

Thank you, Rod, and thank you for getting back to me. If there is a point where you feel like you can talk on background about any of this, please let me know.
Sari

Sent from my iPhone

On May 10, 2017, at 8:47 PM, Rosenstein, Rod (ODAG) <(b) (6)> wrote:

Off the record: Sorry I can't talk. (Off the record because one reporter quoted me saying "Sorry I can't talk.")

I am sorry about the funeral.

On May 10, 2017, at 5:07 PM, Horwitz, Sari <(b) (6)> wrote:

Rod,

I am on a plane returning from LA where I was at a (b) (6) yesterday when the Comey news broke. I know you are extremely busy, but I am trying to help my Post colleagues. Excuse this long email and I would rather have this

help my past colleagues. Forgive this long email and I would rather have this conversation on the phone, but I'm stuck on a five-hour plane ride. If you can offer any background guidance with no attribution for these questions, I would be most appreciative. My goal is for our reporting to be as accurate as possible on an important, fast-breaking story where mistakes can be made.

1. What was the Monday meeting at the White House with Sessions and Trump called to discuss if the Comey issue came up spontaneously, as the WH spokeswoman said?
2. How did the subject of Comey first come up in the Oval office? Who raised it and how?
3. Did you immediately start to work on your memo or did you do it the day Comey was fired? Did Trump or Sessions tell you to do it?
4. Was the Huma Abedin forwarding email mistake a catalyst for the firing, even if the dissatisfaction with Comey had been building? If not, why was the decision made to fire Comey now?
5. Did Comey ask you for more resources in any form, as the NYT first reported?
6. Were you aware that the president had called Comey to ask him to investigate leaks?
7. Did you know that Comey had requested more resources for the Russia investigation?
8. Is it accurate, as the White House, is saying that this was all your idea? Is that accurate?

Thank you very much for any background guidance you can give me. My emails are (b) (6) and (b) (6)

My cell is (b) (6) but I cannot answer for the next five hours.

Best,

Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, May 11, 2017 4:00 PM
To: Rosenstein, Rod (ODAG)
Subject: RE:

Ok, thanks for letting me know.

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell: (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

From: Rosenstein, Rod (ODAG) (b) (6)
Sent: Thursday, May 11, 2017 3:51 PM
To: Horwitz, Sari (b) (6)
Subject: RE:

Off the record: Sorry. I can't say anything. None of these stories are from me. (I did mumble a few words in front of a microphone earlier.) I hope to sit down with you if/when this blows over. Please respect that.

From: Horwitz, Sari (b) (6)
Sent: Thursday, May 11, 2017 3:43 PM
To: Rosenstein, Rod (ODAG) (b) (6)
Subject:

I am coming over to DOJ at 4:30. Could I please speak to you off the record for a few minutes?
Thanks much,
Sari

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell: (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Friday, May 12, 2017 6:37 PM
To: Horwitz, Sari
Subject: Re: Is this true?

Off the record: I have not said anything about that.

**Please delete my old .gov email address if it is in your contacts list.*

On May 12, 2017, at 6:09 PM, Horwitz, Sari <(b) (6)> wrote:

CNN is reporting that you have said that you “do not see the need for a special prosecutor?” Is that accurate? Did you say that today?

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell:(b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

Horwitz, Sari

From: Horwitz, Sari
Sent: Friday, May 12, 2017 6:42 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Off the record

Thank you. I'm around all night if you want to talk off the record.

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell: (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

-----Original Message-----

From: Rosenstein, Rod (ODAG) (b) (6)
Sent: Friday, May 12, 2017 6:40 PM
To: Horwitz, Sari (b) (6)
Subject: Re: Off the record

I will talk to Sarah.

> On May 12, 2017, at 1:39 PM, Horwitz, Sari (b) (6) wrote:

>
> Cook called into our briefing yesterday from Tennessee, so yes.
> Flores told reporters yesterday that she "had spoken to Rod Rosenstein" and "he did not threaten to resign." True?
> And just FYI, when I called Flores Wednesday night as a courtesy before our story posted, she yelled at me and called our story "bullshit." When the Post's National Security editor called her, she yelled at him and said the DOJ relationship with the Post would change because of the story.

>
> Sari Horwitz
> Washington Post Staff Writer
> (b) (6)
> Cell (b) (6)
> @sarihorwitz
> Bio and stories: wapo.st/sarihorwitz

>
>
> -----Original Message-----
> **From:** Rosenstein, Rod (ODAG) (b) (6)
> **Sent:** Friday, May 12, 2017 1:28 PM
> **To:** Horwitz, Sari (b) (6)
> **Subject:** Re: Off the record

>

<
> Flores says you heard from Cook yesterday. True?

>
>
>

>> On May 12, 2017, at 10:53 AM, Horwitz, Sari <(b) (6)> wrote:

>>

>> Yes, it would be very good if could talk today.

>>

>> Sari Horwitz

>> Washington Post Staff Writer

>> (b) (6)

>> Cell: (b) (6)

>> @sarihorwitz

>> Bio and stories: wapo.st/sarihorwitz

>>

>>

>> -----Original Message-----

>> From: Rosenstein, Rod (ODAG) <(b) (6)>

>> Sent: Friday, May 12, 2017 7:44 AM

>> To: Horwitz, Sari <(b) (6)>

>> Subject: Off the record

>>

>> Your story understates the significance of paragraph three.

>>

>> Also I don't think it is accurate that this was largely drafted by Steve Cook. The first draft was from Cook, but this is dramatically different. Sorry I was too distracted yesterday to weigh in.

>>

>> I hope we can talk today.

>>

>

Rosenstein, Rod (USAMD)

From: Rosenstein, Rod (USAMD)
Sent: Monday, May 15, 2017 2:07 AM
To: Gauhar, Tashina (ODAG) (JMD); Crowell, James (ODAG) (JMD)
Subject: Fwd: RESTORING PUBLIC CONFIDENCE IN THE FBI, PART 2 - REQUEST FOR FISA WARRANT APPLICATIONS AND RELATED DOCUMENTS
Attachments: 2017.05.14 - Appeal to DAG Rosenstein.pdf; ATT00001.htm

**Please delete (b) (6) from your contacts and use my new DOJ email address instead: (b) (6)*

Begin forwarded message:

From: Carter Page (b) (6)
Date: May 14, 2017 at 11:36:45 PM EDT
To: Rod Rosenstein <(b) (6)>
Cc: "DoJ Civil Rights Division, Voting Section" <voting.section@usdoj.gov>
Subject: RESTORING PUBLIC CONFIDENCE IN THE FBI, PART 2 - REQUEST FOR FISA WARRANT APPLICATIONS AND RELATED DOCUMENTS

Dear Deputy Attorney General Rosenstein:

I have been working to help the U.S. Senate Select Committee on Intelligence get to the bottom of potential government meddling in the 2016 election. I am thus writing to request the assistance of the U.S. Department of Justice with the immediate release of all documents held by DoJ and other U.S. agencies associated with the Obama Administration's interference in the 2016 election. Specifically, any documents related to their alleged wiretapping of me. Please see attached.

Best regards,

Carter Page
Managing Partner
Global Energy Capital LLC
590 Madison Ave., 21st floor
New York, NY 10022
Direct (b) (6)
Fax (b) (6)
Mobile (b) (6)

GLOBAL ENERGY CAPITAL LLC

May 14, 2017

BY ELECTRONIC MAIL AND REGISTERED MAIL

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

SUBJECT: RESTORING PUBLIC CONFIDENCE IN THE FBI, PART 2 - REQUEST FOR
FISA WARRANT APPLICATIONS AND RELATED DOCUMENTS

Dear Deputy Attorney General Rosenstein:

I have been working to help the U.S. Senate Select Committee on Intelligence get to the bottom of potential government meddling in the 2016 election. I am thus writing to request the assistance of the U.S. Department of Justice with the immediate release of all documents held by DoJ and other U.S. agencies associated with the Obama Administration's interference in the 2016 election. Specifically, any documents related to their alleged wiretapping of me.

If FISA warrants indeed exist as has been extensively reported, wide-ranging false evidence will be inevitably revealed in light of the fact that I have never done anything remotely unlawful in Russia or with any Russian person at any point in my life. In helping to expose the continued divergence between fact and fiction, the documents that the U.S. Department of Justice must now provide are crucial to repairing the integrity of your organization following last year's events. Your unbiased leadership in authorizing the release of this information can manifestly help prove how completely unjustified this entire witch hunt organized by the Clinton campaign and the Obama Administration has been all along.

Your letter of May 9, 2017 focused on the indefensible conduct of James Comey in the earlier case of Mrs. Clinton's emails.¹ This marked Part 1 of the necessary process of restoring public confidence in the F.B.I. Given the alleged involvement of the former F.B.I. Director in compounding the civil rights abuses of the Clinton campaign and their associate Christopher Steele against me and other Trump campaign supporters², it is now also essential to get to the

¹ Rod J. Rosenstein, "RESTORING PUBLIC CONFIDENCE IN THE FBI," Memorandum for the Attorney General, May 9, 2017.

² As per the relevant leak regarding the 2016 Dodgy Dossier author: "Mr. Steele met his F.B.I. contact in Rome in early October, bringing a stack of new intelligence reports... The agent said that if Mr. Steele could get solid corroboration of his reports, the F.B.I. would pay him \$50,000 for his efforts, according to two people familiar with the offer." Matt Apuzzo, Michael S. Schmidt, Adam Goldman and Eric Lichtblau, "Comey Tried to Shield the F.B.I. From Politics.

bottom of these later offenses as well. By simply revealing these illegitimate court documents, your help with Part 2 of this closely interrelated process surrounding government influence in the 2016 election should now achieve precisely that end.

In your May 9, 2017 memorandum, you also astutely noted: “When federal agents and prosecutors quietly open a criminal investigation, we are not concealing anything; we are simply following the longstanding policy that we refrain from publicizing non-public information.” Based both on James Comey’s testimony on March 20, 2017 and multiple leaks in the weeks since regarding my unjustified FISA warrant, this represents the polar opposite of how my so-called “case” has been handled. These recent events have remained particularly outrageous given their basis on false evidence from Clinton campaign associates, as well as longstanding political biases of Comey.

Senate Select Committee on Intelligence (SSCI) Chairman Richard Burr has proactively and equitably pledged to, “Follow the evidence where it leads, and we will continue to be guided by the intelligence and facts as we compile our findings.”³ As part of my vigorous quest to help the SSCI and in the interest of belatedly setting the record straight regarding the completely fact-free allegations that have been lawlessly hurled since the final months of the Clinton/Obama regime’s term in office, this letter thus constitutes a request under the Privacy Act of 1974, 5 U.S.C. § 552a to obtain that indispensable information. Of particular importance, I seek an immediate release of any § 1804 FISA applications for wiretapping of myself in the possession of the Department of Justice. The American people were severely misled with falsehoods throughout the past year, so the information that the Department of Justice can now make public should play a critical role in ending this facade and the disgrace to our democracy it represents.

In the event that this request is not granted, and the requested information not released, the nation would undoubtedly be subjected to many more hours of misleading Congressional testimony where honest answers are avoided. Per Comey on March 20, 2017, repeating a standard refrain which protected him as well as other Obama Administration appointees from effective oversight on countless other occasions while permitting the perpetuation of complete misperceptions prior to subsequent felonious leaks: “Because it is an open ongoing investigation and is classified, I cannot say more about what we are doing and whose conduct we are examining.”⁴ Prolonging today’s unjustified status quo is completely unacceptable given the breadth of lies, leaks and resultant civil rights abuses this whole travesty has created since its inception.

Then He Shaped an Election.” *New York Times*, April 22, 2017.

[<https://www.nytimes.com/2017/04/22/us/politics/james-comey-election.html>]

³ “Senate Intel Chairman Burr Statement on Committee’s Ongoing Investigation into Russian Intelligence Activities,” Senator Richard Burr website, March 4, 2017.

⁴ “Full transcript: FBI Director James Comey testifies on Russian interference in 2016 election,” *Washington Post*, March 20, 2017. [<https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election/>]

A song from popular culture accurately describes many of the matters usurping a vast proportion of your time and America's attention given the primary focus of the mainstream media today: "Like a little girl who cries in the face of a monster that lives in her dreams".⁵

Accordingly, Mrs. Clinton made remarks on May 2, 2017 which dodged responsibility for her campaign by instead pointing fingers at two illusory monsters: Comey and Russia.⁶ While you set the record straight regarding the first monster in your letter of last Thursday given Comey's misconduct, the disclosure requested here in this letter will help get to the bottom of the second set of hallucinations.

As reported in an unfortunate front-page *Washington Post* article about the civil rights abuses committed against me: "Applications for FISA warrants, Comey said, are often thicker than his wrists, and that thickness represents all the work Justice Department attorneys and FBI agents have to do to convince a judge that such surveillance is appropriate in an investigation."⁷ If this thickness is indeed the case for my FISA warrant, it will inevitably be filled with a potpourri of falsehoods from the Clinton/Obama regime which fabricated this travesty from the outset. For the United States to end the continued delusional charade regarding Russia, it is essential to gain public access to these related documents as a matter of the highest urgency.

In President Trump's commencement speech at Liberty University yesterday, he correctly noted:

"Following your convictions means you must be willing to face criticism from those who lack the same courage to do what is right and they know what is right, but they don't have the courage or the guts or the stamina to take it and to do it. It's called the road less traveled. I know that each of you will be a warrior for the truth, will be a warrior for our country, and for your family. I know that each of you will do what is right, not what is the easy way, and that you will be true to yourself, and your country, and your beliefs. In my short time in Washington I've seen firsthand how the system is broken."⁸

In stark contrast, the severely broken Obama Administration allowed one of the most cowardly and deceptive civil rights abuses in recent U.S. election history under a protective cloak of secrecy. After presiding over some of the worst setbacks in the history of America's bilateral relationship with Moscow, the former Administration's desperate attempt to make an illegitimate story out of Russia occurred after I took the road less travelled on a personal trip there in July

⁵ Maroon 5, "Harder To Breathe," YouTube, June 16, 2009.

[https://www.youtube.com/watch?v_rV8NHsmVMPE]

⁶ "Full transcript of Hillary Clinton interview with Christiane Amanpour," May 2, 2017.

[<http://transcripts.cnn.com/TRANSCRIPTS/1705/02/cnnt.02.html>]

⁷ Ellen Nakashima, Devlin Barrett and Adam Entous, "FBI obtained FISA warrant to monitor Trump adviser Carter Page" *Washington Post*, April 12, 2017.

[https://www.washingtonpost.com/world/national-security/fbi-obtained-fisa-warrant-to-monitor-former-trump-adviser-carter-page/2017/04/11/620192ea-1e0e-11e7-ad74-3a742a6e93a7_story.html]

⁸ "Read President Trump's Liberty University Commencement Speech," Time, May 13, 2017.

[<http://time.com/4778240/donald-trump-liberty-university-speech-transcript/>]

2016 that had absolutely nothing to do with the Trump campaign. Your future steps in providing the documents requested herein can play an essential role in resolving these complete falsehoods.

Under such a legacy of mismanagement and in the wake of unprecedented crimes surrounding an illegal email server in 2016, the Comey “monster” spectacle lingered for the better part of a year until decisive action was finally taken which marked Part 1 in this process. Your potential forthcoming disclosure of the FISA warrants and associated materials to the American public this week could mark a proactive and conclusive end to this continued, seemingly incessant Russia madness which some still have in their heads.

In addition to the collusion between Clinton campaign associates and the Dodgy Dossier author Christopher Steele, another factor seems to have been in play based under Comey’s earlier mismanagement of the F.B.I. Illegal leaks to news organizations have hinted that the help I provided to federal agents in U.S.A. v. Evgeny Buryakov, Igor Sporyshev, and Victor Podobnyy might have potentially played a role in last year’s unjustified, politically-motivated FISA warrant(s). On April 3, 2017, reporters at ABC News⁹ and BuzzFeed News¹⁰ requested to meet in order to inform me that some U.S. government operatives had unlawfully disclosed my identity as the “Male-1” witness in this 2015 case. It all relates to my brief interactions in 2013 with Victor Podobnyy, a junior attaché assigned to the Permanent Mission of the Russian Federation to the United Nations. This particular incident follows an increasing series of similar revelations about other political unmaskings in 2016.¹¹

During my prior meeting with F.B.I. agents at New York’s Plaza Hotel in June 2013 in support of their ongoing investigation, I spoke with them at length about my research on international political economy which I had been completing as a Fellow at the Center for National Policy in Washington. I brought this up because it seemed to me that the resources of the U.S. Department of Justice and the F.B.I. might be better allocated towards addressing real national security threats, particularly given the recent Boston Marathon bombing of April 15, 2013. Without question, the harsh retribution subsequently taken against me suggests a possible direct retaliation against my dissenting positions, some of which I shared with the agents that day.

Per an article I had recently written and discussed with the U.S. agents at the time, the Clinton/Obama regime had been, “Reflecting the highest principles of cronyism rather than democracy,” in many of their policy decisions. In my writings, I had also cited a recent quote from Maya Angelou which seemed of particular relevance given a range of ineffective policy approaches by Washington at the time: “The philosophers tell us that power corrupts and

⁹ Brian Ross and Matthew Mosk, “Trump campaign adviser Carter Page targeted for recruitment by Russian spies,” ABC News, Apr 4, 2017. [<http://abcnews.go.com/Politics/trump-campaign-advisor-carter-page-targeted-russian-spies/story?id=46557506>]

¹⁰ Ali Watkins, “A Former Trump Adviser Met With A Russian Spy,” BuzzFeed News, April 3, 2017. [<https://www.buzzfeed.com/alimwatkins/a-former-trump-adviser-met-with-a-russian-spy>]

¹¹ Kristina Wong, “Lindsey Graham: 'We Will Continue' to Look into Susan Rice's Unmasking,” Breitbart News, May 4, 2017. [<http://www.breitbart.com/big-government/2017/05/04/lindsey-graham-we-will-continue-to-look-into-susan-rices-unmasking/>]

absolute power corrupts absolutely.”¹² This corruption, as I noted in my writings at the time, had marked an earlier instance of an influence campaign and related domestic political intelligence operations in support of failed policies abroad, which would eventually be repeated with the civil rights violations based on complete fabrications spread by many of the same people during the 2016 election.

In the wake of the civil rights abuses and outright lies promulgated by the Clinton/Obama regime last year, we must get to the bottom of these questions that have ridiculously remained at the top of the national attention and which your leadership in disclosure can facilitate. Based in large part on the widely promulgated misinformation from the Clinton campaign and their other associates, Clinton campaign surrogate¹³ and Ranking Member of the Permanent Select Committee on Intelligence Adam B. Schiff suggested in an article on the front page of yesterday’s *New York Times*: “For a president who baselessly accused his predecessor of illegally wiretapping him, that Mr. Trump would suggest that he, himself, may have engaged in such conduct is staggering.”¹⁴

Based on revelations thus far, I was the primary known person allegedly put under the most intensive surveillance by the Obama Administration as part of their 2016 domestic political intelligence operation. Assuming the FISA reports in the *Washington Post*, *New York Times* and other publications about me are correct, the facts should help dispel the misinformation that Congressman Schiff and others have been given and continue to repeat. To the contrary, each of the President’s tweets of March 4, 2017 were entirely correct as described in the analysis of his four related statements that day, below:

"TERRIBLE! JUST FOUND OUT THAT OBAMA HAD MY 'WIRES TAPPED' IN TRUMP TOWER JUST BEFORE THE VICTORY. NOTHING FOUND. THIS IS MCCARTHYISM!"

Although I stepped away from my role as an informal, unpaid campaign volunteer in the wake of the Clinton campaign’s lies based on the 2016 “Dodgy Dossier”, like many millions of Americans I continued my support as a member of the Trump movement which I had maintained since June 2015.

The key defense that former Obama Administration appointees including James Comey have made apparently centers on the word “my”.

¹² Maya Angelou, “The 2013 Time 100: Icons,” *Time*, April 18, 2013.

[<http://time100.time.com/2013/04/18/time-100/slide/michelle-obama/>]

¹³ “It is both painful and disturbing to see her surrogates peddle half-truths and insult our intelligence. On ‘Fox News Sunday,’ Rep. Adam Schiff (D-Calif.) fared poorly against an experienced interviewer like Chris Wallace...” Jennifer Rubin, “Clinton surrogates serve up thin gruel,” *Washington Post*, May 30, 2016. [<https://www.washingtonpost.com/blogs/right-turn/wp/2016/05/30/clinton-surrogates-serve-up-thin-gruel/>]

¹⁴ Peter Baker and Michael D. Shear, “Trump Stirs a New Question: Are There Tapes?” *New York Times*, May 13, 2017, Page A1. [<https://www.nytimes.com/2017/05/12/us/politics/trump-threatens-retaliation-against-comey-warns-he-may-cancel-press-briefings.html>]

In the English language, the word “my” is defined as: “belonging to or **ASSOCIATED WITH** the speaker” (emphasis added).¹⁵ Although I previously served as a very junior member of the Trump movement who didn’t actually have any direct one-on-one discussions or meetings with our candidate, I have been labelled as a “Trump associate” in literally thousands of media articles and television programs. This labeling largely stemmed from consistent mischaracterizations by the Clinton campaign which tried to smear the Trump campaign with false allegations of improper relationships with Russian officials which never actually occurred.

Furthermore, in order to properly understand his personal lexicon which stems from the altruistic management philosophy of President Trump, it is useful bearing in mind his core campaign philosophy. Per his Election Day victory speech:

"As I've said from the beginning, ours was not a campaign but rather an incredible and great movement, made up of millions of hard-working men and women who love their country and want a better, brighter future for themselves and for their family..... This was tough. This political stuff is nasty, and it is tough.... **You've all given me such incredible support, and I will tell you that we have a large group of people. You know, they kept saying we have a small staff. Not so small.** Look at all of the people that we have. Look at all of these people."¹⁶

Additionally, then-candidate Donald J. Trump also previously explained how his movement was not about him but about us on countless other occasions last year. Again, in his final speech at the end of the campaign after victory had been declared, President-elect Trump noted: “I’ve just received a call from Secretary Clinton. She congratulated us it’s about us on our victory.”¹⁷

"IS IT LEGAL FOR A SITTING PRESIDENT TO BE ‘WIRE TAPPING’ A RACE FOR PRESIDENT PRIOR TO AN ELECTION? TURNED DOWN BY COURT EARLIER. A NEW LOW!"

Based on the actual facts in my case rather than the false information provided by the Clinton campaign and their surrogates in the U.S. Government last year, members of my legal team have informed me that the alleged actions by the Obama Administration are certainly not legal. In order to prove this and rather than continuing the current cover-up, access to the information that I am requesting here is essential.

¹⁵ “My,” Oxford Dictionaries, Oxford University Press, 2017.

[<https://en.oxforddictionaries.com/definition/my>]

¹⁶ “Transcript: Donald Trump’s Victory Speech,” *New York Times*, November 9, 2016.

[<https://www.nytimes.com/2016/11/10/us/politics/trump-speech-transcript.html>]

¹⁷ “Transcript: Donald Trump’s Victory Speech,” *New York Times*, November 9, 2016.

[<https://www.nytimes.com/2016/11/10/us/politics/trump-speech-transcript.html>]

"I'D BET A GOOD LAWYER COULD MAKE A GREAT CASE OUT OF THE FACT THAT PRESIDENT OBAMA WAS TAPPING MY PHONES IN OCTOBER, JUST PRIOR TO ELECTION!"

My legal team has confirmed that great cases can be made. However, in order to do so, the information requested here would be very helpful.

"HOW LOW HAS PRESIDENT OBAMA GONE TO TAPP MY PHONES DURING THE VERY SACRED ELECTION PROCESS. THIS IS NIXON/WATERGATE. BAD (OR SICK) GUY!"

Having previously spoken in favor of some of Mr. Trump's policies on other Fox News Group programs during the 2016 campaign¹⁸ and given the peaceful relationship I have had with Russian citizens since my years in the U.S. Navy, it may be understandable why I would be the primary associated political target if such sick activities had indeed been committed as alleged in the previously cited media reports. Although I have never had any direct relationship or meetings with President Trump despite previously serving as an informal, unpaid member of one of his campaign committees, I had frequently dined in Trump Grill, had lunch in Trump Café, had coffee meetings in the Starbucks at Trump Tower, attended events among other visits in 2016. As a sister skyscraper in Manhattan, my office at the IBM Building (590 Madison Avenue) is literally linked to the Trump Tower building by an atrium. So if prior media reports are proved to be correct that surveillance was indeed undertaken against me and other Trump supporters according to the FISA documentation you can provide, it will essentially be deemed as a proven fact that the American people's concerns that Trump Tower was under surveillance last year is entirely accurate. Please note that my mobile phone is always turned on and with me 24-hours a day, except when I am in airplane-mode during flights. As an early Trump campaign supporter since June 2015 and a proud member of the historic Make America Great Again movement, yet another attack against me of this sort may well have been a de facto attack against the citizen who would eventually become our current President of the United States. Clearly, such potential abuses will be proven or disproven based on the information regarding the alleged illegal wiretapping of me and any associated FISA warrants that you can help provide.

While a September 23, 2016 news article stated that, "U.S. intelligence agencies have also received reports that Page met with another top Putin aide while in Moscow,"¹⁹ it wasn't until several months later in January 2017 that the source of this false evidence became fully known: the Dodgy Dossier prepared on behalf of the "Hillary for America" campaign. As a potential severe case of election fraud, any FISA warrant would help ascertain whether criminal obstruction of justice in the form of false evidence may be the case. After the report by Yahoo

¹⁸ For example: Fox Business, August 16, 2016 [<http://finance.yahoo.com/video/jan-brewer-obama-not-concerned-224534142.html>]; Fox Business, "Varney & Co.," September 8, 2016.

¹⁹ Michael Isikoff, "[U.S. intel officials probe ties between Trump adviser and Kremlin](#)," Yahoo News, September 23, 2016.

News, the Clinton campaign put out an equally false press release just minutes after the article was released that afternoon.²⁰

Compounding this disinformation initiative, even the U.S. Government-funded propaganda outlets echoed the lies advanced by the Clinton campaign's Dodgy Dossier (again, in contrast to what Steele himself said was "never supposed to be made public"²¹). As dutifully recited by the Obama Administration-sponsored Radio Free Europe / Radio Liberty news network in September 2016: "Yahoo News cited the same Western intelligence source as saying that U.S. intelligence officials have received reports that Page has also met with Igor Diveikin, a right-hand man of Vyacheslav Volodin, Putin's first deputy chief of staff and a key architect of Russia's political landscape during Putin's third term."²²

Just days before the election, the same U.S. Government-funded sources repeated these fabrications: "Another adviser, Carter Page, reportedly met with top Kremlin officials including those under U.S. sanctions."²³

The propagation of these falsehoods was indeed truly state-sponsored by our taxpayer dollars with Radio Free Europe/Radio Liberty's FY 2016 budget of \$108.4 million in direct federal subsidies.

My request for disclosure here echoes recent loud cries from across America's political spectrum including the American Civil Liberties Union ("With just the stroke of a pen, President Trump could provide the public with the information necessary to assess his claims that the Obama administration improperly surveilled him and his associates.")²⁴ and Judicial Watch ("Hillary Clinton's national security crimes included running the most highly classified material the U.S. possesses across her outlaw server without legal consequence. If Communications Intelligence is used as a partisan political weapon without people going to jail, we will have crossed the point

²⁰ Hillary for America, "Hillary for America Statement on Bombshell Report About Trump Aide's Chilling Ties To Kremlin," September 23, 2016. [<https://www.hillaryclinton.com/briefing/statements/2016/09/23/hillary-for-america-statement-on-bombshell-report-about-trump-aides-chilling-ties-to-kremlin/>]

²¹ Rowan Scarborough, "Ex-spy admits anti-Trump dossier unverified, blames BuzzFeed for publishing," *Washington Times*, April 25, 2017. [<http://www.washingtontimes.com/news/2017/apr/25/christopher-steele-admits-dossier-charge-unverify/>]

²² "Report: U.S. Intelligence Officials Examining Trump Adviser's Russia Ties," Radio Free Europe / Radio Liberty, September 24, 2016. [<http://www.rferl.org/a/report-us-intelligence-probes-trump-advisers-russia-ties-kremlin/28010062.html>]

²³ Mike Eckel, "Reset To Overload: Russia-U.S. Ties Have Changed, No Matter Who Wins The Election," Radio Free Europe / Radio Liberty, November 6, 2016. [<http://www.rferl.org/a/u-s-election-trump-clinton-relations-russia/28100058.html>]

²⁴ Neema Singh Guliani, "How Trump Can Show Us Whether He Was Spied On," ACLU Washington Markup Blog, April 13, 2017.

of no return for institutional corruption in our government, our intelligence services and law enforcement.”).²⁵

The final report of my 1993 Trident Scholar research at the U.S. Naval Academy concluded: “When information is leaked by other than official sources, the act may undermine the overall integrity of an administration's policy.”²⁶ The veil of secrecy heretofore concealing these potential criminal actions by the Clinton/Obama regime in 2016 has in turn undermined the Trump Administration and our country. Your leadership in expeditiously authorizing this release of the information requested herein will help resolve this detrimental and unjustified problem for our nation.

Overstepping his realm of responsibility once again, Comey pontificated on Russia, “Certainly in my view, the greatest threat of any nation on earth, given their intention and their capability.”²⁷ This displayed a completely unfounded statement and reflected a bias from the former F.B.I. Director which may have contributed to or at least exacerbated the aforementioned misdeeds of the Obama Administration and the Clinton campaign.

The documents I am requesting include all applications made pursuant to 50 U.S.C. § 1804 directed against me, and all related materials.

I am entitled to expedited processing of this request. 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(1)(ii). There is an “urgency to inform the public about an actual or alleged federal government activity,” and the request is made by myself as a person who currently “is primarily engaged in disseminating information” in fulfillment of my ongoing voluntary support of the Senate Select Committee on Intelligence’s investigation. § 16.5(e)(1)(ii).

While lawyers working on my behalf as well as civil rights organizations are currently pursuing this information through the appropriate channels via the federal bureaucracy as well, the typically slow administrative timelines for such release would only prolong the continued state of affairs. I am therefore contacting you directly given the realization that an immediate resolution of this injustice through these disclosures of the actual facts surrounding last year’s misdeeds would facilitate your efforts to restore confidence in the F.B.I. and DoJ which have been badly damaged by Obama Administration appointees.

²⁵ Chris Farrell, “On Watch: Episode 11 ‘Corrupt Weaponizing of Intelligence Collection’,” Judicial Watch, March 28, 2017. [<http://www.judicialwatch.org/press-room/press-releases/watch-episode-11-corrupt-weaponizing-intelligence-collection/>]

²⁶ Carter W. Page, “Balancing Congressional Needs for Classified Information: A Case Study of the Strategic Defense Initiative,” Defense Technical Information Center, U.S.N.A. Trident Scholar project report, no. 206, 1993, p. 11. [<http://www.dtic.mil/dtic/tr/fulltext/u2/a271110.pdf>]

²⁷ “Read the full testimony of FBI Director James Comey in which he discusses Clinton email investigation,” *Washington Post*, May 3, 2017. [<https://www.washingtonpost.com/news/post-politics/wp/2017/05/03/read-the-full-testimony-of-fbi-director-james-comey-in-which-he-discusses-clinton-email-investigation/>]

The story of the 2016 election was to a large extent a battle between powerful political and business interests on an epic scale vs. average citizens who simply want to see improvements in our country. It is unfortunate that a small fish like me has been severely damaged based primarily on completely false allegations in a dossier commissioned and used by killer whales that is 100% inaccurate in every way as it relates to me. Your assistance with this requested disclosure can resolve these stark injustices while assisting your Department return attention to more important matters.

By all indications, your letter from Tuesday which began the first step in the process of restoring public confidence in the FBI and rehabilitating justice in America seems to be the most consequential correspondence of your life. My letter to you today continues the second giant leap in the process of restoring public confidence in the FBI and rehabilitating justice in America and might similarly be the most consequential communication of my life. Let us please build upon your new momentum by moving forward together in helping to restore America's justice system. Thank you in advance for your help with this vital national security matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Carter Page". The signature is fluid and cursive, with the first name "Carter" being more prominent than the last name "Page".

Carter Page, Ph.D.

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, May 16, 2017 5:47 PM
To: Rosenstein, Rod (ODAG)
Subject: Re: This weekend

Thanks Rod. Quite a speech. I'll be back in DC tomorrow morning. Any chance we can speak off the record in the next couple of days?

From: Rosenstein, Rod (ODAG) (b) (6)
Sent: Monday, May 15, 2017 11:55 PM
To: Horwitz, Sari
Subject: Re: This weekend

<http://www.baltimoresun.com/news/maryland/politics/bs-md-rod-rosenstein-20170516-story.html>
[\[baltimoresun.com\]](http://baltimoresun.com)

On May 13, 2017, at 9:54 AM, Horwitz, Sari <(b) (6)> wrote:

Rod,

I am once again writing you from a plane. Sorry to bother you, as I know you have a very busy day. Just wanted to tell you that if you want to/have any time to talk today or this weekend, you can reach me on my cell (202-251-7909) or email. I'll be in Arizona for a few days, visiting my mother, but I'm working on several DOJ stories.

Best,
Sari

Sari Horwitz
Washington Post Staff Writer

(b) (6)
Cell: (b) (6)
@sarihorwitz

Bio and stories: [wapo.st/sarihorwitz\[wapo.st\]](http://wapo.st/sarihorwitz[wapo.st])

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, May 17, 2017 1:56 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Video of Mr. Rosenstein award and his speech

Just fyi:

<https://thefederalist.com/2017/05/16/tips-for-reading-washington-post-stories-about-trump-based-on-anonymous-leaks/>

Sari Horwitz
Washington Post Staff Writer

(b) (6)

Cell: (b) (6)

@sarihorwitz

Bio and stories: wapo.st/sarihorwitz

From: Rosenstein, Rod (ODAG) (b) (6)
Sent: Wednesday, May 17, 2017 9:51 AM
To: Horwitz, Sari <(b) (6)>
Subject: Re: Video of Mr. Rosenstein award and his speech

Not today.

On May 17, 2017, at 9:26 AM, Horwitz, Sari (b) (6) wrote:

Can I please come over and talk to you today?

Sent from my iPhone

On May 17, 2017, at 12:20 AM, Rosenstein, Rod (ODAG) (b) (6) wrote:

[https://vimeo.com/user10242217/review/217619002/f84f9951bd\[vimeo.com\]](https://vimeo.com/user10242217/review/217619002/f84f9951bd[vimeo.com])

The speech begins at 4:00.

Mark Guidera
Vice President, Communications & Marketing
Greater Baltimore Committee
111 S. Calvert Street

Suite 1700
Baltimore, Maryland 21202

Phone: (b) (6)
Fax: (b) (6)
Email: (b) (6)

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[[facebook.com](http://www.facebook.com/GBCorg)]

Upcoming GBC Events

May 15, 2017 GBC 2017 Annual Meeting
May 17, 2017 Newsmaker – Scott Burger, President, Pandora
June 21, 2017 Newsmaker – Paul Comfort, Md. Transit Administration
July 12, 2017 GBC Golf Classic- Greystone Golf Course, White Hall, Md.
August 9, 2017 Newsmaker – Ricky D. Smith, Sr., Executive Director, BWI

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Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, May 17, 2017 7:23 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Special Counsel

I look forward to that.

From: Rosenstein, Rod (ODAG) (b) (6)
Sent: Wednesday, May 17, 2017 6:53 PM
To: Horwitz, Sari <(b) (6)>
Subject: RE: Special Counsel

At some point, I owe you a long story. But this is not the right time for me to talk to anybody.

From: Horwitz, Sari (b) (6)
Sent: Wednesday, May 17, 2017 6:34 PM
To: Rosenstein, Rod (ODAG) <(b) (6)>
Subject: Special Counsel

Now, I see why you couldn't talk today! Obviously, we're writing a big story about this. Is there any chance I could talk to you on background about your decision? Would really appreciate a few moments of your time on this.

Best,
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, May 18, 2017 5:25 PM
To: Rosenstein, Rod (ODAG)
Subject: Urgent

The Washington Post has been told by very good sources that President Trump is now a focus of the FBI investigation. Can I please talk to you as soon as possible on deep background?
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Friday, May 19, 2017 11:24 AM
To: Rosenstein, Rod (ODAG)
Subject: Story

Rod,

As a courtesy, I just wanted to give you a heads up that the Post will be reporting today that the law enforcement investigation into possible coordination between Russia and the Trump campaign is reaching into the White House, as a member of Trump's current inner circle is now a significant person of interest in the probe.

Sari

Ruiz, Rebecca

From: Ruiz, Rebecca
Sent: Sunday, May 21, 2017 9:02 PM
To: Rosenstein, Rod (USAMD)
Subject: Re: NY Times story

Noted, off the record.

Thank you for clarifying our understanding. That will be reflected in the story. We will not mention the charging and sentencing policy, and we will make clear that the criticisms Obama administration officials had regarding the Cartwright matter were stylistic criticisms (not that it's unusual for a prosecutor to take an aggressive approach), and not legal or ethical ones.

I appreciate your help in making sure we weren't inaccurate. The story is due to be in tomorrow's paper, meaning it would go online late tonight.

Rebecca

Rebecca R. Ruiz
The New York Times
(b) (6) (cell)
(b) (6) (office)

On Sun, May 21, 2017 at 7:25 PM, Rosenstein, Rod (USAMD) <(b) (6)> wrote:

Off the record:

Thank you very much for the opportunity. I regret that I do not plan to make any statements. Everybody is entitled to their own opinion. I do want to make two suggestions about my tenure as U.S. Attorney, but only off the record. You are free to validate them or not, on your own.

First, off the record, I have no idea what you mean about the Cartwright case. A prosecutor cannot prejudge a leak case. You need to find out who was the leaker, which is a factual issue, and then decide whether to prosecute. The Attorney General (and the President) publicly stated that we should catch the leaker and hold him accountable, and the Attorney General committed to the Senate that we would do so expeditiously. Review the publicity in June 2012. I do not think we were "remarkably aggressive" in a negative way. I think we approached the case with an appropriate sense of urgency.

Second, off the record, I faithfully implemented the Holder policies. As a matter of fact, I developed a form to document in USAO files that people were following the policies – alleging drug quantities and pursuing mandatory penalties only in appropriate cases meeting the Holder guidelines – and then I

distributed the form to other U.S. Attorneys. I also spoke at one of the U.S. Attorneys' Conferences about how to implement the policies effectively.

From: Ruiz, Rebecca (b) (6)
Sent: Sunday, May 21, 2017 6:27 PM
To: Rosenstein, Rod (USAMD) (b) (6)
Subject: NY Times story

Mr. Rosenstein,

I do not expect you to reply. I simply wanted to inform you further of our story about you, likely to publish tomorrow.

We have spoken to friends and colleagues of yours (including, to be quoted: Andrew White, James Trusty, Gregg Bernstein, Doug Gansler).

I want to give you a sense of what to expect and an opportunity to respond to our reporting before we publish.

People have described you as an apolitical prosecutor in your 27 years at the Justice Department; they have said you are skilled at staying focused on the law and tuning out political noise. One example of that: the Black Guerrilla Family case in Maryland, which had political overtones but in which, per Mr. Gansler, you simply followed the facts.

Some Obama administration officials we talked to criticized your handling of the Cartwright case, suggesting that your team took a remarkably aggressive approach and seemed to prejudge the matter. Others said that you seemed resistant to the Holder charging and sentencing policy regarding nonviolent drug crimes, newly reversed.

Friends said you were likely surprised by how the memo you wrote about Mr. Comey was used as an initial rationale for the firing, but that the way the situation had been evolved was symbolic: That you likely corrected the record with people in the administration, quietly and without taking the spotlight.

Should you or a spokesperson have anything to say in response to any of this, we would gladly incorporate it in our story.

I am available on my cell below at any time.

Thank you for reading.

Rebecca Ruiz

Rebecca R. Ruiz

The New York Times

(b) (6) (cell)
(office)

Swanson, Matthew L. (ODAG)

From: Swanson, Matthew L. (ODAG)
Sent: Monday, May 22, 2017 8:58 AM
To: Rosenstein, Rod (ODAG); Crowell, James (ODAG); Terwilliger, Zachary (ODAG); Goldsmith, Andrew (ODAG); Bonilla, Armando (ODAG); Cook, Steven H. (ODAG); Gauhar, Tashina (ODAG); Lan, Iris (ODAG); Raman, Sujit (ODAG); Schools, Scott (ODAG); Troester, Robert J. (ODAG); Frank, Michael (ODAG); Hill, John L. (ODAG); Bumatay, Patrick (ODAG); Barnett, Gary (ODAG); Bressack, Leah (ODAG); Mizelle, Chad (ODAG); Murray, Michael (ODAG); Sheehan, Matthew (ODAG)
Subject: FW: Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2017-004020 (DAG)
Attachments: 01. Initial Request (5.11.17).pdf

The initial request is attached. Details of the search process can be found below.

Best,
Matt

From: Kochurka, Kimberley (OIP)
Sent: Friday, May 19, 2017 4:41 PM
To: Swanson, Matthew L. (ODAG (b) (6)) >
Cc: Hibbard, Douglas (OIP (b) (6))
Subject: Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2017-004020 (DAG)

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

The requester, Jason Leopold, is seeking records pertaining to:

- Potential voter fraud in the November 2016 general election, and the May 11, 2017 Executive Order on election integrity.

The officials that will be searched for this request are:

- Deputy Attorney General Rod Rosenstein
- James Crowell
- Zachary Terwilliger
- Andrew Goldsmith
- Armando Bonilla
- Steven Cook
- Tashina Gauhar
- William Hall
- Iris Lan
- Sujit Raman
- Scott Schools
- Robert Troester
- Michael Frank

- John Hill
- Patrick Bumatay
- Gary Barnett
- Leah Bressack
- Chad Mizelle
- Michael Murray
- Matthew Sheehan

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. G or H drive) maintained by the officials listed above. We have also initiated a search in the Offices of the Attorney General, Associate Attorney General, Legislative Affairs, Legal Policy, Public Affairs, Information Policy, and of the Departmental Executive Secretariat.

To the extent officials within your office maintain other types of records, such as text and voice messages, or material maintained within a classified system, that would be responsive to this request but would not be located as a result of OIP's records search, please indicate so in response to this email. OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request or you can readily identify the officials(s), be they either current or former employees, that would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014, and DOJ Policy Statement 0801.04 provide that government employees may not use a non-official email account for official business unless the communication is fully captured in a DOJ recordkeeping system either by copying their official account or forwarding any such messages to their official account within twenty days. Should any records custodians have official records responsive to this FOIA request which are on a non-official account but were not copied into their official email account, those records should be provided to OIP.

If you have any questions concerning this matter, please feel free to call me (b) (6) or by replying to this email.

Attachment

This is a request for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

REQUESTER INFORMATION

Name: Jason Leopold

Affiliation: Senior Investigative Reporter/BuzzFeed News

Address (b) (6)

(b) (6)

Email (b) (6)

Phone (b) (6)

RECORDS SOUGHT

I request disclosure from the Department of Justice Public Integrity Section, Office of the Attorney General, Office of Legal Counsel, Office of the Deputy Attorney General, Civil Division, Office of Professional Responsibility, Office of Public Affairs, Office of Legislative Affairs, Office of Information Policy, US Attorneys, Office of Legal Policy, Office of the Associate Attorney General, Criminal Division, National Security Division, the following records:

1. Legal opinions, memoranda, findings, factual evidence, studies, audits or advisories concerning actual or potential voter fraud in the November 2016 General Election, including but not limited to documents supporting the President’s allegation that millions of votes were fraudulently cast against him.
2. Communications—including but not limited to emails, letters, social-media posts, Twitter direct messages—to, from, or about the presidential transition, the President’s staff, or the Vice President’s staff addressing actual or potential voter fraud in the November 2016 General Election, including but not limited to documents supporting the President’s allegation that millions of votes were fraudulently cast against him.
3. Changes or potential changes to any rules, regulations, guidance, or guidelines contemplated in connection with this investigation.
4. Any and all legal opinions, legal guidance, mentioning or referring to the President’s May 11, 2017 executive order on election integrity.
5. Any and all letters, to or from the Office of Legislative Affairs from a member of the House and Senate and a House and Senate Congressional Committee.
6. Any and all emails, letters, memos, from all offices listed above that mentions or refers to “ELECTION INTEGRITY” and “VOTER FRAUD.” The date range for this

specific search is November 1, 2016 through the date the search for responsive records is conducted.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”

EXPEDITED PROCESSING REQUEST

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(e)(1)(ii), (iv), I request that the DOJ expedite the processing of this request. I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions concerning the government’s integrity that affect public confidence. There are more than 5 million Google hits on this subject matter less than a day after the firing took place, most of which question the integrity of the action. As discussed above, this matter already has been the subject of widespread media interest and attention, predominantly as a result of the President’s own statements which he has not provided evidence to support. The information sought in this request will meaningfully further public discourse on this issue of national concern.

ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included. Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am an investigative reporter for BuzzFeed News covering a wide-range of issues, including Guantanamo, national security, counterterrorism, civil liberties, human rights, and open government. Additionally, my reporting has been published in VICE News, The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) (“Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the

government and is not primarily in the commercial interest of the requester.”). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’”). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

Under 32 C.F.R. 1900.13(b), “Records will be furnished without charge or at a reduced rate whenever the Agency determines . . . (2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.”

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to 32 C.F.R. 1900.02(h)(3). According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. This is consistent with the definition provided in 32 C.F.R. 1900.02(h)(3) As the legislative history of FOIA reveals, “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) “A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.” 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes. According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

As the legislative history of FOIA reveals, “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected. . . . In fact, any

person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) “A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.” 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies my request for a fee waiver. Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, May 24, 2017 8:21 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Good morning

Ok. But, does that mean I cannot even have an off-the-record background conversation with you about anything?

-----Original Message-----

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Wednesday, May 24, 2017 8:16 PM
To: Horwitz, Sa (b) (6) >
Subject: Re: Good morning

Off the record: I agreed not to do any media without OPA. I hope to do another group session soon.

> On May 24, 2017, at 8:19 AM, Horwitz, Sa (b) (6) > wrote:
>
> Any chance we could get a cup of coffee soon? Maybe next week, possibly in Bethesda?
>
> Sent from my iPad

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, May 25, 2017 12:10 PM
To: Rosenstein, Rod (ODAG)
Subject: FYI

FYI: The Post is about to publish a story saying that “Jared Kushner, President Trump’s son-in-law and an influential White House advisor, is a significant subject in the escalating law enforcement probe of Russian meddling in the 2016 election and related matters, according to people familiar with the matter.

I know you probably cannot comment one way or the other on this, but if you have any issues or concerns, please call me.

Sari

Swanson, Matthew L. (ODAG)

From: Swanson, Matthew L. (ODAG)
Sent: Wednesday, May 31, 2017 3:04 PM
To: Rosenstein, Rod (USAMD); Crowell, James (ODAG) (JMD); Terwilliger, Zachary (ODAG) (JMD); Goldsmith, Andrew (ODAG) (JMD); Ohr, Bruce (ODAG) (JMD); Cook, Steven H. (ODAG) (JMD); Gauhar, Tashina (ODAG) (JMD); Lan, Iris (ODAG) (JMD); Raman, Sujit (ODAG) (JMD); Schools, Scott (ODAG) (JMD); Troester, Robert J. (ODAG) (JMD); Frank, Michael (ODAG) (JMD); Hill, John L. (ODAG) (JMD); Bumatay, Patrick (ODAG) (JMD); Barnett, Gary (ODAG) (JMD); Bressack, Leah (ODAG) (JMD); Mizelle, Chad (ODAG) (JMD); Murray, Michael (ODAG) (JMD); Sheehan, Matthew (ODAG) (JMD)
Subject: FW: Notification of Records Search to be Conducted in Response to the FOIA, Moss OIP No DOJ-2017-004088 (DAG)
Attachments: 01. Initial Request (5.9.17).pdf

Hi all,

The initial search request is attached.

Thanks,

Matt

From: Hotchkiss, Eric (OIP)
Sent: Wednesday, May 31, 2017 12:56 PM
To: Swanson, Matthew L. (ODAG (b) (6))
Cc: Hibbard, Douglas (OIP (b) (6))
Subject: Notification of Records Search to be Conducted in Response to the FOIA, Moss OIP No DOJ-2017-004088 (DAG)

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

The requester, Brad Moss of the James Madison Project is seeking records pertaining to:

- The dismissal of Federal Bureau of Investigation Director James Comey.

The officials that will be searched for this request are:

- Deputy Attorney General Rod Rosenstein
- James Crowell
- Zachary Terwilliger
- Andrew Goldsmith
- Bruce Ohr
- Armando Bonilla
- Steven Cook
- Tashina Gaugar
- Iris Lan
- Sujit Raman

- Scott Schools
- Robert Troester
- Michael Frank
- John Hill
- Patrick Bumatay
- Gary Barnett
- Leah Bressack
- Chad Mizelle
- Michael Murray
- Matthew Sheehan

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. G or H drive) maintained by the officials listed above. We have also initiated searches in the Offices of the Attorney General, Associate Attorney General, Legislative Affairs, and Public Affairs, and of the Departmental Executive Secretariat.

To the extent officials within your office maintain other types of records, such as text and voice messages, or material maintained within a classified system, that would be responsive to this request but would not be located as a result of OIP's records search, please indicate so in response to this email. OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request or you can readily identify the officials(s), be they either current or former employees, that would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014, and DOJ Policy Statement 0801.04 provide that government employees may not use a non-official email account for official business unless the communication is fully captured in a DOJ recordkeeping system either by copying their official account or forwarding any such messages to their official account within twenty days. Should any records custodians have official records responsive to this FOIA request which are on a non-official account but were not copied into their official email account, those records should be provided to OIP.

If you have any questions concerning this matter, please feel free to call m (b) (6) or by replying to this email.

Attachment

The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20010

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

May 9, 2017

VIA E-MAIL

Laurie Day
Chief, Initial Request Staff
Office of the Attorney General
Department of Justice
1425 New York Avenue, NW
Washington, D.C. 20530-0001

RE: Termination of FBI Director James Comey

Dear Ms. Day:

This is a request on behalf of The James Madison Project (“JMP”) and The Wall Street Journal reporter Shane Harris (“Mr. Harris”)(hereinafter referred to jointly as “the Requesters”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*

On May 9, 2017, FBI Director James Comey (“Director Comey”) was informed that, by order of President Donald J. Trump (“President Trump”), he had been terminated and removed from office, effective immediately. <http://edition.cnn.com/2017/05/09/politics/james-comey-fbi-trump-white-out/index.html> (last accessed May 9, 2017). President Trump’s letter to Director Comey indicated that he was relying upon recommendations from Attorney General Jeff Sessions (“AG Sessions”) and Deputy Attorney General Rod Rosenstein (“DAG Rosenstein”). <http://www.newsweek.com/read-james-comey-fired-heres-his-dismissal-letter-606380> (last accessed May 9, 2017). According to media reports, AG Sessions was specifically asked to “build a case” justifying the termination of Director Comey. <http://thehill.com/homenews/administration/332651-sessions-was-told-to-find-reasons-to-fire-comey-reports> (last accessed May 9, 2017). President Trump’s letter to Director Comey, as well as the underlying memoranda from AG Sessions and DAG Rosenstein, were all dated May 9, 2017. <https://apps.washingtonpost.com/g/documents/politics/fbi-director-james-b-comeys-termination-letters-from-the-white-house-attorney-general/2430/> (last accessed May 9, 2017).

In the aftermath of the firing of Director Comey being reported, lawmakers began issuing calls for a special prosecutor to take over the investigation into allegations of collusion during the 2016 presidential election between the Trump campaign and the Russian Government.

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

<http://q13fox.com/2017/05/09/democrats-renew-call-for-special-prosecutor-on-russia-probe-after-trumps-firing-of-fbi-director/> (last accessed May 9, 2017); <http://www.independent.co.uk/news/world/americas/us-politics/james-omey-fired-trump-russia-special-prosecutor-investigation-schumer-lates-news-a7727266.html> (last accessed May 9, 2017).

The Requesters seek copies of records created, received and/or maintained by the Office of the Attorney General (“AG”), the Office of the Deputy Attorney General (“DAG”), and/or the Office of the Associate Attorney General (“AAG”), including cross-references. Specifically, the Requesters are seeking:

- 1) Any records memorializing discussions between Department of Justice (“DOJ”) staff and White House staff concerning the possibility of terminating Director Comey, including, but not limited to, requests by White House staff for legal guidance; and
- 2) Any records memorializing discussions among DOJ staff concerning the possibility of terminating Director Comey, including, but not limited to, memoranda prepared for review and requests for the collection of particular factual information concerning prior actions by Director Comey.

The AG, the DAG, and the AAG should construe “DOJ staff” and “White House staff” to encompass Government civilian employees, political appointees, Constitutional officers, and contract staff. The scope of the searches should include, but not be limited to, e-mail communications on unclassified and classified systems, as well as records stored on individual hard drives and/or shared drives.

The AG, the DAG and the AAG can limit the timeframe of their searches from January 20, 2017, up until the date upon which the DOJ components begin conducting searches for responsive records. The scope of the searches should not be limited to AG-originated, DAG-originated, or AAG-originated records and should be construed to include records that are currently in the possession of a U.S. Government contractor for purposes of records management.

The Requesters are pre-emptively waiving any objection to the redaction of the names of any U.S. Government officials below a GS-14 position or whom otherwise were not acting in a supervisory position. The Requesters similarly waive any objection to redactions of the names of any U.S. Government contractors in a position of authority similar to that of a GS-13 series civilian employee or below.

In terms of all other third parties who work or worked for the U.S. Government and whose names appear in records responsive to this request, the Requesters submits that the privacy interests of those individuals have been diminished by virtue of their involvement in one or more of the U.S. Government functions described above as falling within the scope of this request. There is a recognized inverse relationship between the position of authority that a government

employee holds and the strength of that employee's privacy interests. See Stern v. FBI, 737 F.2d 84, 92 (D.C. Cir. 1984); Jefferson v. Dep't of Justice, 2003 U.S. Dist. LEXIS 26782, *11 (D.D.C. Nov. 14, 2003); see also Perlman v. Dep't of Justice, 312 F.3d 100, 107-109 (2d. Cir. 2002)(setting forth five factors to consider in weighing government employee's privacy interests against public interest in disclosure, including employee's rank and whether information sheds light on a government activity).

The work performed by these third parties was part of their official responsibilities on behalf of the U.S. Government and was not of a personal nature. They served in a position of trust and authority to, among other things, evaluate possible concerns that had been raised regarding Director Comey's actions and make recommendations with respect to whether the circumstances warranted advising President Trump to terminate Director Comey. Given that responsive records memorializing the work they performed will shed light on government activity, it would be reasonable to conclude that the relevant third parties' respective (and diminished) privacy interests are outweighed by the public interest in disclosure of the information indexed to their name.

We are requesting a waiver of or, at a minimum, a reduction in fees. The Requesters qualify in their own respective rights for designation as representatives of the news media.

JMP is a non-partisan organization dedicating to promoting government accountability and the reduction of secrecy. <http://jamesmadisonproject.org/> (last accessed May 9, 2017). Mr. Harris, for his part, currently serves as a Senior Writer for The Wall Street Journal. He received the New York Public Library's Helen Bernstein Book Award for his book, *The Watchers*, and was the 2010 winner of the 2010 Gerald R. Ford Prize for Distinguished Reporting on National Defense. His most recent book is entitled "*@War: The rise of the Military-Internet Complex.*" <http://shaneharris.com/> (last accessed February 20, 2017).

The Requesters have the ability to disseminate information on a wide scale and intend to use information obtained through this FOIA request in an original work, particularly through news articles written by Mr. Harris. According to 5 U.S.C. § 552(a)(4)(A)(ii),

the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

The Requesters can demonstrate their intent and ability to publish or otherwise disseminate information to the public. See Nat'l Security Archive v. Dep't of Defense, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Mr. Harris in particular maintains the ability to publish articles explaining the content of any responsive records received as part of this request. In the event that fees are ultimately assessed, do not incur expenses beyond \$25 without first contacting our office for authorization.

Relying upon the same reasons we provided above outlining a public interest in disclosure of responsive records, we are also **requesting expedited processing**. FOIA permits expedited processing when a “compelling need” exists. 5 U.S.C. § 552(a)(6)(E)(v). Specifically, “compelling need” means “with respect to a request made by a person primarily engaged in disseminating information, **urgency to inform the public concerning actual or alleged Federal Government activity.**” *Id.* at § 552(a)(6)(E)(v)(II). There is a compelling and immediate need to clarify the particular circumstances in which such a controversial and politically-explosive personnel decision was made, particularly in light of Director Comey’s oversight of the investigation into allegations of collusion.

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible. However, the Requesters do not agree to pay an additional fee to receive records on a CD, and in the instance that such a fee is required, the Requesters will accept a paper copy of responsive records.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me a (b) (6) or via e-mail a (b) (6).

Sincerely,

/s/

Bradley P. Moss

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Friday, June 2, 2017 6:02 PM
To: Horwitz, Sari
Subject: RE: Interview

[Please check with Sarah.](#)

From: Horwitz, Sa (b) (6)]
Sent: Friday, June 2, 2017 6:01 PM
To: Rosenstein, Rod (ODAG (b) (6)
Subject: Interview

Hi Rod,

I saw that you did an interview with the Associated Press. Would it be possible for us to please interview you also?

Thanks,
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, June 8, 2017 2:58 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Off the record

I sent you the one quote.

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 2:42 PM
To: Horwitz, Sari <Sari.Horwitz@washpost.com>
Subject: RE: Off the record

Please do send the quotes. Did he say he asked me to do something?

From: Horwitz, Sari (b) (6)
Sent: Thursday, June 8, 2017 2:29 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: RE: Off the record

I was just going to write you because I am writing a longer story about this. I'll send you the exact quotes from the transcript, but Comey testified that he brought his serious concerns about Trump's interference with the FBI to you and he said you did nothing. I wanted to see if you would like to comment.

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 2:08 PM
To: Horwitz, Sari (b) (6) >
Subject: Off the record

I saw your story. What exactly did he say?

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, June 8, 2017 4:39 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Off the record

Yes, I told you that was the only reference to you. I am saying since we have not spoken about this and I don't know the answer that it is unclear what, if anything, you did with his concerns.

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 4:36 PM
To: Horwitz, Sari (b) (6)
Subject: RE: Off the record

Off the record:

OPA says this is the only reference to me. Read carefully because it is not clear how many discussions he is talking about:

COMEY: In general, I did. I spoke to the attorney general, and I spoke to the new deputy attorney general Mr. Rosenstein when he took office and explained my serious concern about the way in which the president is interacting, especially with the FBI. And I specifically as I said in my opinion, I asked the attorney general, it can't happen that you get kicked out of the room and the president talks to me in the room, and -- but why didn't we raise the specific -- it was an investigative interest to us to try to figure out what just happened with the president's request so I would not have wanted to alert the White House that it had happened until we figured out what are we going to do with this investigatively.

From: Horwitz, Sari (b) (6)
Sent: Thursday, June 8, 2017 4:12 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: RE: Off the record

Ok.

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 4:02 PM
To: Horwitz, Sari (b) (6)
Subject: RE: Off the record

Off the record:

I think you should just quote his vague statement. He knows how to make specific allegations when he wants to.

From: Horwitz, Sari (b) (6)
Sent: Thursday, June 8, 2017 3:57 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: RE: Off the record

I understand that you don't want to comment. I am now writing a fuller story (rather than a blog item) about what Comey said regarding you and the AG. I just wanted to see if you wanted to respond to his statement that he brought you his concerns about Trump's interactions with him regarding the Russia investigation. As for the blog item, I have asked the editors to change the headline and add another line regarding you.

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 3:51 PM
To: Horwitz, Sa (b) (6) >
Subject: RE: Off the record

Off the record:

I have been firm about not discussing the facts on or off the record. I am not commenting. I am just pointing out that your story makes assumptions that go beyond what he said. I was not sworn in until April 26. Jim's friend claims that he thought I would be compromised. Excuse me? I am not the one who pledged loyalty and leaked memos about federal investigations.

From: Horwitz, Sa (b) (6)
Sent: Thursday, June 8, 2017 3:45 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: RE: Off the record

I just called you. Do you have a minute to talk?

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 3:43 PM
To: Horwitz, Sa (b) (6)
Subject: RE: Off the record

12:42 PM

June 8 by Sari Horwitz

Comey raised serious concerns about two highest-ranking Justice officials

Comey raised serious concerns about the two highest-ranking officials in the Justice Department during his testimony.

In addition, Comey said he brought his concerns about how Trump dealt with the Russia investigation to new Deputy Attorney General Rod Rosenstein.

From: Horwitz, Sa (b) (6)]
Sent: Thursday, June 8, 2017 3:23 PM
To: Rosenstein, Rod (ODAG (b) (6)) >
Subject: RE: Off the record

What spin are you talking about? Comey testified that he went to you and Sessions about his concerns regarding Trump. Please tell me your concerns since I am writing a story on this. Do you want to have an off the record conversation?

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 3:15 PM
To: Horwitz, Sa (b) (6)]
Subject: RE: Off the record

Off the record:

That's it? The spin in your post is really unfair. My family is still reeling from the false "Comey requested resources" banner headline. There should be some standard of objectivity. There is no logical way to postulate a conspiracy theory with me in it.

From: Horwitz, Sa (b) (6)]
Sent: Thursday, June 8, 2017 2:45 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: RE: Off the record

Rod,

This is what he said:

I spoke to the new deputy attorney general, Mr. Rosenstein, when he took office, and explained my serious concern about the way in which the president is interacting, especially with the FBI."

Sari

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Thursday, June 08, 2017 2:08 PM
To: Horwitz, Sa (b) (6)]
Subject: Off the record

I saw your story. What exactly did he say?

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Friday, June 9, 2017 5:54 PM
To: Horwitz, Sari
Subject: RE: So...

I never take offense at hard questions.

From: Horwitz, Sa (b) (6)
Sent: Friday, June 9, 2017 5:53 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: RE: So...

I never want to bug anyone, Rod. But my job is to ask questions. If you can't answer them, I completely understand and will not take it personally. But, any serious reporter has to ask the hard questions. As a tough prosecutor, I know you totally understand that. 😊

From: Rosenstein, Rod (ODAG (b) (6))
Sent: Friday, June 09, 2017 5:48 PM
To: Horwitz, Sa (b) (6)
Subject: RE: So...

I hope. As long as you don't bug me with questions I can't answer now. Let me try to set something up for late next week.

From: Horwitz, Sa (b) (6)
Sent: Friday, June 9, 2017 5:47 PM
To: Rosenstein, Rod (ODAG (b) (6))
Subject: So...

Am I ever going to get to talk to you in person? I asked your folks in OPA early in the week.
Sari

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

Ruiz, Rebecca

From: Ruiz, Rebecca
Sent: Monday, June 12, 2017 4:22 PM
To: Rosenstein, Rod (USAMD)
Subject: New York Times inquiry

Mr. Rosenstein,

Ahead of the Attorney General's testimony tomorrow, we'd like to ask you about your oversight of the Russia inquiry.

Given what Jim Comey testified to last week -- the broad purview of the special counsel and the fact that Bob Mueller has asked for Mr. Comey's memos -- it seems clear that the president's actions regarding Mr. Comey fall under the scope of Mr. Mueller's investigation.

I know you told the Associated Press you'd recuse yourself from overseeing the inquiry if you became a target, but doesn't this make you a potential witness?

Have you recused yourself or are you considering recusing yourself?

Can you oversee an investigation in which the firing of Mr. Comey could be looked at?

I'm available at any time on my cell below at any time and would greatly appreciate your response to these questions.

Rebeca

Rebecca R. Ruiz
The New York Times
(b) (6) (cell)
(b) (6) (office)

Horwitz, Sari

From: Horwitz, Sari
Sent: Monday, June 12, 2017 8:27 PM
To: Rosenstein, Rod (ODAG)
Subject: Mueller

Are these reports that the president is considering firing Mueller accurate? Have you heard anything about this? (On background or off the record) Sari

Sent from my iPad

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, June 14, 2017 4:25 PM
To: Rosenstein, Rod (ODAG)
Subject: Re:

My cel (b) (6)

Sent from my iPhone

On Jun 14, 2017, at 4:20 PM, Rosenstein, Rod (ODAG) (b) (6) > wrote:

Phone number?

On Jun 14, 2017, at 4:07 PM, Horwitz, Sa (b) (6) > wrote:

We have a story that will be published shortly and I wanted to give you the heads-up, but not on email. Do you have a couple minutes to talk?
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, June 14, 2017 6:55 PM
To: Rosenstein, Rod (ODAG)
Subject: Re:

In what way specific?

Sent from my iPhone

On Jun 14, 2017, at 6:50 PM, Rosenstein, Rod (ODAG) (b) (6) > wrote:

Off the record:

Officials? I think the Post should be a bit more specific.

On Jun 14, 2017, at 4:07 PM, Horwitz, Sa (b) (6) > wrote:

We have a story that will be published shortly and I wanted to give you the heads-up, but not on email. Do you have a couple minutes to talk?
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, June 14, 2017 7:52 PM
To: Rosenstein, Rod (ODAG)
Subject: Re:

I'm sorry I can't be more helpful, Rod. But we take source protection seriously and again, in this environment of leak investigations, we can't say anything more about our sources. But, I always care what you think on important subjects like this one.

Sent from my iPhone

On Jun 14, 2017, at 7:12 PM, Rosenstein, Rod (ODAG (b) (6)) > wrote:

Off the record:

I respect your job of pursuing leaks, although it conflicts with my duty to prevent them. I have no idea who are the sources of your alleged facts. My point is that if they are not officials who work for DOJ or the special counsel, which the Post story implies I think it is unfair. You should at least reveal whether your sources are or are not involved in conducting the investigation.

On Jun 14, 2017, at 6:57 PM, Horwitz, Sa (b) (6)) > wrote:

In the current environment, with leak investigations and threatened leak investigations, we cannot be more specific.

Sent from my iPhone

On Jun 14, 2017, at 6:50 PM, Rosenstein, Rod (ODAG (b) (6)) wrote:

Off the record:

Officials? I think the Post should be a bit more specific.

On Jun 14, 2017, at 4:07 PM, Horwitz, Sari (b) (6)) > wrote:

We have a story that will be published shortly and I wanted to give you the heads-up, but not on email. Do you have a couple minutes to talk?

Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, June 15, 2017 10:37 PM
To: Rosenstein, Rod (ODAG)
Subject: Re: Your statement

Are you counting me as "some people?"

Sent from my iPhone

> On Jun 15, 2017, at 10:25 PM, Rosenstein, Rod (ODAG (b) (6)) > wrote:

>

> Off the record:

>

> I think some reporters are trying to mislead people into believing they have sources inside the investigation who are violating their obligations by talking. Sometime we will have a long talk.

>

>> On Jun 15, 2017, at 10:21 PM, Horwitz, Sa (b) (6) m> wrote:

>>

>> If you have a particular problem with the accuracy of one of our stories, it would be very helpful to me and my colleagues if you let us know what the issue is. I really respect you Rod and would take your concerns seriously. But I don't know what to make at all of your statement.

>>

>> Sent from my iPhone

>>

>>> On Jun 15, 2017, at 9:59 PM, Rosenstein, Rod (ODAG (b) (6)) > wrote:

>>>

>>> Off the record;

>>>

>>> I am still not commenting about particular matters. It is a reminder not to believe everything in the media. No offense.

>>>

>>>

>>>

>>>> On Jun 15, 2017, at 9:49 PM, Horwitz, Sari (b) (6) > wrote:

>>>>

>>>> It's very unusual. Does this have to do with the Kushner story. Or the obstruction one? Or other ones reported by different outlets?

>>>> Sari

>>>>

>>>> Sent from my iPhone

>>

Horwitz, Sari

From: Horwitz, Sari
Sent: Friday, June 16, 2017 10:14 AM
To: Rosenstein, Rod (ODAG)

I really need to talk to you off the record about what's going on this morning.

Sent from my iPhone

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Friday, June 16, 2017 11:29 AM
To: Horwitz, Sari
Subject: Re: Deputy Attorney General Rod Rosenstein acknowledges he may need to recuse himself from Russia probe - ABC News

Off the record: Don't run it. Ian will give you a comment.

> On Jun 16, 2017, at 10:38 AM, Horwitz, Sa (b) (6) > wrote:

>

> We are going to run this story unless you tell me it's not true.

> <http://abcnews.go.com/Politics/deputy-attorney-general-privately-acknowledges-recuse-russia-probe/story?id=48080253>

>

>

> Sent from my iPhone

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Saturday, June 17, 2017 10:00 AM
To: Horwitz, Sari
Subject: Re: Good morning

Thank you for the offer. I just need to be firm on not discussing anything about the matter. So any questions would need to be handled by OPA and preferably in writing.

> On Jun 17, 2017, at 9:50 AM, Horwitz, Sari (b) (6) > wrote:
>
> Is there any chance we could talk off the record today or tomorrow?
>
> Sent from my iPad
>

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, June 20, 2017 3:34 PM
To: Rosenstein, Rod (ODAG)
Subject: Just checking

I'm writing a short story about Sessions having a personal lawyer. Just wanted to check with you do you have one also?
Sari

Ferrato, Katherine M. (ODAG)

From: Ferrato, Katherine M. (ODAG)
Sent: Friday, June 30, 2017 2:12 PM
To: Rosenstein, Rod (ODAG)
Subject: FW: Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2017-004901 (DAG)
Attachments: 01. Initial Request (6.23.17).pdf

Hello The initial search request is attached. Let me know if you have any questions.

From: Kochurka, Kimberley (OIP)
Sent: Friday, June 30, 2017 2:10 PM
To: Ferrato, Katherine M. (ODAG (b) (6) >
Cc: Villanueva, Valeree A (OIP (b) (6)
Subject: Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2017-004901 (DAG)

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

The requester, Jason Leopold, is seeking records pertaining to:

- Correspondence between Deputy Attorney General Rod Rosenstein and any reporter or editor from named publications, dating from March 2, 2017 (see attached request).

The officials that will be searched for this request are:

- Deputy Attorney General Rod Rosenstein

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. G or H drive) maintained by the officials listed above.

To the extent officials within your office maintain other types of records, such as text and voice messages, or material maintained within a classified system, that would be responsive to this request but would not be located as a result of OIP's records search, please indicate so in response to this email. OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request or you can readily identify the official(s), be they either current or former employees, that would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014, and DOJ Policy Statement 0801.04 provide that government employees may not use a non-official email account for official business unless the communication is fully captured in a DOJ recordkeeping system either by copying their official account or forwarding any such messages to their official account within twenty days. Should any records custodians have official records responsive to this FOIA request which are on a non-official account but were not copied into their official email account, those records should be provided to OIP.

If you have any questions concerning this matter, please feel free to call me (b) (6) or by replying to this email.

Attachment

Request Details
Request Type : FOIA

Status : Assignment Determination **Due Date : N/A**
🕒 **0 (Never Started)**



Request Details

| | |
|---------------------------------------|--|
| Tracking Number : DOJ-2017-004901 | Submitted Date : 06/23/2017 |
| Requester : Mr. Jason Leopold | Last Assigned Date : 06/23/2017 |
| Organization : Investigative Reporter | Fee Limit : \$25.00 |
| Requester Has Account : Yes | Request Track : Simple |
| Email Address : (b) (6) | Due Date : N/A |
| Phone Number : (b) (6) | Assigned To : Kim Kochurka (Office of the Deputy Attorney General) |
| Fax Number : N/A | Last Assigned By : Valeree Villanueva (Department of Justice - Office of Information Policy) |
| Address : (b) (6) | |
| City : (b) (6) | |
| State/Province : (b) (6) | |
| Zip Code/Postal Code : (b) (6) | |

Submission Details

Request Handling

| | |
|--|--|
| Requester Info Available to the Public : No | Request Perfected : No |
| Request Track : Simple | Acknowledgement Sent Date : |
| Fee Category : | Unusual Circumstances ? : No |
| Fee Waiver Requested: Yes | 5 Day Notifications: No |
| Fee Waiver Status: Pending Decision | Litigation : No |
| Expedited Processing Requested : Yes | * Litigation Court Docket Number: <input type="text"/> |
| Expedited Processing Status : Pending Decision | |

Request Description

Short Description : N/A

I request disclosure from the Department of Justice Office of the Deputy Attorney General and Office of Public Affairs any and all emails, text messages, gchats, or other electronic communications, sent and received by Rod Rosenstein to any reporter and/or editor from the Washington Post, The New York Times, Reuters, McClatchy Newspapers, The Daily Beast and The Associated Press, between March 2, 2017 and the date the search for responsive records is conducted. Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)): (A) An agency shall— (i) withhold information under this section only if— (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) disclosure is prohibited by law; and (ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information. . . . DOJ and its components should not fail to meet the requirements of Section 552(a)(8) when processing my request and release responsive records to me in full or at least in part.

| | | |
|--|-----------------------------------|--------|
| Description Available to the Public : No | Has Description Been Modified? No | 0/2000 |
|--|-----------------------------------|--------|

Additional Information

Litigation Counsel Name : N/A
 Litigation Case Number : N/A
 Litigation Contact Information : N/A

Sub-Office : Office of the Deputy Attorney General


Attached Supporting Files

No supporting files have been added.

Case File

Direct URL : <https://localhost:8443/foia/action/public/view/request/813d049d>

Case Details

Type of Case : 
Fiscal Year : 2017
Total Days Pending : 0

Received Date : 06/23/2017
Clock Initially Started On : TBD



Request Details

| | |
|---------------------------------------|--|
| Tracking Number : DOJ-2017-004901 | Submitted Date : 06/23/2017 |
| Requester : Mr. Jason Leopold | Perfected Date : 06/23/2017 |
| Organization : Investigative Reporter | Last Assigned Date : 06/23/2017 |
| Requester Has Account : Yes | Fee Limit : \$25.00 |
| Email Address : (b) (6) | Request Track : Complex |
| Phone Number : (b) (6) | Due Date : 07/24/2017 |
| Fax Number : N/A | Assigned To : Kim Kochurka (Office of the Deputy Attorney General) |
| Address : (b) (6) | Last Assigned By : Valeree Villanueva (Department of Justice - Office of Information Policy) |
| City : (b) (6) | |
| State/Province : (b) (6) | |
| Zip Code/Postal Code : (b) (6) | |

Task Details

| | |
|--|--|
| Task Type : Expedited Processing | Assigned To : Kim Kochurka (Office of the Deputy Attorney General) |
| Due Date : 07/03/2017 | Last Assigned Date : 06/23/2017 |
| Task Submitted Date : 06/23/2017 | Last Assigned By : Valeree Villanueva (Department of Justice - Office of Information Policy) |
| Task Received Date : 06/23/2017 | |
| Description : Expedited Processing Task | |
| Comments : I ask that my request be given expedited processing because there is an urgency to inform the public about an actual or alleged federal government activity, and I am a person primarily engaged in disseminating information. As a senior investigative journalist at BuzzFeed News, I am a full-time member of the news media. I therefore qualify as a person primarily engaged in disseminating information. There is an urgent need to inform the public about Mr. Rosenstein's communications with the media about a matter that is of global import: the investigation into Russia's alleged role in influencing the US presidential election and the media's reporting on the investigation. This request seeks records which will shed light on government activity regarding this matter that the public has the right to know about. Additionally, these documents will likely contain information about the candidates that is otherwise unavailable publicly. And because of Mr. Rosenstein's statement about the use of anonymous sources and the public's waning support of the media, the need for these records is urgent. | |

- Submission Details
- Case File
- Admin Cost
- Assigned Tasks
- Comments (2)
- Review

Request Handling

| | |
|--|-----------------------------|
| Requester Info Available to the Public : No | Request Perfected : Yes |
| Request Track : Complex | Perfected Date : 06/23/2017 |
| Fee Category : Unassigned | Acknowledgement Sent Date: |
| Fee Waiver Requested: Yes | Unusual Circumstances ? No |
| Fee Waiver Status: Pending Decision | |
| Expedited Processing Requested : Yes | |
| Expedited Processing Status : Pending Decision | |

Request Description

Short Description :

I request disclosure from the Department of Justice Office of the Deputy Attorney General and Office of Public Affairs any and all emails, text messages, gchats, or other electronic communications, sent and received by Rod Rosenstein to any reporter and/or editor from the Washington Post, The New York Times, Reuters, McClatchy Newspapers, The Daily Beast and The Associated Press, between March 2, 2017 and the date the search for responsive records is conducted. Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)): (A) An agency shall— (i) withhold information under this section only if— (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) disclosure is prohibited by law; and (ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information. . . . DOJ and its components should not fail to meet the requirements of Section 552(a)(8) when processing my request and release responsive records to me in full or at least in part.

Description Available to the No
Public :

Has Description Been
Modified?

Additional Information

Litigation Counsel Name : N/A

Litigation Case Number : N/A

Litigation Contact N/A

Information :

Sub-Office : Office of the Deputy Attorney General

Attached Supporting Files

Attachments Available to the No

Public : No supporting files have been added.

Subject: Meeting
Location: DAG's Conference Room, 4111 Main

Start: Thu 7/6/2017 4:30 PM
End: Thu 7/6/2017 5:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Murphy, Marcia (ODAG) on behalf of Rosenstein, Rod (ODAG)
/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP
(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7364A46E955B40869D4DF51FE6F9EACD-ROSENSTEIN,

Required Attendees: Schools, Scott (ODAG); Gauhar, Tashina (ODAG (b) (6)); Hur, Robert (ODAG); Crowell, James (ODAG) (JMD); AMZ; CWK; RSMSC

POC: Scott Schools
Attendees:
ODAG: DAG Rosenstein, Scott Schools, Tash Gauhar, Rob Hur, Jim Crowell
SCO: Bob Mueller, Aaron Zebley

From: CWK on behalf of CWK on behalf of RSMSC /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E0D23D43C1D3444CBD37B629ADE440EA-MUELLER, RO
Sent: Monday, July 3, 2017 4:04 PM
To: Rosenstein, Rod (ODAG)
Subject: Accepted: Meeting
Sensitivity: Private

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, July 19, 2017 8:04 PM
To: Rosenstein, Rod (ODAG)
Subject: NYT story

Hi Rod,

Is anyone from DOJ going to respond to what the president said to the New York Times about you and Sessions? We have to write a story about this tonight.

Best,
Sari

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

Horwitz, Sari

From: Horwitz, Sari
Sent: Thursday, July 20, 2017 4:21 PM
To: Rosenstein, Rod (ODAG)

Hi Rod,

Any chance that you can talk on background about what's going on? I understand if you don't want to, but I just wanted to give you the opportunity if you could.

Best,
Sari

(b) (6)

Horwitz, Sari

From: Horwitz, Sari
Sent: Monday, July 24, 2017 5:34 PM
To: Rosenstein, Rod (ODAG)

Rod,

Would it be possible for us to talk for a few minutes off the record today?

Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, July 25, 2017 10:41 AM
To: Rosenstein, Rod (ODAG)
Subject: Talk

During this unusual time, it would be good to have an open line of communication if at all possible -- even if it's on background or off the record. Just a thought.

Best,
Sari

Sent from my iPad

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, July 25, 2017 11:35 AM
To: Rosenstein, Rod (ODAG)

We are working on a big story today about what is happening at the Justice Department given the President's tweets and what is being said from the White House. It would be very, very, very helpful if you -- or someone in public affairs -- would talk to us so it doesn't look like everyone at DOJ is hiding from the press and will at least give us a sense of what is going on here in light of the attacks from the President on his attorney general.

Thank you for any help you can give us on this.

Best,
Sari

Sent from my iPad

Horwitz, Sari

From: Horwitz, Sari
Sent: Friday, July 28, 2017 12:44 PM
To: Rosenstein, Rod (ODAG)
Subject: RE: Question

Call me.

Off the record:

Did she directly answer your question?

From: Horwitz, S (b) (6)
Sent: Friday, July 28, 2017 11:24 AM
To: Rosenstein, Rod (ODAG (b) (6)
Subject: RE: Question

Yes, Sarah just sent me your forwarded message from me and said she was not aware of him being there.

From: Rosenstein, Rod (ODA (b) (6)
Sent: Friday, July 28, 2017 11:09 AM
To: Horwitz, Sa (b) (6)
Subject: RE: Question

Off the record:

Thanks. Please check with OPA for any response.

From: Horwitz, Sari (b) (6)
Sent: Friday, July 28, 2017 10:46 AM
To: Rosenstein, Rod (ODAG (b) (6)
Subject: Question

Good morning Rod,

We've been told that Rudy Giuliani was at the Justice Department in the late afternoon on Monday and he met with you. Since you have criticized reporters in the past for not checking their information and reporting it accurately, I wanted to reach out to you to get a comment on or off the record.

Thanks much,
Sari

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, September 12, 2017 10:34 AM
To: Rosenstein, Rod (ODAG)
Subject: A request

Hi Rod,

I haven't seen you around the building in a while. To better understand and cover this Justice Department, I would very much like to talk to you over lunch or dinner off the record. I completely understand that there are many things you can't talk about, but I also know it would make a better Justice reporter to have your on-background insights about the department and its policies.

If you feel you have to go through OPA for this request, please let me know and I will ask them rather than you forward this request. I'm not sure that they will make this happen, which is why I'm going to you directly. But I will try, if you feel that is the best route. In covering past Justice departments, I found that it helped the department and helped me do a better job when I was able to regularly meet with senior officials, off the record.

If you'd like to call me about this, my numbers are (b) (6) a (b) (6)

Best,
Sari

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, September 12, 2017 4:00 PM
To: Rosenstein, Rod (ODAG)

https://www.washingtonpost.com/local/ike-fulwood-a-friend-who-made-me-a-better-person/2017/09/09/0ce67c6a-94cb-11e7-89fa-bb822a46da5b_story.html?utm_term=.414366d86549

Horwitz, Sari

From: Horwitz, Sari
Sent: Tuesday, September 19, 2017 10:00 PM
To: Rosenstein, Rod (ODAG)
Subject: Fact-checking

Is the WSJ story accurate that you were interviewed by the Special Counsel's Office?
Sari

Sent from my iPhone

Ferrato, Katherine M. (ODAG)

From: Ferrato, Katherine M. (ODAG)
Sent: Thursday, September 21, 2017 1:29 PM
To: Rosenstein, Rod (ODAG); Hur, Robert (ODAG); Crowell, James (ODAG); Terwilliger, Zachary (ODAG); Goldsmith, Andrew (ODAG); Ohr, Bruce (ODAG); Cook, Steven H. (ODAG); Gauhar, Tashina (ODAG); Lan, Iris (ODAG); Raman, Sujit (ODAG); Schools, Scott (ODAG); Troester, Robert J. (ODAG); Frank, Michael (ODAG); Hill, John L. (ODAG); Bumatay, Patrick (ODAG); Bolitho, Zachary (ODAG); Loveland, Daniel (ODAG); Medina, Amelia (ODAG); Bressack, Leah (ODAG); Mizelle, Chad (ODAG); Murray, Michael (ODAG); Sheehan, Matthew (ODAG)
Cc: Gamble, Nathaniel (ODAG); Murphy, Marcia (ODAG)
Subject: FW: Notification of Records Search to be Conducted in Response to the FOIA, Leopold OIP No DOJ-2017-006650 (DAG)
Attachments: 01. Initial Request (9.11.17).pdf

Hi all The initial request is attached. Let me know if you have any questions.

From: Hotchkiss, Eric (OIP)
Sent: Thursday, September 21, 2017 12:24 PM
To: Ferrato, Katherine M. (ODAG (b) (6))
Cc: Villanueva, Valeree A (OIP (b) (6))
Subject: Notification of Records Search to be Conducted in Response to the FOIA, Leopold OIP No DOJ-2017-006650 (DAG)

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

The requester, Jason Leopold of BuzzFeed News is seeking records pertaining to:

- the decision to end the Deferred Action for Childhood Arrivals (DACA) program.
- Time frame dating since January 20, 2017

The officials that will be searched for this request are:

- Deputy Attorney General Rod Rosenstein
- Robert Hur
- James Crowell
- Zachary Terwilliger
- Andrew Goldsmith
- Bruce Ohr
- Armando Bonilla
- Steven Cook
- Tashina Gauhar
- Iris Lan
- Sujit Raman
- Scott Schools
- Robert Troester
- Michael Frank
- John Hill

- Patrick Bumatay
- Zachary Bolitho
- Daniel Loveland
- Amelia Medina
- Leah Bressack
- Chad Mizelle
- Michael Murray
- Matthew Sheehan

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. G or H drive) maintained by the officials listed above. We have also initiated searches in the Offices of the Attorney General, Legislative Affairs, and Public Affairs, and of the Departmental executive secretariat.

To the extent officials within your office maintain other types of records, such as text and voice messages, or material maintained within a classified system, that would be responsive to this request but would not be located as a result of OIP's records search, please indicate so in response to this email. OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request or you can readily identify the official(s), be they either current or former employees, that would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014, and DOJ Policy Statement 0801.04 provide that government employees may not use a non-official email account for official business unless the communication is fully captured in a DOJ recordkeeping system either by copying their official account or forwarding any such messages to their official account within twenty days. Should any records custodians have official records responsive to this FOIA request which are on a non-official account but were not copied into their official email account, those records should be provided to OIP.

If you have any questions concerning this matter, please feel free to call me (b) (6) or by replying to this email.

Attachment



Request Details

| | |
|---------------------------------------|--|
| Tracking Number : DOJ-2017-006511 | Submitted Date : 09/09/2017 |
| Requester : Mr. Jason Leopold | Perfected Date : 09/11/2017 |
| Organization : Investigative Reporter | Last Assigned Date : 09/13/2017 |
| Requester Has Account : Yes | Fee Limit : \$25.00 |
| Email Address : (b) (6) | Request Track : Complex |
| Phone Number : (b) (6) | Due Date : 10/10/2017 |
| Fax Number : N/A | Assigned To : Eric Hotchkiss (Office of the Attorney General) |
| Address : (b) (6) | Last Assigned By : Valeree Villanueva (Department of Justice - Office of Information Policy) |
| City : (b) (6) | |
| State/Province : (b) (6) | |
| Zip Code/Postal Code : (b) (6) | |

Submission Details

Request Handling

| | |
|--|--|
| Requester Info Available to No the Public : | Request Perfected : Yes |
| Request Track : Complex | Perfected Date : 09/11/2017 |
| Fee Category : | Acknowledgement Sent Date: |
| Fee Waiver Requested: Yes | Unusual Circumstances ? : No |
| Fee Waiver Status: Pending Decision | 5 Day Notifications: No |
| Expedited Processing Yes Requested : | Litigation : No |
| Expedited Processing Status : Pending Decision | * Litigation Court Docket Number: <input type="text"/> |

Request Description

Short Description : records pertaining to DACA (ERH)(Seeks Expedition under Standard iv)

I request disclosure from the Office of Public Affairs any and all records, which includes but is not limited to emails, memos, talking points, mentioning or referring to the decision by the President of the United States's, Donald Trump, to end the Deferred Action for Childhood Arrivals, also known as DACA, and sometimes referred to as the DREAMers. I request any and all correspondence between the Office of Public Affairs, the Office of Legal Counsel, the Office of Legislative Affairs, the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Solicitor General and the Executive Office of Immigration Review, mentioning or referring to the Deferred Action for Childhood Arrivals, DACA, DREAMers program, the constitutionality of the program, and any correspondence exchanged between these offices about ending it. The timeframe for this part of my request is January 20, 2017 through the date the search for responsive records is conducted. I request disclosure of any and all talking points mentioning or referring to the Deferred Action for Childhood Arrivals, DACA, DREAMers program and decisions to end it and any and all talking points provided to Attorney General Jeff Sessions about it. Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)): (A) An agency shall— (i) withhold information under this section only if— (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) disclosure is prohibited by law; and (ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information. . . . OLC should not fail to meet the requirements of Section 552(a)(8) when processing my request

| | |
|--|-----------------------------------|
| Description Available to the No Public : | Has Description Been No Modified? |
|--|-----------------------------------|

Additional Information

Litigation Counsel Name : N/A
Litigation Case Number : N/A
Litigation Contact : N/A
Information :
Sub-Office : Office of Public Affairs

Attached Supporting Files

No supporting files have been added.

Case File

Direct URL : <https://localhost:8443/foia/action/public/view/request/815a9ea3>

Case Details

| | |
|--|---|
| Type of Case : <input type="text" value="FOIA"/> | Received Date : 09/11/2017 |
| Fiscal Year : 2017 | Clock Initially Started On : 09/11/2017 |
| Total Days Pending : 5 | |

Assigned Tasks

| Outcome | Assigned To | Assigned By | Creation Date | Due Date | Closed Date | Notification | Detail |
|---|----------------|--------------------|---------------|------------|-------------|--------------------------|--------|
| Pending | Eric Hotchkiss | Valeree Villanueva | 09/11/2017 | 09/21/2017 | | <input type="checkbox"/> | |
| <p><i>Description</i> : Expedited Processing Task</p> <p><i>Comments</i> : There is an overwhelming public interest in DACA and the Trump administration's decision to end the program. The welfare of at least 800,000 individuals identified as DREAMers/recipients of this program are at risk and they may face the prospect of being deported when the program winds down in 6 months. There have been thousands of news stories written about this decision and statements by lawmakers, many of which have condemned the administration's actions. I need these records urgently in order to inform the public about actual government activity.</p> | | | | | | | |
| Pending | Eric Hotchkiss | Valeree Villanueva | 09/09/2017 | 09/09/2017 | | <input type="checkbox"/> | |
| <p><i>Description</i> : Fee Waiver Task</p> <p><i>Comments</i> : I am the senior investigative reporter for BuzzFeed News and formerly senior investigative reporter and on-air correspondent for VICE News. Additionally, my reporting has been published in The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America. I request a complete waiver of all search and duplication fees. If my request for a waiver is denied, I request that I be considered a member of the news media for fee purposes. Under 5 U.S.C. §552(a)(4)(A)(iii), "Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Disclosure in this case meets the statutory criteria, as the records sought detail the operations and activities of government. This request is also not primarily in my commercial request, as I am seeking the records as a journalist to analyze and freely release to members of the public. If I am not granted a complete fee waiver, I request to be considered a member of the news media for fee purposes. I am willing to pay all reasonable duplication expenses incurred in processing this FOIA request. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.</p> | | | | | | | |

Horwitz, Sari

From: Horwitz, Sari
Sent: Wednesday, October 4, 2017 12:06 PM
To: Rosenstein, Rod (ODAG)
Subject: WaPo story

Hi Rod,

Our reporters have been told that you pushed back with Mueller on the Special Counsel budget in August and imposed what amounted to a hiring freeze. We are pretty close to reporting this. If that information is wrong, please tell me. I don't want a repeat of a story earlier this year that inaccurately said you denied resources to Comey. Your people in OPA have said no comment to questions about your pushing back on the Special Counsel budget and they will not engage with our reporters on this story. Can you please give me some guidance to make sure this is accurately reported?

Best,

Sari

Sari Horwitz
Washington Post Staff Writer
(b) (6)
Cell (b) (6)
@sarihorwitz
Bio and stories: wapo.st/sarihorwitz

Bui, Lynh

From: Bui, Lynh
Sent: Saturday, October 7, 2017 7:18 PM
To: Rosenstein, Rod (ODAG)
Subject: Re: Off the record

Thank you! I will fix.

Sent from my iPhone

On Oct 7, 2017, at 3:05 PM, Rosenstein, Rod (ODAG (b) (6)) wrote:

Good story about the Maryland USAO. Note that Steve never worked at Main Justice. Other than the Army, he never left Baltimore. He was the USAO civil rights coordinator for a while. <https://www.justice.gov/archive/usao/md/news/archive/NewFirstAssistantU.S.AttorneyAppointed.html|justice.gov>

From: Medina, Amelia (ODAG)
Sent: Friday, October 20, 2017 12:44 PM
To: Murphy, Marcia (ODAG)
Cc: Crowell, James (ODAG)
Subject: OLA meeting today
Attachments: 2017-10-20 Weekly Report FINAL.docx; Rosenstein mentions at SJC Oversight Hearing.docx

Hi Marcy, OLA has said they do not have an agenda for today's bi-weekly with them, except that they will be discussing generally the AG's hearing testimony as well as nominations. However, I've attached the weekly report memo they just sent in, if the DAG would like a pre-read of what they have going on. In addition, OLA collected excerpts of the AG's hearing testimony in which the DAG was mentioned; Jim received the email but I've attached the transcript again here in case DAG would like it printed before the meeting.

Amelia



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 20, 2017

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE OFFICE OF THE DEPUTY ATTORNEY GENERAL

FROM: Stephen E. Boyd, Assistant Attorney General

SUBJECT: Weekly Report for October 23 through October 27, 2017

The House and Senate are in session this week.

The following is a summary of our current activities:

A. Hearings at Which the Department is Testifying

1. **“Federal Efforts to Combat the Opioid Crisis: A Status Update on CARA and Other Initiatives.”** On Wednesday, October 25, 2017, at 10:00 a.m., in Room 2123 of the Russell House Office Building, the House Committee on Energy and Commerce will hold a hearing entitled, “Federal Efforts to Combat the Opioid Crisis: A Status Update on CARA and Other Initiatives.” Neil Doherty, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Agency, will testify on behalf of the Department.
2. **“Securing Stronger and Safer Indian communities: Legislative Hearing on Public Safety Bills.”** On Wednesday, October 25, 2017, at 2:30 p.m., in Room 628 of the Dirksen Senate Office Building, the Senate Committee on Indian Affairs will hold a hearing on 3 bills before the Committee: S. 1870, Securing Urgent Resources Vital to Indian Victim Empowerment Act 2017; S. 1953, Reauthorization of the Tribal and Law Order Act of 2010; and S. 1942, “Savanna’s Act.” The Department of Justice and the Department of Interior have been invited to testify. R. Trent Shores, U.S. Attorney for the Northern District of Oklahoma, will testify on behalf of the Department.

B. Hearings of Interest to the Department

None to report.

C. Nominations

1. Department Nominees.

Summary: Of the Department's 13 executive nominations sent to the Senate, eight have been confirmed as of October 12, 2017.

Pending on the Senate Executive Calendar: Steven Andrew Engel (nominee to be Assistant Attorney General, Office of Legal Counsel), Jeffrey Clark (nominee to be Assistant Attorney General, Environment and Natural Resources Division), Brian Benzowski (nominee to be Assistant Attorney General, Criminal Division), and Eric Dreiband (nominee to be Assistant Attorney General, Civil Rights Division).

Pending in the Senate Judiciary Committee: On Wednesday, October 17, 2017, in Room 224 of the Dirksen Senate Office Building, the Senate Judiciary Committee held a hearing to consider the nominations of: Gregory G. Katsas; Jeffrey Uhlman Beaverstock; Emily Coody Marks; Brett Joseph Talley; and Holly Lou Teeter.

On October 19, 2017, the Senate Judiciary Committee reported favorably on the nomination of John Demers for Assistant Attorney General to the National Security Division. We anticipate a hearing before the Senate Select Committee on Intelligence before November 16, 2017.

2. U.S. Attorney Nominees.

Summary: Of the 46 U.S. Attorney nominations sent to the Senate, 24 have been confirmed as of October 19, 2017.

Pending on the Executive Calendar: Robert M. Duncan (E.D. KY.); Charles E. Peeler (M.D. GA.); Bryan D. Schroder (D. AK.); Scott C. Blader (W.D. WI.); Mark A. Klaassen (D. WY.); William C. Lamar (N.D. MS.); John R. Lausch (N.D. IL.); and J. Douglas Overbey (E.D. TN.).

The following 14 nominations are pending before the Senate Judiciary Committee:

| | | | |
|--------------------|----------|------------------------|----------|
| Bobby L. Christine | S.D. GA. | Erin Nealy Cox | N.D. TX. |
| Andrew E. Lelling | D. MA. | Ronald A. Parsons, Jr. | D. SD. |
| Scott W. Brady | W.D. PA. | John F. Bash | W.D. TX. |
| R. Andrew Murray | W.D. NC. | Stephen R. McAllister | D. KS. |
| Michael B. Stuart | S.D. WV. | David J. Freed | M.D. PA. |
| Duanne DAK Kees | W.D. AR. | Matthew G.T. Martin | M.D. NC. |
| Matthew Krueger | E.D. WI. | Christina Nolan | D. VT. |

3. U.S. Marshal Nominees.

Summary: Of the 94 U.S. Marshal nominations, 11 have been sent to the Senate as of October 19, 2017.

Pending in Senate Judiciary Committee: Jesse Seroyer, Jr. (M.D. AL.), Michael T. Baylous (S.D. WV.), David G. Jolley (E.D. TN.), Daniel R. McKittrick (N.D. MI.), Norman Euell Arflack (E.D. KY.), Frank M. Coffman (E.D. OK.), Thomas M. Griffin, Jr. (D. SC.), Mark S. James (W.D. MO.), Johnny Lee Kuhlman (W.D. OK.), Daniel C. Mosteller (D. SD.), and Gary G. Schofield (D. NV.).

D. Briefings

1. **“Operation Pacifier.”** On Thursday, October 26, 2017, 10:00 a.m., at the Federal Bureau of Investigation (FBI) Headquarters, FBI supervisors and Child Exploitation and Obscenity Section Chief, Steve Grocki, will provide a briefing to majority and minority staff of the Senate Homeland Security and Governmental Affairs Committee Permanent Subcommittee on Investigation on child exploitation through the dark net. This briefing is being offered in lieu of the Committee’s request for a briefing on a pending case, “Operation Pacifier.”
2. **FISA 702.** On Monday, October 23, 2017, at the National Security Agency, Rob Boyer, Deputy Section Chief of Operations, Office of National Intelligence, National Security Division (NSD), and officials from the National Security Agency (NSA) and the Office of the Director of National Intelligence (ODNI) will meet with Senator Manchin to discuss FISA Section 702.

On Tuesday, October 24, 2017, at 11:00 a.m., in the Rayburn Office Building, Stuart Evans, Deputy Assistant Attorney General, NSD, and officials from the NSA and ODNI, will meet with members of the House Armed Services Committee to discuss how FISA Section 702 supports the warfighter.

On Thursday, October 26, 2017, at 10:00 a.m. in Room 217 of the Senate Visitor’s Center, Stuart Evans, Deputy Assistant Attorney General to the NSD, Carl Ghattas, Executive Assistant Director of the National Security Branch at the Federal Bureau of Investigation (FBI), and officials from the Central Intelligence Agency (CIA), NSA, and ODNI will have a follow-up briefing for all Senators on FISA Section 702.

E. Committee Markups & Business Meetings

1. **Senate Judiciary Committee.** On Thursday, October 26, 2017, at 10:00 a.m., we anticipate that the Senate Judiciary Committee will hold an Executive Business Meeting to consider the nominations U.S. Attorneys and Judges.

D. Significant Legislative Developments of Interest to the Department

None to report.

G. Floor

1. **House.** No action to report.
2. **Senate.** No action to report.

H. Looking Ahead

1. **“Oversight of the Executive Office for Immigration Review.”** On Wednesday, November, 1, 2017, at 2:00 p.m., in Room 2141 of the Rayburn House Office Building, the Committee on the Judiciary’s Subcommittee on Immigration and Border Security will hold a hearing entitled, “Oversight of the Executive Office for Immigration Review.” James McHenry, Acting Director, Executive Office for Immigration Review, has been invited to testify.

References to DAG Rod Rosenstein during SJC Oversight Hearing
10/18/17

GRASSLEY:

Yes. I want to ask a question that looks like history, but it was in the news recently -- yesterday, I believe. According to government documents and recent news reports, the Justice Department had an ongoing criminal investigation for bribery, extortion, and money laundering into officials for the Russian company making the purchase of Uranium One.

That purchase was approved during the previous administration and resulted in the Russians owning 20 percent of America's uranium mining capacity. What are you doing to find out how the Russian takeover of the American uranium was allowed to occur, despite criminal conduct by the Russian company that the Obama administration approved to make the purchase?

SESSIONS:

Mr. Chairman, we will hear your concerns. The Department of Justice will take such actions as is appropriate, I know. And I would offer that some people have gone to jail in that transaction already. But the article talks about other issues. So I -- without confirming or denying the existence of any particular investigation, I would say I hear your concerns, and they will be reviewed.

GRASSLEY:

I think I know why you're probably reluctant to go into some detail on that. But I would like to remind you that Deputy Attorney Rosenstein directly supervised the

criminal case when he was U.S. Attorney in Maryland. I don't think it would be proper for him to supervise a review of his own conduct. Do you?

SESSIONS:

It would be his decision. He's a man of integrity and ability. If he feels that he has a inability to proceed with any investigation, it would be his responsibility to make that determination, and should consult -- as I told you I would, and as I have done -- with the senior ethics people at the department.

FEINSTEIN:

Thanks very much, Mr. Chairman.

I wanted to ask you a question or two about the firing of the FBI director. Specifically -- I have your letter, dated May 9th, to the president. Specifically, what was your designated role in the decision to fire Director Comey?

SESSIONS:

It is -- it's a matter that I can share some information about, because the president himself has talked about it and revealed or -- that letter. He asked that Deputy Rosenstein and I make our recommendations in writing. We prepared those recommendations and submitted it to the president.

Senator Feinstein, I don't think it's been fully understood, the significance of the error that Mr. Comey made on the Clinton matter. For the first time I'm aware of in all of my experience -- and I don't think I've heard of a situation in which a major case in which the Department of Justice prosecutors were involved in an investigation, that the investigative agency announces the closure of the investigation.

And then, a few weeks before this happened, he was testifying before the Congress -- Mr. Comey was -- and he said he thought he did the right thing, and would do it again.

So the -- Deputy Attorney General Rosenstein, who's got, what, 27 years in the Department of Justice -- Harvard graduate, served for eight years as U.S. attorney under President Obama, and four years under President Bush -- he said that was a usurpation of the position of the Department of Justice, the Attorney General's position.

And that -- but, particularly, we were concerned that he reaffirmed that he would do it again. So I think that was a basis that called for a fresh start at the FBI. Mr. Comey had many talents, there's no doubt about it.

Have no hard feeling about that, but I am really excited about the new director, Chris Wray, who you've confirmed with an overwhelming vote, and I believe he's going to be able to do the job of FBI director with great skill and integrity.

FEINSTEIN:

What exactly did President Trump tell you was his reason for firing Director Comey? I know he has said he thought the department was a mess and he asked you and -- and Mr. Rosenstein to take a look at it.

And my understanding was these two letters were presented, the letter from you dated May 9th and the letter from Rosenstein dated the same date -- a response to that request to take a look at the department.

SESSIONS:

That's what I can tell you. He did ask for our written opinion, and we submitted that to him. It did not represent any change in either one of ours (ph) opinion, as he -- as Deputy Rosenstein has also indicated, I believe. And we were asked to provide it, and we did.

GRAHAM:

So -- good, there we go.

So, speaking of letters not answered, on August the 30th, Senator Grassley and I sent a letter over to the Department of Justice wanting information related to drafting of memos exonerating Secretary Clinton before the July statement of Director Comey, and we've got nothing back.

Do you think we'll ever get an answer to that letter?

SESSIONS:

Do you need an answer or explaining why it can't be answered?

GRAHAM:

Well, either way. So, the FBI...

SESSIONS:

I'll take that...

GRAHAM:

... Yeah.

SESSIONS:

... and make sure it happens.

GRAHAM:

So apparently, on the FBI's website, they've got e-mails with no -- with no content, suggesting that Comey in May was talking, and the title of this thing is -- what is the title of this thing, the e-mail? "Drafts of Director Comey's July 5th, 2016 Statement Regarding E-mail Server Investigation."

That's what the title of this thing is, but when you look at it, there's nothing there. So apparently, in May, Comey was talking to senior staff about -- draft -- memorandum clearing Clinton before he ever talked to her. Are you aware of this?

SESSIONS:

Well, I'm not -- have not been engaged in that...

GRAHAM:

Well, who is engaged in it (ph)?

SESSIONS:

... subject, because I told the committee at confirmation that...

GRAHAM:

Well, who do I talk to? Who do I talk to about getting my letter answered?

SESSIONS:

... I think you have -- you should direct your letter to the deputy attorney general or to the -- Legislative Affairs.

.....

GRAHAM:

As to the Clinton e-mail investigation, do you know if there was a phone call between the former attorney general, Ms. Lynch, and the White House regarding whether or not she should take a meeting with former President Clinton on the tarmac?

SESSIONS:

No.

GRAHAM:

Is there any way we could find that out? Are (ph) records of that -- would there be records available?

SESSIONS:

That would be -- the inquires could be, probably, directed to the deputy attorney general.

GRAHAM:

We knew -- the president knew, when he was inaugurated, that Comey jumped into the middle of the Clinton e-mail investigation, took the job of attorney general over. That's the main reason that he was fired. Why did he wait so long to fire Comey?

SESSIONS:

Well, I'm not sure he ever grasped the full import of that. He asked the -- Deputy Attorney General Rosenstein...

GRAHAM:

OK. So he -- OK.

SESSIONS:

... and me for a recommendation, and that's the recommendation we gave him.

GRAHAM:

OK.

SESSIONS:

It's something that everybody familiar with the Department of Justice had been
buzzing about for months.

KLOBUCHAR:

So, as you know, I've very pleased with the choice of Christopher Wray, and I was there at his ceremony, and I also had a good working relationship with Director Comey. And do you believe there are inherent risks in any private communication between the president and the FBI director?

This comes out of the fact that Director Comey testified that he had nine private conversations with President Trump in four months. He also testified that, in three years, he spoke only twice with President Obama.

And, following Director Comey's firing and his testimony that the president improperly raised the subject of an ongoing investigation during that private meeting, have you taken any steps to ensure that Justice Department officials are not being appropriately approached by the president or anyone in the White House?

So the two questions are, do you think there are risks in this, and what steps have you taken.

SESSIONS:

Actually, we have discussed it at some length -- about the proper procedures. The Holder -- I believe, Holder or Lynch -- memorandum on that subject remains in effect. It's probably tighter than previous memorandum on that subject.

And the deputy attorney general and others in the department are -- I don't think we've completed our new policy. But we think there should be a careful policy on that subject.

It's not appropriate, say, for White House officials to call lower-level prosecutors or civil attorneys and carry on conversations. It should be done in a -- an appropriate fashion. That's set out now. Those rules remain in effect, and we are reviewing whether to -- they should be altered in any way.

COONS:

So, if I could just make sure...

SESSIONS:

For the purpose of the Russian investigation, the attorney general of the United States is Deputy Attorney General Rod Rosenstein. He makes all the decisions and manages the processes and guarantees its integrity.

COONS:

Have you spoken with President Trump about Special Counsel Mueller or his investigation at any point?

SESSIONS:

I've never discussed anything with him of -- well, I'm not going to comment on the conversations we've had, because I think that violates the privilege -- executive privilege.

COONS:

Do you think the deputy attorney general made the right decision to appoint a special counsel? You spoke previously, in response to another senator's question, about knowing Mr. Mueller, having respect for his professionalism, his experience. Do you think that was the right choice?

SESSIONS:

The decision to appoint a special counsel depends on the facts and circumstances of the case, of which he was fully apprised, and I'm not. So I'm not able to opine about his judgment. But I -- you know, he's a talented and experienced prosecutor.

COONS:

You made a statement at the outset that some of the core mission of the Department of Justice -- fighting violent crime, keeping our nation safe, respecting rule of law, promoting rule of law -- I think it is important, as you have stated, that this investigation reach its natural and full conclusion without any interference.

In your view, if the president asked for your advice about whether or not to remove or fire the special counsel, would that be an appropriate conversation for him to have with you?

SESSIONS:

I have not thought that through, and -- but it's -- if it deals with the special counsel, I think the communication would need to be directed to the person who supervises the special counsel. And that would be the Deputy Attorney General.

COONS:

If the special counsel were removed, would you protest or consider resigning in order to clarify the importance of that position and that investigation being followed to its end?

SESSIONS:

You know, I won't attempt to deal with a hypothetical. I think it'd be best just to leave my answer as I gave it.

COONS:

Let me move to another recusal. You -- in your confirmation hearing, you said -- and I think this is in response to a question from the chairman -- you had offered, "It'd be the proper thing for me to do to recuse myself from any questions involving investigations that involve Secretary Clinton and -- that were raised during the campaign."

Chairman said, "When you say you'll recuse, you mean you'll actually recuse, and the decision will therefore fall to the deputy attorney general?" And you say, after some intervening sentences, "There is a procedure for that, which I will follow." And you've just shared with me, you followed that promptly.

Yet, on May 9th, Deputy Attorney General Rosenstein delivered to you a memo entitled "Restoring Public Confidence in the FBI" that is about Director Comey's conduct during the Clinton e-mail investigation, and concludes that the director handled the conclusion of that e-mail investigation incorrectly. Is that correct?

SESSIONS:

Yes. You -- you're talking about the recommendation -- yes.

COONS:

Yes. And then, on the same day, you penned a memo to the president, relying exclusively on the deputy attorney general's memo, where you recommend that Director Comey be removed, correct?

SESSIONS:

That's correct.

HIRONO:

So, in response to a question from Senator Feinstein, you provided an explanation as to why Director Comey was fired. The thing is, though, that that explanation was directly contradicted by the president in public, where he said that he fired Director Comey because of the Russia thing, and that -- he also said that he was going to fire Director Comey anyway, regardless of any memo that you presented.

So are you now contradicting the president's explanation?

SESSIONS:

All I said was -- Senator, was that the deputy attorney general and I were asked to give our opinion, and we did so...

HIRONO:

Yes.

SESSIONS:

... and the president made the decision. And he's talked about it to some degree publicly.

LEAHY:

Thank you, Mr. Chairman. You know, I think there's general acceptance -- certainly the people who are here (ph) -- the press knows this -- that Rod Rosenstein's May 9th memorandum tying Director Comey's firing to his handling of the Clinton investigation served as a pretext.

President Trump fired Director Comey due to the Russia investigation. President Trump has said as much. Now, the press recently reported an earlier, unsent letter penned by President Trump that justified firing Director Comey because of the Russia investigation.

One of the reports said you were involved in discussions in (ph) the Oval Office surrounding that initial letter -- not the Clinton one, but the Russian one.

When you signed off on the May 9th memorandum -- I'm now (ph) asking about what you did, not (ph) what the president did -- When you signed off on the May 9th memorandum tying Comey's termination to the Clinton investigation, were you aware of that initial letter?

SESSIONS:

Senator Leahy, I also believe that -- in -- considers and consumes a possible communication with the president of the United States, and the same privilege would apply.

LEAHY:

So you're not going to answer whether you were aware of the Russian one?

SESSIONS:

I think that's the proper course for the attorney general at this time.

SESSIONS:

Thank you, Senator Flake.

And it is -- this human trafficking is a priority of ours. My deputy attorney general feels strongly about it. The associate attorney general, Rachel Bran, has made that one of her interests and made a couple of speeches on that recently. We can do more and we will do more.

FLAKE:

OK, thank you. One other item. You mentioned in your opening remarks with regard to civil forfeiture, that you'd put some protocols in place in terms of more speedy notification of those whose assets were seized. What other protocols and what are we doing to ensure that we have a better system than we've had in the past? I'm convinced that this has been abused at just about every level of law enforcement, state and -- and federal.

SESSIONS:

Well, we intend to respond to any problems that are out there that we identify in the future. When you make -- when the government has probable cause, and feels able to seize -- money usually -- drug trafficking money, usually. The -- they have a certain period of time to respond. We cut that by at least half -- if not, I believe, a little more than half.

And we have -- we've directed our assistant United States attorneys to monitor the state authorities and the DEA to make sure the systems are working well. We have required that before we adopt a case from the states, that they be trained in proper

procedures for a Federal Court system and not just any police officer. So they know what they're supposed to do and I think that will be a big help.

And I believe there's some other things. And then, I don't know if you were here, but I did announce -- send out, Monday, a directive to establish an asset forfeiture accountability officer, who will be in the deputy's office, and who will be monitoring all these cases, complaints that may occur, so that we can respond promptly.

We want this -- this system is really important, Senator Flake. It's a top priority of our -- every law enforcement agency in America, but it's got to be run right. And that's going to be our goal.

GRASSLEY:

I'm going to take my five minutes now. During your June 13th hearing before the Senate Select Committee on Intelligence, you testified that you had discussed the issue of James Comey's firing with Deputy Attorney General Rosenstein before either of you were confirmed for your current position. Mr. Comey was fired May 9th. Why did you talk to Deputy Attorney General Rosenstein about the firing of Mr. Comey and what did you discuss with him and when did you come to the conclusion of the James Comey needed to be terminated?

SESSIONS:

My view, after discussing with the Director Comey -- excuse me -- my possible new Deputy Attorney General Rod Rosenstein, we discussed it as two professionals. He was United States attorney 12 years, I was in United States attorney 12 years and we loved the department, we know about it. And it was my best judgment, as I -- I think I expressed it, that a fresh start at the FBI was probably appropriate.

.....

GRASSLEY:

I've got one second left. What steps have you taken to create a comprehensive enforcement strategy for the Foreign Agents Registration Act and address how that act fits into the department's national security efforts?

SESSIONS:

We have -- I've -- for some months, we have discussed that in the office. We've not reached a final conclusion. Probably will go up through the Deputy Attorney General's office, but I personally talked to the lawyers who do these cases. There have

not been many of those cases over the decades. There just have not been many of them. There probably need to be more. There's some legislation being proposed that we might be supportive of that may also be beneficial.
