

zterwilliger@jmd.usdoj.gov

From: zterwilliger@jmd.usdoj.gov
Sent: Thursday, March 16, 2017 11:27 PM
To: Rosenstein, Rod (USAMD)
Cc: Tyson, Jill C. (OLA)
Subject: QFR
Attachments: Questions For the Record - Rod J. Rosenstein - MASTER DOC - JCT edits 4.docx

Sir,

Please see attached draft QFR responses. The ODAG team (Sujit, Mike Murray, Gary Barnett, Bill Hall, Chad Mizelle, and Matt Sheehan) as well as Jill Tyson in OLA worked extremely hard to get this turned around.

We will fix all formatting issues tomorrow, but we wanted to get this to you as soon as possible for review. I know it is close to midnight and you have an absolutely full day tomorrow, but our hope is to have your edits as soon as you have time to be able to get this turned around to the Committee forthwith.

Thank you very much,

Zach

>
>

Ramer, Sam (OLA)

From: Ramer, Sam (OLA)
Sent: Sunday, March 19, 2017 10:10 AM
To: Terwilliger, Zachary (ODAG)
Subject: Fw: OLA edits -
Attachments: Questions For the Record - Rod J. Rosenstein - MASTER DOC - RJR edits - OLA edits 3.19.17.docx

Zach-

Here are our edits. Please take a quick look, call me when you are done to discuss strategy. Thanks.

Sam

From: Tyson, Jill C. (OLA)
Sent: Sunday, March 19, 2017 2:08 AM
To: Ramer, Sam (OLA)
Cc: Tyson, Jill C. (OLA)
Subject: OLA edits -

Here are my proposed edits with some explanatory comments. Feel free to disregard any edits or comments as you see fit.

-JCT

Jill C. Tyson
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
(b) (6)
Jill.C.Tyson@USDOD.gov

Tyson, Jill C. (OLA)

From: Tyson, Jill C. (OLA)
Sent: Saturday, March 25, 2017 6:15 PM
To: Tyson, Jill C. (OLA); Rosenstein, Rod (USAMD)
Cc: Raman, Sujit (ODAG) (JMD); Terwilliger, Zachary (ODAG) (JMD); Tyson, Jill C. (OLA) (JMD); Ramer, Sam (OLA) (JMD); Gauhar, Tashina (ODAG)
Subject: RE: Scanned Letter:
Attachments: Deputy AG nominee - Rod J. Rosenstein - Follow up Questions for the Record Leahy - FINAL 3.25.2017.pdf

Closing the loop. QFRs have been submitted to the Committee. Final document attached here. Thanks again everyone.

From: Tyson, Jill C. (OLA) [mailto:jctyson@jmd.usdoj.gov]
Sent: Saturday, March 25, 2017 1:35 AM
To: Rosenstein, Rod (USAMD) <Rod.Rosenstein@usdoj.gov>
Cc: Raman, Sujit (ODAG) (JMD) <Sujit.Raman2@usdoj.gov>; Terwilliger, Zachary (ODAG) (JMD) <Zachary.Terwilliger2@usdoj.gov>; Tyson, Jill C. (OLA) (JMD) <Jill.C.Tyson@usdoj.gov>; Ramer, Sam (OLA) (JMD) <Sam.Ramer@usdoj.gov>
Subject: Re: Scanned Letter:

(b) (5)

Jill C. Tyson

On Mar 25, 2017, at 12:03 AM, Rosenstein, Rod (USAMD) <Rod.Rosenstein@usdoj.gov> wrote:

Thanks. My final edit tonight

(b) (5)

From: Raman, Sujit (ODAG) [mailto:Sujit.Raman2@usdoj.gov]
Sent: Friday, March 24, 2017 11:53 PM
To: Terwilliger, Zachary (ODAG) (JMD) <Zachary.Terwilliger2@usdoj.gov>
Cc: Rosenstein, Rod (USAMD) <RRosenstein@usa.doj.gov>; Raman, Sujit (ODAG) (JMD) <Sujit.Raman2@usdoj.gov>; Tyson, Jill C. (OLA) (JMD) <Jill.C.Tyson@usdoj.gov>; Terwilliger, Zachary (ODAG) (JMD) <Zachary.Terwilliger2@usdoj.gov>; Ramer, Sam (OLA) (JMD) <Sam.Ramer@usdoj.gov>
Subject: Re: Scanned Letter:

(b) (5)

On Mar 24, 2017, at 11:19 PM, Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov> wrote:

What about (b) (5)

On Mar 24, 2017, at 11:05 PM, Rosenstein, Rod (USAMD) <Rod.Rosenstein@usdoj.gov> wrote:

(b) (5)

How about:

(b) (5)

From: Raman, Sujit (ODAG) [<mailto:Sujit.Raman2@usdoj.gov>]
Sent: Friday, March 24, 2017 10:42 PM
To: Rosenstein, Rod (USAMD) <RRosenstein@usa.doj.gov>
Cc: Tyson, Jill C. (OLA) (JMD) <Jill.C.Tyson@usdoj.gov>; Terwilliger, Zachary (ODAG) (JMD) <Zachary.Terwilliger2@usdoj.gov>; Raman, Sujit (ODAG) (JMD) <Sujit.Raman2@usdoj.gov>; Ramer, Sam (OLA) (JMD) <Sam.Ramer@usdoj.gov>
Subject: Re: Scanned Letter:

(b) (5)

On Mar 24, 2017, at 10:30 PM, Rosenstein, Rod (USAMD) <Rod.Rosenstein@usdoj.gov> wrote:

Please review this draft. The only major edits are to

(b) (5)

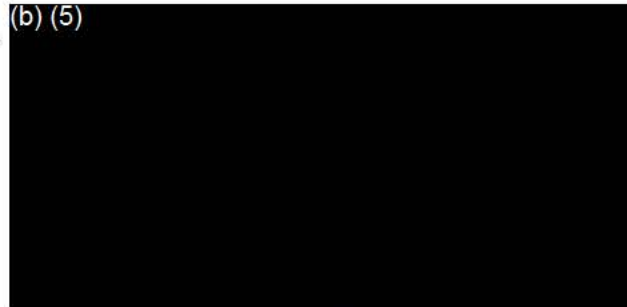
Judge Gorsuch testified that he sometimes exchanges up to 30 drafts of opinions. so it could be worse....

From: Tyson, Jill C. (OLA)
[mailto:Jill.C.Tyson@usdoj.gov]
Sent: Friday, March 24, 2017 7:14 PM
To: Rosenstein, Rod (USAMD)
<RRosenstein@usa.doj.gov>; Terwilliger, Zachary
(ODAG) (JMD) <Zachary.Terwilliger2@usdoj.gov>
Cc: Ramer, Sam (OLA) (JMD) <Sam.Ramer@usdoj.gov>
Subject: RE: Scanned Letter:

Sir: I appreciate you signing the cover letter tonight and considering these additional edits.

Two other notes:

1. (b) (5)



2. Please do not stay up until 430am reviewing this document. I've let the Committee know they will have your responses this weekend so I can transmit tonight or tomorrow, no problem.

Although (b) (6) happy to discuss by phone. My personal is (b) (6) or DOJ cell is (b) (6)

Thanks,
-JCT

From: Rosenstein, Rod (USAMD)
[mailto:Rod.Rosenstein@usdoj.gov]
Sent: Friday, March 24, 2017 7:00 PM
To: Terwilliger, Zachary (ODAG) (JMD)
<Zachary.Terwilliger2@usdoj.gov>; Tyson, Jill C. (OLA)
(JMD) <Jill.C.Tyson@usdoj.gov>
Cc: Ramer, Sam (OLA) (JMD) <Sam.Ramer@usdoj.gov>
Subject: RE: Scanned Letter:

I dated the cover letter tomorrow. Thank you for the helpful edits on the draft QFRs. I will get back to you later tonight with my final revisions.

From: Terwilliger, Zachary (ODAG)
[mailto:Zachary.Terwilliger2@usdoj.gov]

Sent: Friday, March 24, 2017 6:48 PM
To: Tyson, Jill C. (OLA) (JMD) <Jill.C.Tyson@usdoj.gov>
Cc: Rosenstein, Rod (USAMD)
<RRosenstein@usa.doj.gov>
Subject: Fwd: Scanned Letter:

Jill,
Please see attached cover letter.

Thanks for all your help on this,
Zach

Begin forwarded message:

From: "Gamble, Nathaniel (ODAG)"
<nagamble@jmd.usdoj.gov>
Date: March 24, 2017 at 6:40:57 PM EDT
To: "Terwilliger, Zachary (ODAG)"
<zterwilliger@jmd.usdoj.gov>
Subject: Scanned Letter:

<QFRs 2- Leahy - draft OLA responses
3.25.2017_RJR - JCT redline 10pm.docx>



U.S. Department of Justice

*United States Attorney
District of Maryland*

Rod J. Rosenstein
United States Attorney

Suite 400
36 S. Charles Street
Baltimore, MD 21201-3119

DIRECT: 410-209-4800
MAIN: 410-209-4800
FAX: 410-962-3091

March 25, 2017

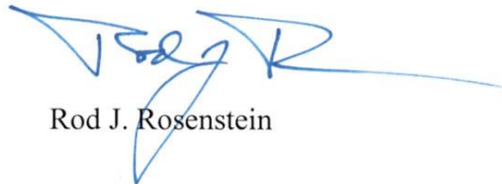
The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

Enclosed please find responses to Follow-Up Questions for the Record that I received from Senator Leahy, concerning my appearance before the Senate Judiciary Committee on March 7, 2017.

Sincerely,



Rod J. Rosenstein

Enclosure

QUESTIONS FOR THE RECORD
ROD J. ROSENSTEIN
NOMINEE TO BE DEPUTY ATTORNEY GENERAL

FOLLOW UP QUESTIONS FROM SENATOR LEAHY

1. I asked you in writing why it was proper for Elliot Richardson to commit to appointing an independent prosecutor for Watergate when his nomination was pending before this Committee, but not for you to make a similar commitment regarding Russian interference in our election and possible collusion with the Trump campaign. You replied, “Richardson’s decision to appoint a special counsel was appropriate given the facts and circumstances known to him in May 1973. Those facts and circumstances are included in histories of the Watergate era. The facts and circumstances known to me in March 2017 are quite different.”

This week we learned additional facts. On March 20, 2017, at a public hearing held by the House Permanent Select Committee on Intelligence, FBI Director James Comey “confirm[ed] that the FBI, as part of our counterintelligence mission, is investigating, the Russian government’s efforts to interfere in the 2016 presidential election. And that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government, and whether there was any coordination between the campaign and Russia’s efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.”¹

To ensure that the investigation is insulated as much as possible from any outside influences, this public announcement reaffirms the need for a Special Counsel who, unlike you, or the FBI director, does not report to the Attorney General, who was forced to recuse himself from this investigation, and cannot be fired by the President. In my view, several extraordinary circumstances are present, including an inescapable appearance of a conflict of interest.

- a. In light of these newly public facts, do you still believe that it would be premature to commit to appointing an independent Special Counsel² to investigate the Russian connection to the Trump campaign?**

RESPONSE: The federal regulation adopted by Attorney General Janet Reno, 28 C.F.R. § 600.1, requires the Attorney General or Acting Attorney General to make certain determinations before appointing a special counsel. I am not the Acting Attorney General at this time, and it would be premature to make a decision to appoint a special counsel, or not to appoint a special counsel, based solely on the limited information available to me.

- b. Now that the FBI has publicly confirmed a counterintelligence investigation into Russian interference and possible collusion with the Trump campaign, will you commit to appointing a Special Counsel to ensure a fully impartial investigation that is protected from political meddling?**

RESPONSE: I will do whatever is necessary to ensure an impartial investigation that is protected from political influence. If I am the Acting Attorney General for a particular matter, I will review the facts and circumstances, consider the applicable law and regulations, and consult with law enforcement professionals before making a decision.

2. Suppose an American citizen contracted with a foreign national for \$10 million per year to “influence politics, business dealings and news coverage inside the United States,” and was dealing with “the highest levels of the U.S. government the White House, Capitol Hill and the State Department”³ as part of those efforts.

a. **Would that American citizen be required to register with the Justice Department under the Foreign Agents Registration Act?**

RESPONSE: The Foreign Agents Registration Act (FARA) requires any person acting as an agent of a foreign principal in a political or quasi-political capacity to make periodic public disclosure of the relationship with the foreign principal, as well as activities, receipts, and disbursements in support of those activities. Whether the disclosure requirements apply to a particular person requires a fact-specific analysis, and it would not be appropriate for me to opine on a hypothetical case. The Department of Justice has career professionals and subject matter experts who are responsible for responding to FARA inquiries and conducting FARA investigations.

b. **If that citizen failed to do so, might they be subject to prosecution under 22 U.S.C. § 618?**

RESPONSE: Determining whether any person might be subject to prosecution for willfully failing to comply with FARA would require an analysis of the facts and circumstances, and it would not be appropriate for me to opine on a hypothetical case. The Department of Justice has career professionals and subject matter experts who are responsible for responding to FARA inquiries and conducting FARA investigations.

3. **Have you ever briefed a potential subject of an ongoing investigation on details involving that investigation?**

RESPONSE: The term “subject” has a broad meaning in the Department of Justice; we use it to refer to any person whose conduct is within the scope of a criminal investigation, not necessarily a person suspected of a crime. We use the term “target” to refer to a person who is a putative defendant. In either case, prosecutors disclose details about a criminal investigation to such persons only when it furthers the legitimate goals of the criminal investigation.

¹ <https://www.washingtonpost.com/news/post-politics/wp/2017/03/20/full-transcript-fbi-director-james-comey-testifies-on-russian-interference-in-2016-election>

² https://www.washingtonpost.com/world/national-security/senate-begins-confirmation-hearing-for-nominee-to-be-deputy-attorney-general/2017/03/07/4bd4ae02-02b2-11e7-ad5b-d22680e18d10_story.html

³ <https://www.apnews.com/122ae0b5848345faa88108a03de40c5a>

Cutrona, Danielle (OAG)

From: Cutrona, Danielle (OAG)
Sent: Thursday, May 4, 2017 3:31 PM
To: Watts, Brad (Judiciary-Rep)
Subject: Re: LOCATION CHANGE for a Committee Hearing on Mon., May 8 at 2:30 p.m.

No

On May 4, 2017, at 3:22 PM, Watts, Brad (Judiciary-Rep) <Brad_Watts@judiciary-rep.senate.gov> wrote:

From: Covey, Jason (Judiciary-Rep)
Sent: Thursday, May 4, 2017 3:21:45 PM (UTC-05:00) Eastern Time (US & Canada)
To: All Judiciary Users; Photo (SAA); Boxenbaum, Shelby (Hirono); Driscoll, Ben (Klobuchar); Harman, Alex (Hirono); Hu, Patrick (Hirono); Matyger, Kevin (Blumenthal); Miske, Elizabeth (Blumenthal); Rhodes, Julia (Blumenthal); Roberts, Jordan (Hatch - INTERN); Romero, Belsis (Cruz); Sadler, Brittany (Kennedy); Stanley, Chris (Kennedy); Stokes, David (Kennedy); Strand, Ben (Hirono); Teleky, Seth (Blumenthal); Abegg, John (McConnell); Alderson Reporting (Contact); Amacio, Kathleen (Crapo); Babcock, Christine (Cruz); Berger, Kaylee (Schumer); Berry, Elizabeth (Flake); Cannon, Kate (Lee); Carle, David (Leahy); Carney, Kelley Anne (Klobuchar); Chabot, Erica (Leahy); Comer, Cameron (Hatch); Daniels, Sarah (L. Graham); Dowd, John (Leahy); Flaherty, Rachel (Whitehouse); Foord, Chesna (Feinstein); Franken, LawClerk (Franken); Chris Gaskill (Contact); Heins, Jennifer (Grassley); Herod, Amy (Cruz); Hoefer, Grace (Kennedy); Hollis, Kate (Sessions); Hsu, Josh (Harris); James, Alice (L. Graham); Johnston, Joseph (Secretary); Kelsey, Joel (Blumenthal); Kerr, Paige (Cornyn); Kingo, Lola A. (OLP); Lawson, Michael (Blumenthal); Long, Sydnie (Cruz); Lopez, Anthony (Hirono); Maggie Whitney; Mazer, Tara (Franken); McDonald, Kevin (Leahy); Meirose, Sarah (Flake); Mentzer, Tom (Feinstein); Montoya, Ruth (Hatch); Moser, Chelsea (Coons); Nuebel, Kathy (Grassley); O'Leary, Molly (Franken); Oliver, Aaricka (Cornyn); O'Neill, Megan (Coons); Ott, Andrew (Secretary); Packer, Megan (Cruz); Panza, Lucy (Schumer); Patino, Linda (Lee); Peer, Sarah (Sasse); Pollard, Beatrice (Schumer); Reuschel, Claire (Durbin); Rhoades, Chad (Tillis); Sapperstein, Kristin (Kennedy); Saunders, Chris (Leahy); Schmidt, Brynna (Franken); Schulze, Angela (Tillis); Seigle, Leah (Whitehouse); Shah, Noor (Feinstein); Shepherd, Meagan (Flake); Shirley, Raven (Sasse); Slaughter, Rebecca Kelly (Schumer); Swanner, Bob (SAA); Tamayo, Yanci; Temple, Courtney (Tillis); Thorpe, Michael (RPC); Toomajian, Kathryn (Leahy); Tratos, Elizabeth (Secretary); Ventre, Don (SAA); Weiss, Michael (Franken)
Subject: LOCATION CHANGE for a Committee Hearing on Mon., May 8 at 2:30 p.m.

May 4, 2017

NOTICE OF COMMITTEE HEARING

LOCATION CHANGE

The Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism hearing entitled: "Russian Interference in the 2016 United States Election" on Monday, May 8 at 2:30 p.m., **will now be held in Room 216 of the Hart Senate Office Building.**

By order of the Chairman.

Jason A. Covey
Hearing Clerk | Senate Judiciary Committee
<http://judiciary.senate.gov>

Raman, Sujit (ODAG)

From: Raman, Sujit (ODAG)
Sent: Thursday, May 4, 2017 6:05 PM
To: Terwilliger, Zachary (ODAG)
Cc: Tyson, Jill C. (OLA)
Subject: RE: Letter from 14 Senators to DAG Rosenstein
Attachments: Letter to DAG Rosenstein from 14 Sens re. Russia Investigation.pdf

Here's a draft response. Please let me know what you think.

(b) (5)



From: Terwilliger, Zachary (ODAG)
Sent: Monday, May 1, 2017 11:29 PM
To: Raman, Sujit (ODAG) <sraman@jmd.usdoj.gov>
Cc: Tyson, Jill C. (OLA) <jctyson@jmd.usdoj.gov>
Subject: RE: Letter from 14 Senators to DAG Rosenstein

Sujit,
Would you have time to crank something out by Thursday?

Jill, when would we have to have a final back to the hill?

Zach

From: Raman, Sujit (ODAG)
Sent: Monday, May 1, 2017 11:28 PM
To: Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov>
Subject: Re: Letter from 14 Senators to DAG Rosenstein

Sure. When were you hoping to have a draft by?

On May 1, 2017, at 11:21 PM, Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov> wrote:

Sujit,
I spoke with the DAG and he was hoping you could take the first crack at this. My apologies that I did not connect with you on this today.

Thanks,
Zach

Zach, Gary:

This afternoon we received the attached letter in our Hill correspondence inbox. Should it be assigned to ODAG to draft the response? Also, do you mind circulating it to the PADAG, ADAG Schools, and any others (or shall I)?

Thanks,
-JCT

Jill C. Tyson
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
(b) (6)
Jill.C.Tyson@USDOJ.gov

<Letter to DAG Rosenstein from 14 Sens re. Russia Investigation.pdf>

United States Senate
WASHINGTON, DC 20510

April 26, 2017

The Honorable Rod J. Rosenstein
Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dear Deputy Attorney General Rosenstein:

We write to request that you take immediate action to ensure a comprehensive and impartial investigation of Russian interference in the 2016 presidential election. Because Attorney General Sessions has recused himself from this matter, you are responsible for leading the Department of Justice's (DOJ) response to these unprecedented circumstances. In order to ensure the fullest possible public confidence in the unbiased nature of the conduct of the investigation, the content of its findings, and any necessary actions in response, we urge you to use existing regulatory authority to appoint an independent official, such as a special prosecutor, to head the investigation.

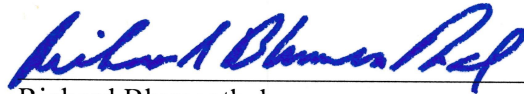
The integrity of American elections must be unquestioned and unimpeachable. Any attempts by a foreign power to interfere with our democratic process – whether to help a particular candidate or otherwise – are attacks not on Democrats or Republicans but on the entire country. It is now well documented that Russia engaged in precisely this type of interference, possibly along with collusion and cover-up efforts by American citizens. The degree to which individuals connected to President Trump's campaign communicated or coordinated with the Russians is the subject of an active FBI investigation, and the possibility of criminal prosecution is very real.

The Attorney General (or his designee) has wide latitude to appoint an attorney from outside the Department of Justice to take charge of any investigation that could pose a conflict of interest or when it would otherwise be in the public interest to do so. See 28 C.F.R. § 600.1. Past Attorneys General have done so in a number of high-profile, highly political cases that had the potential to reveal wrongdoing on the part of an Administration – precisely the kind of matter presented here. For example, Elliot Richardson agreed to appoint a special prosecutor before his confirmation to serve as Attorney General under President Richard Nixon, and then-Deputy Attorney General James Comey designated one to investigate a controversial matter that arose during President George W. Bush's administration.

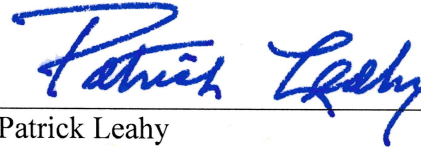
While we have no reason to doubt your integrity or professionalism, the American people cannot have full confidence when a prosecutor investigates his own boss and the President who appointed and can remove him. The regulations providing for the appointment of an independent, impartial head of such investigations were put in place for just this reason. We

therefore urge you to appoint a special prosecutor and take any other steps necessary to ensure that a complete investigation of this matter proceeds without delay.

Sincerely,



Richard Blumenthal
United States Senator



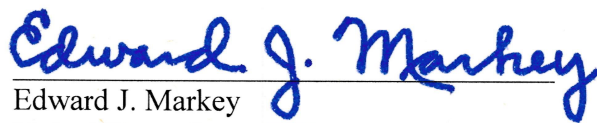
Patrick Leahy
United States Senator



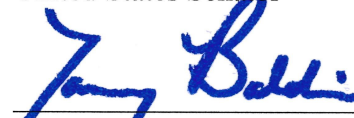
Chris Van Hollen
United States Senator



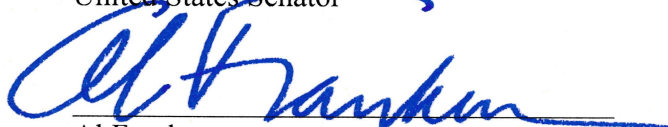
Kirsten Gillibrand
United States Senator



Edward J. Markey
United States Senator



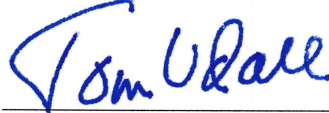
Tammy Baldwin
United States Senator



Al Franken
United States Senator



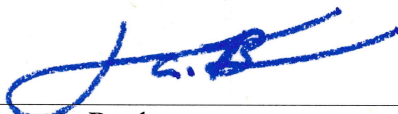
Margaret Wood Hassan
United States Senator



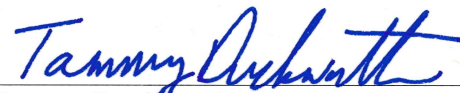
Tom Udall
United States Senator



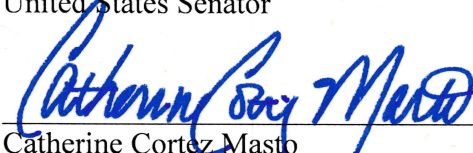
Thomas R. Carper
United States Senator



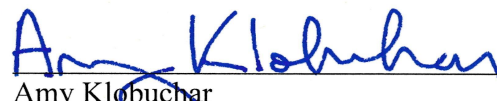
Cory A. Booker
United States Senator



Tammy Duckworth
United States Senator



Catherine Cortez Masto
United States Senator



Amy Klobuchar
United States Senator

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Monday, May 8, 2017 8:47 AM
To: Cutrona, Danielle (OAG)
Subject: FW: 5-8-17 Russian Interference in the 2016 United States Election - Written Testimony (Yates, Clapper)
Attachments: Clapper Appendix.pdf; Yates Bio.pdf; Yates Testimony.pdf; Clapper Bio.PDF; Clapper Testimony.pdf

From: Covey, Jason (Judiciary-Rep)
Sent: Monday, May 8, 2017 8:46:00 AM (UTC-05:00) Eastern Time (US & Canada)
To: All Judiciary Users; Boxenbaum, Shelby (Hirono); Driscoll, Ben (Klobuchar); Harman, Alex (Hirono); Hu, Patrick (Hirono); Matyger, Kevin (Blumenthal); Miske, Elizabeth (Blumenthal); Rhodes, Julia (Blumenthal); Roberts, Jordan (Hatch - INTERN); Romero, Belsis (Cruz); Sadler, Brittany (Kennedy); Stanley, Chris (Kennedy); Stokes, David (Kennedy); Strand, Ben (Hirono); Teleky, Seth (Blumenthal)
Subject: 5-8-17 Russian Interference in the 2016 United States Election - Written Testimony (Yates, Clapper)

Attached please find the testimony and biographies of the Honorable Sally Q. Yates and the Honorable James R. Clapper before today's hearing entitled: "Russian Interference in the 2016 United States Election."

Thank you.

Jason A. Covey
Hearing Clerk | Senate Judiciary Committee
<http://judiciary.senate.gov>

STATEMENT OF

**JAMES R. CLAPPER
FORMER DIRECTOR OF NATIONAL INTELLIGENCE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND TERRORISM
UNITED STATES SENATE**

CONCERNING

RUSSIAN INTERFERENCE IN THE 2016 UNITED STATES ELECTION

PRESENTED ON

MAY 8, 2017

STATEMENT OF
JAMES R. CLAPPER
FORMER DIRECTOR OF NATIONAL INTELLIGENCE
CONCERNING
RUSSIAN INTERFERENCE IN THE 2016 UNITED STATES ELECTION
BEFORE THE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND TERRORISM
UNITED STATES SENATE
MAY 8, 2017

Chairman Graham, Ranking Member Whitehouse, and distinguished Members of the Subcommittee, thank you for the invitation to appear before you today.

I. INTRODUCTION

I didn't expect to be before this Committee, or any other Committee in Congress, again so soon, since I thought I was all done with this when I left the government. But understandably, concern about the egregious Russian interference in our election process is so critically serious as to merit focus — hopefully bi-partisan focus — by Congress and the American people.

Last year, the Intelligence Community conducted an exhaustive review of Russian interference into our presidential election process, resulting in a special Intelligence Community Assessment, or ICA. I'm here today to provide whatever information I can — now as a private citizen — on how the Intelligence Community conducted its analysis, came up with its findings, and communicated them to the Obama administration, to the Trump transition team, to Congress, and — in an unclassified form — to the public. Additionally, I will briefly address four related topics that have emerged since the ICA was produced.

Because of both classification and executive privilege strictures requested by the White House, there are limits to what I can discuss. And, of course, my direct, official knowledge of any of this stopped on January 20th, when my term of office was, happily, over.

II. INTELLIGENCE COMMUNITY ASSESSMENT (ICA) PROCESS

As you know, the ICA was a coordinated product from three agencies — CIA, NSA, and FBI — under the aegis of my former office. Following extensive intelligence reporting about many Russian efforts to collect on, and influence the outcome of, the presidential election,

President Obama tasked us to do this in early December, and have it completed before the end of his administration.

The two-dozen analysts for this task were hand-picked, seasoned experts from each of the agencies. They were given complete, unfettered, mutual access to all sensitive raw intelligence data, and, importantly, complete independence to reach their findings.

1. Findings

They found that the Russian government pursued a multi-faceted influence campaign in the run-up to the election, including aggressive use of cyber capabilities. The Russians used cyber operations against both political parties, including hacking into servers used by the Democratic National Committee and releasing stolen data to WikiLeaks and other media outlets. Russia also collected on certain Republican party-affiliated targets, but did not release any Republican-related data.

The Intelligence Community Assessment concluded, *first*, that President Putin directed an influence campaign to erode the faith and confidence of the American people in our presidential election process. *Second*, that he did so to demean Secretary Clinton. And, *third*, that he sought to advantage Mr. Trump. These conclusions were reached based on the richness of the information gathered and analyzed, and were thoroughly vetted and then approved by the directors of the three agencies, and me.

2. Briefings

These Russian activities, and the resultant assessment, were briefed first to President Obama on the 5th of January, then to President-elect Trump on the 6th of January, and to Congress via a series of five briefings from the 6th through the 13th of January. The classified version was profusely annotated with footnotes, drawn from thousands of pages of supporting material. The key judgments in the unclassified version published on the 6th of January were identical to those in the classified version.

3. Quality of the ICA

While it's been over four months since the issuance of the assessment, as Directors Comey and Rogers testified before the House intelligence committee on March 20th, the conclusions and confidence levels reached at the time still stand. That's a testament to the quality and professionalism of the IC personnel who produced such a compelling intelligence report during a tumultuous, controversial time, under intense scrutiny, and with a very tight deadline.

III. FOUR RELATED ISSUES

Throughout the public dialogue about this issue over the past few months, four related topics have been raised that could use some clarification. I'd like to take a few moments to provide that clarification.

1. “Unmasking”

First, I want to address the meaning of “unmasking,” which is an unofficial term that’s appeared frequently in the media in recent months and is often misused and misunderstood. It frequently happens that, in the course of conducting lawfully-authorized electronic surveillance on validated foreign intelligence targets, the collecting agency picks up communications involving U.S. persons. Under IC minimization procedures, the identities of these U.S. persons are typically “masked” in reports that go out to intelligence consumers, and are referred to as “U.S. Person 1”, etc.

However, there are cases when to fully understand the context of the communication that has been obtained or the threat that is posed the consumer of that collected intelligence may ask that the identity of the U.S. person be revealed. Such requests explain why the unmasking is necessary, and that explanation is conveyed back to the agency that collected the information. It is then up to that agency whether to approve the request and to provide the identity. And, if a U.S. person’s identity is revealed, that identity is provided only to the person who properly requested it, not to a wider audience.

This process is subject to oversight and reporting, and, in the interests of transparency, my former office publishes a report on the statistics of how many U.S. persons’ identities are unmasked based on collection that occurred under Section 702 of the FISA Amendments Act. In 2016, that number was 1,934.

On several occasions during my six-and-a-half years as DNI, I requested the identity of U.S. persons to be revealed. In each such instance, I made these requests so I could fully understand the context of the communication and the potential threat being posed. At no time did I ever submit a request for personal or political purposes, or to voyeuristically look at raw intelligence, nor am I aware of any instance of such abuse by anyone else.

2. Leaks

Second is the issue of leaks. Leaks have been conflated with unmaskings in some of the public discourse, but they are two very different things. An unmasking is a legitimate process that consists of a request and approval by proper authorities. A leak is an unauthorized disclosure of classified or sensitive information that is improper under any circumstance.

I’ve long maintained during my 50-plus year career in intelligence that leaks endanger national security; they compromise sources, methods, and tradecraft; and they can put assets’ lives at risk. And, for the record, in my long career, I’ve never knowingly exposed classified information in an inappropriate manner.

3. Counterintelligence Investigations

Third is the issue of counterintelligence investigations conducted by the Federal Bureau of Investigation. While I can’t and won’t comment in this setting on any particular

counterintelligence investigation, it's important to understand how such investigations fit into the Intelligence Community, and my general practice for handling them.

When the Intelligence Community obtains information suggesting that a U.S. person is acting on behalf of a foreign power, the standard procedure is to share that information with the FBI. The Bureau then decides whether to look into that information and handles any ensuing investigation, if there is one.

Given its sensitivity, even the existence of a counterintelligence investigation is closely held, including at the highest levels. During my tenure as DNI, it was my practice to defer to the FBI Director — both Director Mueller and Director Comey — on whether, when, and to what extent they would inform me about such investigations. This stems from the unique position of the FBI, which straddles both intelligence and law enforcement. As a consequence, I was not aware of the counterintelligence investigation Director Comey first referred to during his testimony before the House intelligence committee on March 20th, and that comports with my public statements.

4. FISA Section 702

Finally, I would like to comment on Section 702 of the FISA Amendments Act — what it governs and why it is vital.

This provision authorizes the Foreign Intelligence Surveillance Court to approve electronic surveillance of non-U.S. person foreign intelligence targets outside the United States. Section 702 has been a tremendously effective tool in identifying terrorists who threaten us, while at the same time protecting the privacy and civil liberties of U.S. persons.

As you know, Section 702 is due for reauthorization by Congress later this year. With so many misconceptions flying around, it would be tragic for Section 702 to become a casualty of misinformation and for us to lose a tool that is so vital to this nation's safety and security.

IV. CONCLUSION

Russia's influence activities in the run-up to the 2016 presidential election constituted the high-water mark of their long-running efforts since the 1960's to disrupt and influence our elections. They must be congratulating themselves for having exceeded their wildest expectations. They are now emboldened to continue such activities in the future, both here and around the world, and to do so even more intensely.

If there has ever been a clarion call for vigilance and action against a threat to the very foundations of our democratic political system, this episode is it. I hope that the American people recognize the severity of this threat and that we collectively counter it before it further erodes the fabric of our democracy.

I'll now turn to my former colleague, Acting Attorney General Sally Yates, for any remarks she has to make.

Statement for the Record
Sally Quillian Yates
Senate Judiciary Subcommittee on Crime and Terrorism
“Russian Interference in the 2016 United States Election”
May 8, 2017

Chairman Graham, Ranking Member Whitehouse and distinguished Members of the Subcommittee, I am pleased to appear before you this afternoon on this critically important topic of Russian interference in last year’s presidential election and related matters the Subcommittee is investigating.

For twenty seven years, I was honored to represent the people of the United States with the Justice Department. I began as an Assistant United States Attorney in Atlanta in the fall of 1989. Like all line prosecutors, I investigated and tried cases, working to ensure that our communities were safe and that those who violated the law were held accountable. Over time, through five Democratic and Republican administrations, I assumed greater leadership positions within the Department of Justice. In the U.S. Attorney’s Office in Atlanta, I served as Chief of the Fraud and Public Corruption section, First Assistant U.S. Attorney, and U.S. Attorney. I then had the privilege of serving as Deputy Attorney General, overseeing the daily operations of the Justice Department for over two years, and finally as Acting Attorney General after being asked to stay on by the current administration. Throughout my time at the Department, I was incredibly fortunate to work alongside the career men and women who followed the facts and applied the law with tremendous care and dedication, and who are in fact the backbone of the Department of Justice. And at every step, in every position from AUSA to Acting Attorney General, I have always tried to carry out my responsibility to seek justice in a manner that would engender the trust of the people whom I served.

I want to thank this Subcommittee for conducting an impartial and thorough investigation of this vitally important topic. The efforts by a foreign adversary to interfere with and undermine our democratic processes and those of our allies pose a serious threat to all Americans. This hearing and others the Subcommittee has and will convene are an important bipartisan step in understanding the threat and the best ways to confront it going forward. As the intelligence community assessed in its January 2017 report, Russia “will continue to develop capabilities . . . to use against the United States,” and we need to be ready to meet those threats. I sincerely appreciate the opportunity to take part in today’s discussion.

I also want to note that I intend my answers today to be as fulsome and comprehensive as possible while respecting my legal and ethical boundaries. As the

Subcommittee understands, many of the topics of interest today concern classified information that I cannot address in this public setting, either directly or indirectly. My duty to protect classified information applies just as much to me as a former official as it did when I led the Department. In addition, I'm no longer at the Department of Justice, and I'm not authorized generally to discuss deliberations within DOJ or more broadly in the Executive Branch, particularly on matters that may be the subject of ongoing investigations. I take those obligations very seriously, and I appreciate the Subcommittee's shared interest in protecting classified information and preserving the integrity of any investigations the Department of Justice may now be pursuing. I look forward to answering your questions. Thank you.

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Wednesday, May 24, 2017 10:42 AM
To: Cutrona, Danielle (OAG)
Subject: FW: McConnell, Schumer

From: SRC Floor Update
Sent: Wednesday, May 24, 2017 10:41:48 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: McConnell, Schumer

Floor Update

WEDNESDAY, MAY 24, 2017 AT 10:41 AM

Opening Remarks

Today -

- The Senate will convene at 10:00 a.m.
- Following any leader remarks, the Senate will proceed to Executive Session to resume consideration of Executive Calendar #58, John J. Sullivan, of Maryland, to be Deputy Secretary of State.
- Note: all time during leader remarks, morning business and adjournment will count post-cloture on the Sullivan nomination.
- Note: on Monday, cloture was filed on Executive Calendar #59, Amul Thapar, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.
- Note: on Tuesday, cloture was filed on Executive Calendar #54, Courtney Elwood, of Virginia, to be General Counsel of the Central Intelligence Agency.

Senator McConnell: (10:03 a.m.)

- Spoke on health care reform.
 - o "According to that report, average annual Obamacare premiums have

According to that report, average annual Obamacare premiums have increased by nearly \$3,000 since 2013, the year that most of the health care law's mandates and regulations actually went into effect. In other words, it's now clear that average Obamacare plans on the exchanges more than doubled from 2013 until now. That's an increase of 105%, or nearly \$3,000, and these figures are based on the Obama administration's own data. But these exorbitant costs are just one part of the problem. To say nothing of the shrinking choices of insurers offering plans on the Obamacare exchanges across the country. Last week our colleague from Iowa, Chairman Grassley, came to the floor and shared with us the story of the Tacoma Narrows Bridge, a bridge in Washington State that was, as he put it, set to fail from the very beginning. He told us how the bridge was built on a flawed design, how it self-destructed and how it eventually collapsed. Much like that bridge, he said Obamacare is becoming its own bridge to nowhere with no insurance plan on its exchanges. Boy, he's right about that. As time goes on, more Americans are finding themselves with fewer Obamacare insurance options to choose from on the exchanges."

- Spoke on the nomination of Amul Thapar to be United States Circuit Judge for the Sixth Circuit.
 - "Judge Amul R. Thapar served with distinction on the United States District Court for the Eastern District of Kentucky for a decade. Having previously served as U.S attorney for that same district and as assistant U.S attorney for several years before that. He was the first South Asian American to become a federal judge. And once he's confirmed to the Sixth Circuit, Judge Thapar will be only the second South Asian American to serve on a federal circuit court. The American Bar Association has given him its highest rating, unanimously well qualified. That meant the group that rated him that was no one who didn't give him a well-qualified rating, which is the best they could give any nominee. I certainly couldn't agree more with that characterization. Judge Thapar is an excellent jurist."

Senator Schumer: (10:25 a.m.)

• Spoke on President Trump and Russia

- Spoke on President Trump and Russia.
 - o "What Mr. Brennan said was happening gets at the very core of our democracy. The free and fair elections of our representatives. Americans of all political stripes should be outraged by what Putin and the Russians did during the 2016 elections. As former Director Brennan said, in America, quote, we cherish the ability to elect our own leaders, without outside interference or disruption, end of quote. So again, I expect the Senate Intelligence Committee will continue its bipartisan investigation into these events. I expect that Special Counsel Mueller will help us all get to the bottom of this. We must make sure he is not interfered with. And finally, I expect this body will hold up a high standard for the next F.B.I director. He or she should be someone who is nonpartisan and independent, a director's director, a prosecutor's prosecutor, not a politician of either party. Amidst all the furor, we cannot lose sight of the most serious part of this investigation, the scope of Russian interference in our elections and if they colluded with representatives of an American campaign in the process."
- Spoke on the president's FY2018 budget request.
 - o "The president promised to increase infrastructure investment, but his budget actually cuts more money from infrastructure programs than the new money it puts in. The president's proposal to slash American infrastructure investments is a job-killing, 180-degree turn away from his repeated promise of a trillion-dollar infrastructure plan. President Trump's campaign promises on infrastructure are crumbling faster than our roads and bridges. And I want to ask the Trump Administration how can we expect that our going to be real about a trillion-dollar infrastructure plan when your budget cuts infrastructure dramatically? Right now. Don't you think it adds up? To us, it does, and it makes us very dubious of any attempt to do infrastructure by this administration. We hope we're wrong, but the budget is a document that tells where the real truth is in terms of administration beliefs, and they sure as heck by this budget don't like infrastructure. The president has said that education was the civil rights issue of our time, but the Trump budget calls for over \$3.2 billion in cuts to higher education, eliminates programs that forgive loans for public service jobs like teachers and doctors, eliminates

subsidized loan program that helps lower the cost for college. College students of America, look at the president's budget. See if he's on your side. He sure as heck isn't."

- Spoke on health care reform.
 - "Now today the Congressional Budget Office will release its analysis of the House Republican health care bill, Trumpcare. I remind my colleagues how unusual it is for a C.B.O score to come out nearly three weeks after a bill is passed. It's like test-driving a brand-new car three weeks after you already signed on the dotted line and paid the dealer in full. Republicans in the House were so worried about how bad the C.B.O score might be, they rushed Trumpcare through. No hearings, no debate, no score. Never mind that this legislation remakes one-sixth of our nation's economy. It has life-and-death consequences for millions of American families. Republicans were haunted by the ghost of C.B.O scores past, so they went ahead without one. Now, when the C.B.O analyzed the first version of Trumpcare earlier this year, it concluded that 24 million fewer Americans would have health insurance if it became law. We also learned the bill would gut Medicaid, crush seniors with higher premiums, and would increase out-of-pocket expenses for Americans of all ages with higher deductibles and co-pays. Given that there were few differences between the first and second versions of Trumpcare, we can expect that today's C.B.O analysis will likely show many of the same grave consequences as the first one did."

Alexander Charow, Floor Monitor

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Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Tuesday, May 9, 2017 10:22 AM
To: Cutrona, Danielle (OAG)
Subject: FW: McConnell, Durbin

From: SRC Floor Update
Sent: Tuesday, May 9, 2017 10:22:13 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: McConnell, Durbin

Floor Update

TUESDAY, MAY 9, 2017 AT 10:22 AM

Opening Remarks

Today -

- The Senate will convene at 10:00 a.m.
- Following any leader remarks, the Senate will proceed to Executive Session to resume consideration of Executive Calendar #53, Scott Gottlieb, of Connecticut, to be FDA Commissioner, with the time until 12:30 equally divided.
- Note: all time during recess, adjournment and morning business and leader remarks count post-cloture on the Gottlieb nomination.

Senator McConnell: (10:03 a.m.)

- Spoke on opioid abuse.
 - "The heroin and prescription opioid epidemic is taking a heartbreaking toll on families and communities across our country. Experts estimate that as many as two million Americans are struggling with prescription drug addiction, with heroin and opioid overdoses claiming an average of 91 lives every day. We continue to read the devastating

average of 1,100 every day. He continues to read the devastating headlines too, like one article published by CNN entitled "A generation of heroin orphans." It told the story of five Kentucky children living with their grandparents due to their mother's addiction. Sadly, this family's not unique. Nearly three million grandparents or other relatives across the country are caring for grandchildren. And according to experts, this uptick in children left without their parents is due at least in part to this epidemic. It's just one of the many reasons why the heroin and prescription opioid crisis require continued action."

- Spoke on the nomination of Scott Gottlieb to be FDA Commissioner.
 - "Dr. Gottlieb has the necessary experience to serve in this key role. Not only has he worked in hospitals, interacted directly with those affected by disease and treatment, but he also has developed and analyzed medical policies in both the public and private sectors. He formed his perspectives on the dynamic public health sector by overseeing medical research and innovation projects. In 2005, Dr. Gottlieb was appointed the F.D.A's deputy commissioner for medical and scientific affairs. He also has served as senior advisor to the F.D.A commissioner and as the agency's director of medical policy development. As a practicing physician with a wealth of policy experience, Dr. Gottlieb has the necessary qualifications to lead the F.D.A at this critical time. The Senate voted to advance his nomination last night on a bipartisan basis, and I look forward to his confirmation."

Senator Durbin: (10:08 a.m.)

- Spoke on Russian interference in Western democratic elections.
 - "During a recent trip to Eastern Europe, a Polish security expert warned me that if the United States didn't respond to an attack on its own presidential election by the Russians, Putin would feel emboldened to keep up the attacks to undermine and manipulate elections all through the free world. So what has this administration and this Congress done to respond to the cyber act of war by the Russians against America's democracy? Has President Trump clearly acknowledged Russia's attack on the U.S. and

Trump clearly acknowledged Russia's attack on the U.S. and forcefully condemned the actions? No. Has President Trump warned Russia to stop meddling in the United States and other democratic elections in France, Germany, and other countries? No. Has President Trump proposed a plan to help the United States thwart any future attack on the next election and to help our states protect the integrity of their voting systems? No. Has the Republican-led Congress passed sanctions on Russia in response to this attack on our democracy? Has it passed meaningful cybersecurity legislation? No. Quite simply, the failure of this president and Congress to address the security threat is a stunning abdication of responsibility to protect the United States and our democratic values."

Alexander Charow, Floor Monitor

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Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Tuesday, May 9, 2017 12:02 PM
To: Cutrona, Danielle (OAG)
Subject: FW: Markey, Schumer, Hassan

From: SRC Floor Update
Sent: Tuesday, May 9, 2017 12:02:21 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: Markey, Schumer, Hassan

Floor Update

TUESDAY, MAY 9, 2017 AT 12:02 PM

Executive Session (Gottlieb Nomination)

Senator Markey: (11:21 a.m.)

- Spoke on the nomination of Scott Gottlieb to be FDA Commissioner.
 - "I rise to speak in option to Dr. Scott Gottlieb to lead the Food and Drug Administration. The F.D.A commissioner is our nation's gatekeeper but for years the F.D.A has granted unfettered access to big pharma and its addictive opioid pain killers to the American public. The result is a prescription drug, heroin and fentanyl epidemic of tragic proportions and the greatest public health crisis our nation currently faces. At a time when we need its leader to break the stronghold of big pharmaceutical companies on the F.D.A, Dr. Scott Gottlieb would be nothing more than an agent of big pharma. He doesn't support using the tools that the F.D.A has to minimize the risk of public health from the misuse of prescription opioids. The current opioid epidemic is a manmade problem. It was borne out of the greed of big pharmaceutical companies and led by the F.D.A which greenlighted prescriptions drugs like oxycotin."

Senator Schumer: (11:29 a.m.)

- Spoke on Russian interference in the 2016 election.
 - "In particular, Deputy A.G. Yates made the point that General Flynn who misled the president about his contact with the Russian ambassador was vulnerable to blackmail since the Russians knew about those conversations. It's still an open question whether or not the Trump Administration will hold General Flynn accountable under our criminal law, but needless to say, his presence in the administration and the length of time it took to dismiss him raise serious questions about why the president brought him on board to begin with and why the president and his staff did not respond more quickly to protect our national security. Mr. President, both parties here in Congress should be focused on the threat posed by Russia's hacking activities and Russia's attempt to influence foreign elections, especially ours. Make no mistake about it, these cyber-attacks won't be limited to any one party or any president. Anyone who draws the ire of President Putin, president, senator, congress member, elected official could be subject to these dark attacks. Whatever is good for Russia at the moment, whatever hurts the United States at the most, that's what he'll pursue."
- Spoke on health care reform.
 - "The bill the House of Representatives passed last week is devastating in so many ways and to so many groups of Americans. To older Americans who would be charged five times as much as others. To middle class Americans who will be paying on average \$1,500 more a year for their coverage the next few years, to lower income Americans who are struggling to make it into the middle class who will be paying thousands of dollars more per year. To women to whom pregnancy could now become a preexisting condition. Amazing. Why are they making these cuts? For all too many on the other side of the aisle, it's for one purpose, to give a massive tax break to the wealthy. Folks making over \$250,000 a year. God bless the wealthy. They're doing well. They don't need a tax break at the expense of everyone else, especially when it comes to something as important as health care. Amazingly, this bill is even devastating to our veterans, and that's what I'd like to focus on for

even devastating to our veterans, and that's what I like to focus on for the remainder of my time this morning."

Senator Hassan: (11:39 a.m.)

- Spoke on the nomination of Scott Gottlieb to be FDA Commissioner.
 - o "I have serious concerns about Dr. Gottlieb's record. I also have additional concerns from his nomination hearing about his stances on critical priorities for people in New Hampshire and across the nation. Mr. President, as I mentioned and as Senator Markey has detailed as well, the most pressing public health and safety challenge facing New Hampshire is the heroin, fentanyl, and opioid crisis. And I want to thank the senator from Massachusetts for his leadership and work in helping identify the root causes of this terrible epidemic. Yesterday I was in New Hampshire, and I met with the Drug Enforcement Agency leaders and personnel there. I heard updates from those on the front lines about the latest developments in the substance misuse crisis. We discussed the spread of the dangerous synthetic drug carfentanyl which is a hundred times stronger than the already deadly drug fentanyl. And a report released this week by new futures showed the economic impact of alcohol and substance misuse costs. It costs New Hampshire's economy now over \$2 billion a year. It's clear that we need to take stronger action to combat this crisis."

Alexander Charow, Floor Monitor

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From: Watts, Brad (Judiciary-Rep)
Sent: Wednesday, May 10, 2017 4:41 PM
To: Cutrona, Danielle (OAG)
Subject: FW: Cornyn, Heinrich, Peters

From: SRC Floor Update
Sent: Wednesday, May 10, 2017 4:41:07 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: Cornyn, Heinrich, Peters

Floor Update

WEDNESDAY, MAY 10, 2017 AT 04:41 PM

Executive Session (Lighthizer Nomination)

Senator Cornyn: (3:15 p.m.)

- Spoke on Russian interference in the 2016 election.
 - "But I believe that we do share a bipartisan and universal commitment to get to the bottom of what happened in our last election. I would note that there are two members of the Senate Judiciary Committee who actually serve as members of the Senate Intelligence Committee that is actively involved in a rigorous bipartisan investigation. That would be myself and Senator Feinstein, the ranking member of the Senate Judiciary Committee, who's also the former chair of the Senate Intelligence Committee. Senator Feinstein has said recently that there is no evidence of collusion between the administration and Russia. But I think she would share with me a commitment to not stop there, but to find out where the facts take us. And indeed thanks to Chairman Burr and thanks to Vice Chairman Warner, our bipartisan Senate Intelligence Committee has unprecedented access to raw intelligence that is from the National Security Agency, the C.I.A, from all sources of the intelligence community. We have access to some of the most sensitive intelligence guard by the United

States government. And I think that's to the credit and leadership of Chairman Burr and Vice Chairman Warner that our committee has remained bipartisan, and we are leaving no stone unturned to get to the bottom of what exactly happened. So I'm -- I know people are concerned, and I share that concern, and we need to come up with a program of countermeasures to deal with this because the Russian government has been amping up their game for some time now and now they are operating at dangerous levels when it comes to trying to interfere in our most basic institutions like our elections."

- Spoke on health care reform.
 - "Our colleagues in the House took the first necessary step to deliver on our campaign promises for the last three elections to repeal and replace Obamacare. Why is that important? Well, because of the impact of Obamacare on premiums and deductibles for many people, millions of people literally who are now being priced out of the insurance market, whose insurance, even though they have a policy, is really unavailable to them because they have, for example, such high deductibles. And we know insurance companies continue to pull out of the marketplace, and people are reduced to little or no choices when it comes to where to buy their insurance. Because, frankly, Obamacare was oversold and under-delivered. The president said if you like your policy, you can keep it. Well, that proved to be false. He said if you like your doctor, you can keep your doctor. Well, that didn't turn out to be true either. And he said if you like your policy, you can keep your -- or he said a family of four would save an average of \$2,500 on their premiums. That didn't prove to be true either. So like most command and control from Washington, D.C, notwithstanding perhaps the aspirations of our colleagues across the aisle to deliver affordable care act to the American people, it simply failed to do so, and it's in serious distress, even a meltdown."

Senator Heinrich: (3:46 p.m.)

- Spoke on the BLM methane rule.
 - "This is a warning of a potential threat. The basin has long been a leading producer of oil and natural gas. And with the natural gas

a leading producer of oil and natural gas. And with the natural gas boom in the mid 2000's, production in the basin grew by leaps and bound and that created hundreds of new high-paying jobs and a major new domestic source of an important energy resource. But unfortunately, amid all this growth, some producers developing natural gas on our public lands and on tribal lands released harmful air pollution and waste at these publicly owned resources by allowing methane to leak into the air from faulty equipment and pipes and even by burning off valuable natural gas in the process called flaring. Following the discovery of the methane hot spot, NASA researchers at the jet propulsion laboratory joined Cal Tech and the university of Michigan scientists to conduct a detailed study into the cause of the methane cloud. Some producers claimed that the hot spot was caused primarily by natural seeps of gas from underground geologic formations and by gas venting out from an old coal mine in the region. But the NASA researchers, using instrumentation mounted on aircraft that flew close to the ground and throughout 1,200 square miles of airspace in the four corners region, identified leaks from natural gas wells as the major methane emitters, contributing to the methane air pollution."

Senator Peters: (4:02 p.m.)

- Spoke on the firing of F.B.I Director James Comey.
 - "It is often said that the news is the first rough draft of history and while the president can attempt to wage war with the news media, none of us can truly fight history. But here in the Senate, we can help shape it. History has its eyes on our chamber now. Some of my colleagues across the aisle have said they are troubled or disappointed by the president's decision to fire Director Comey. But it appears that many are taking a wait and see approach. They are taking a wait and see approach to Director Comey's firing. They are taking a wait and see approach to how the administration replaces him. And they are taking a wait and see approach to the ongoing investigation into the Trump campaign's potential collusion with Russia. The problem here is that this administration won't let us see anything. The Trump administration is not forthcoming to answer anything that we --

administration is actively working to cover up everything that we as the independent legislative branch need to see to get to the bottom of Trump campaign's potential collusion with Russia. Director Comey was investigating this potential collusion at the time that he was fired."

Alexander Charow, Floor Monitor

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Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Monday, May 8, 2017 6:02 PM
To: Cutrona, Danielle (OAG)
Subject: FW: 5-8-17 Russian Interference in the 2016 United States Election Hearing - Written Question Notice

From: Covey, Jason (Judiciary-Rep)
Sent: Monday, May 8, 2017 6:02:18 PM (UTC-05:00) Eastern Time (US & Canada)
To: All Judiciary Users; Boxenbaum, Shelby (Hirono); Driscoll, Ben (Klobuchar); Harman, Alex (Hirono); Hu, Patrick (Hirono); Matyger, Kevin (Blumenthal); Miske, Elizabeth (Blumenthal); Rhodes, Julia (Blumenthal); Romero, Belsis (Cruz); Sadler, Brittany (Kennedy); Stanley, Chris (Kennedy); Stokes, David (Kennedy); Strand, Ben (Hirono); Teleky, Seth (Blumenthal)
Subject: 5-8-17 Russian Interference in the 2016 United States Election Hearing - Written Question Notice

All written questions following today's Senate Judiciary Committee hearing entitled: "Russian Interference in the 2016 United States Election" are due to me by **5 p.m., Monday, May 15th**.

Please note:

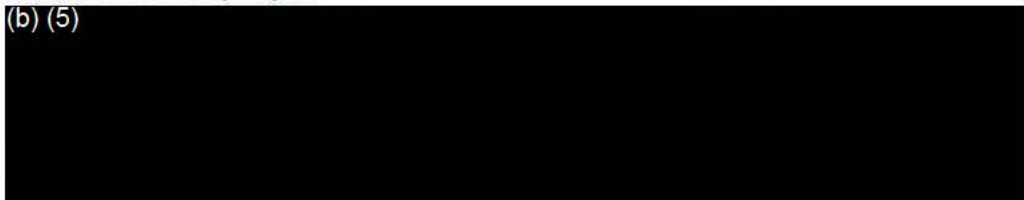
If your Senator requested to have documents or statements entered into the record at the hearing, please forward those documents to me as soon as possible.

Thank you.

Jason A. Covey
Hearing Clerk | Senate Judiciary Committee
<http://judiciary.senate.gov>


Hudson, Andrew (OLP)

From: Hudson, Andrew (OLP)
Sent: Friday, May 19, 2017 6:00 AM
To: Tucker, Rachael (OAG)
Subject: National Security Papers
Attachments: (b) (5)



Here are the edited versions of the national security topics for today. If you have any edits you want to make, it'd be great if you could let me know by 10:30 this morning so I can have JMD update all the binders.

(b) (5)



Thanks!

Cutrona, Danielle (OAG)

From: Cutrona, Danielle (OAG)
Sent: Thursday, May 11, 2017 1:48 PM
To: Hunt, Jody (OAG)
Subject: Fwd: Important - Leahy/Shahen Letter to DAG on Reported FBI Resource Request
Attachments: PJL-CJS Letter to DAG - FBI Resources.pdf; ATT00001.htm

Begin forwarded message:

From: "Lofthus, Lee J (JMD)" (b) (6)
Date: May 11, 2017 at 1:45:29 PM EDT
To: "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
Cc: "Cutrona, Danielle (OAG)" <dcutrona@jmd.usdoj.gov>
Subject: Important - Leahy/Shahen Letter to DAG on Reported FBI Resource Request

[Jim, see attached letter.](#) (b) (5)

(b) (5)

(b) (5)

Thks Lee

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
<http://appropriations.senate.gov>

May 11, 2017

The Honorable Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Deputy Attorney General Rosenstein:

The American people have a right to know, for the sake of our national security and sovereignty, whether and to what extent Russia interfered in the 2016 Presidential election. The Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) should dedicate the needed personnel and resources to the investigation without hesitation. As you know, the recently-passed FY 2017 Consolidated Appropriations Act provided the FBI \$8.767 billion for salaries and expenses which is \$277 million more than the FY 2016 enacted level. In our roles as Vice Chair of Appropriations and Ranking Member of the Senate Subcommittee on Commerce, Justice and Science Appropriations, we stand ready to assist should the FBI require additional funding to comprehensively conduct this crucial investigation or to meet any of its core missions.

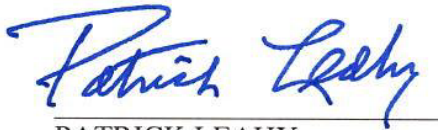
To that end, we were surprised by recent press reports indicating that now former FBI Director James Comey asked DOJ just last week for a significant increase in resources for the bureau's investigation into Russia's interference in the 2016 presidential election. Given the importance of this investigation, the FBI and the DOJ should spare no expense in getting to the truth. In order to facilitate the consideration of the Justice Department's FY 2018 budget request, and to ensure that the investigation has adequate resources, at least 72 hours prior to the Committee's hearing on the Justice Department's FY 2018 request, please provide us with:

- The details of any request for increased resources made by the FBI to DOJ in order to complete its ongoing investigation into Russian interference in our election process, and whether that funding is needed now, in FY 2017, or in FY 2018.
- Information about how this request was communicated from the FBI to DOJ, and whether similar requests were made to the White House (including the Office of Management and Budget) or any member of Congress, and what the response was to these requests.

The Honorable Rod Rosenstein
Deputy Attorney General
May 10, 2017
Page 2 of 2

- Any other constraints that might limit the FBI in conducting a thorough investigation.

Thank you in advance for your timely response to these questions. Should you have any questions, your staff may be in contact with Jean Toal Eisen at 202-224-5202.



PATRICK LEAHY
Vice Chairman



JEANNE SHAHEEN
Ranking Member
Subcommittee on Commerce, Justice,
Science, and Related Agencies

Burton, Faith (OLA)

From: Burton, Faith (OLA)
Sent: Friday, May 12, 2017 9:59 AM
To: Schools, Scott (ODAG)
Subject: FW: Comey testimony
Attachments: 05032017 SJC FBI Oversight Transcript.pdf

Here you go. FB

From: Schools, Scott (ODAG)
Sent: Friday, May 12, 2017 8:14 AM
To: Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
Subject: Comey testimony

Hi, Faith. Can you have someone send me the transcript from Dir. Comey's testimony last week? Thanks much.

Scott

U.S. Department of Justice
Office of Legislative Affairs

Hearing before the Senate Judiciary Committee
May 3, 2017
Oversight of the Federal Bureau of Investigation

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 dossier's 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 be 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 access 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 access 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?

COMERY:

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.

CORNBYN:

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 sow 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 too 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 who 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 know 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 Derrik 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.

Ramer, Sam (OLA)

From: Ramer, Sam (OLA)
Sent: Monday, May 8, 2017 3:07 PM
To: Gauhar, Tashina (ODAG); May, M. Benjamin (OLA); Johnson, Joanne E. (OLA)
Subject: RE: transcripts
Attachments: Transcript - Oversight of the FBI.docx

Comey attached. It will take two days to get transcripts from today's hearing.

From: Gauhar, Tashina (ODAG)
Sent: Monday, May 8, 2017 2:51 PM
To: May, M. Benjamin (OLA) <mbemay@jmd.usdoj.gov>; Johnson, Joanne E. (OLA) <jojohnson@jmd.usdoj.gov>
Cc: Ramer, Sam (OLA) <sramer@jmd.usdoj.gov>
Subject: transcripts

Hi - Have we gotten or can we get a transcript of the FBI Director's testimony last week? Also, same question for the one today by Clapper and Yates (SSCI going on now).

Thanks,
Tash

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 laptops 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 there 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 be 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.

COMNEY:

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.

CORNYN:

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?

COMET:

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's sake 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.

CORNBYN:

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 sow 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?

COMET:

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 terrorists 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.

COMET:

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»?

COMET:

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

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SEN. MAZIE K. HIRONO, D-HAWAII

WITNESSES:

FBI DIRECTOR JAMES COMEY