President to decide upon the appropriate response. And so that is one of reasons I have to be very careful about what I say about it. That work is ongoing. I should make clear to folks when we talk about our election system, there has been a lot of press reporting about attempts to intrude into voter registration databases. Those are connected to the Internet. That is very different than the electoral mechanism in this country, which is not.

Ms. LOFGREN. We had actually a hearing, and I had the chance to talk to Alex Padilla, who is the Secretary of State in California. Number one, they encrypt their database. And number two, even if you were to steal it, there is backups that you couldn't steal. So they can't really manipulate that. But you could cause a lot of damage. I mean, you could create chaos on Election Day that would—and you could target that chaos to areas where voters had a tendency to vote for one candidate over another in an attempt to influence the outcome. So it is not a benign situation certainly, and one that we want to worry about.

I want to just quickly touch on a concern I have also on cyber on rule 41, and how the FBI is interpreting that. I am concerned that the change, as understood by the FBI, would allow for one warrant for multiple computers, but would include allowing the FBI to access victims' computers in order to clean them up. Cybersecurity experts that I have been in touch with have raised very strong concerns about that provision, especially using malware's own signaling system to disable the malware. The cyber experts who have talked to me and expressed concern believe that that ultimately could actually trigger attacks. And, so, I am wondering if you have any comments on how the FBI intends to use rule 41 *vis* malware on victims' computers?

Mr. COMEY. Yeah. Thank you.

Mr. GOODLATTE. Time of gentlewoman has expired. The witness will be permitted to answer the question.

Mr. COMEY. Thank you, Mr. Chairman. I am not an expert, but one of the challenges we face, especially in dealing with these huge criminal botnets, which have harvested and connected lots of innocent peoples' computers is how do we execute a search warrant to try and figure out where the bad guys are, and get them away from those innocent people? And the challenge we have been facing is to go to every single jurisdiction and get a warrant would take, literally, years. And so we are trying to figure out can we use rule 41 to have one judge issue that order and give us that authority.

Ms. LOFGREN. Mr. Chairman, I know my time has expired. I would just like to close by expressing the hope that the FBI might seek the guidance of some of the computer experts at our national labs on this very question of triggering malware attacks. And I yield back.

Mr. GOODLATTE. The point is well taken. The Chair recognizes the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. Director Comey, Chairman Goodlatte, in his introduction of you, mentioned that you are a graduate of the College of William and Mary. And as you may well know, I am a graduate of William and Mary as well.

Anyway, you may remember that our alma mater is very proud of something called the honor code. And I checked out the wording

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of the honor code to make sure that I was correct on it. And I will tell you exactly what it says. It says, "As a member of the William and Mary community, I pledge on my honor not to lie, cheat, or steal, either in my academic or in my personal life." Well, one of the people whose behavior you investigated, Hillary Clinton, didn't have the good fortune to attend the College of William and Mary. But she did attend Wellesley. And I wondered whether they had an honor code. And I found out, I looked it up, they do, and they did. And here is what it says, "As a Wellesley College student, I will act with honesty, integrity, and respect. In making this commitment, I am accountable to the community and dedicate myself to a life of honor." Let me repeat part of that again. "I will act with honesty."

Now, I am sure the young women attending Wellesley today, and those that have attend it in the past, are proud that one of their own could be the next President of the United States. But a majority of the American people have come to the conclusion that Hillary Clinton is not honest and cannot be trusted. It is about two to one who say that she is dishonest. In the latest Quinnipiac poll, for example, the question being: Would you say that Hillary Clinton is honest or not, 65 percent said no. And only 32 percent said yes, she is honest. You know, Republicans and Democrats. Not surprisingly, were overwhelmingly one way or the other. But Independents, 80 percent of them said nope, she is not honest. And only 19 percent of them said she is.

So Director Comey, since you and your people were the ones who investigated Hillary Clinton's email scandal, I would just like to ask a couple of questions. First, Hillary Clinton claimed over and over that none of the emails that she sent contained classified information. Was she truthful when she said that?

Mr. COMEY. As I said when I testified in July, there were—I am forgetting now after 2½ months the exact number, but there were 80 or so emails that contained classified information.

Mr. CHABOT. Okay. So she said they didn't contain classified information and they did. So that sounds like not being truthful. Not trying to put words in your mouth. But I think that is what that means.

Hillary Clinton then came up with a fallback position saying: Well, none of the emails I sent were marked classified. But that wasn't true either. Was it?

Mr. COMEY. There were three—as I recall, three emails that bore within the body of the text a portion marking that indicated they were classified confidential.

Mr. CHABOT. And again, not putting words in your mouth, but I think that means that no, she didn't tell the truth in that particular instance.

Hillary Clinton said she decided to use a personal email server system for convenience. And that she would only have to carry around one BlackBerry. Was she being truthful when she said she just used one device?

Mr. COMEY. She used, during her tenure as Secretary of State, multiple devices. Not at the same time, but sequentially.

Mr. CHABOT. Okay. Again, I am going to take that as she said one and it was more. So, therefore, not honest. And in fact, some

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of the devices were destroyed with a hammer, as has already been mentioned. Is that the type of behavior that you would expect from someone who is being fully cooperative with an investigation, destroying devices containing potential evidence with a hammer?

Mr. COMEY. Well, we uncovered no evidence that devices were destroyed during the pendency of our investigation. And so why people destroy devices when there is no investigation is a question I am not able to answer.

Mr. CHABOT. Okay. Thank you. Mr. Director, a little less than 2 months ago, Hillary Clinton, in talking about her emails, claimed that you said "that my answers were truthful." PolitiFact, by the way, gave this claim a Pants on Fire rating. Did you say that she was telling the truth with respect to her email claims?

Mr. COMEY. I did not. I never say that about anybody. Our business is never to decide whether someone—whether we believe someone. Our business is always to decide what evidence do we have that would convince us not to believe that person. It is an odd way to look at the world, but it is how investigators look at the world.

Mr. CHABOT. Thank you. Director Comey, it must have been, and I am almost out of time, but it must have been very awkward for you, you are tasked with investigating a person who could be the next President of the United States, and the current President of the United States has already prejudged the case and telegraphed to you and the entire Justice Department that he, your boss, has come to the conclusion that there is not even a smidgen of corruption, his own words, before you have even completed your investigation. You were aware that he had said that, weren't you?

Mr. COMEY. Yes, I saw those reported in the press.

Mr. CHABOT. Okay. And finally, it just seems to me here that there was clearly a double standard going on. Like, for example, if anybody else had done this, like a soldier or a serviceman who did virtually the same thing, they would have been prosecuted and were, but not Hillary Clinton. And that is a double standard, and that is not the way it is supposed to work in America. And I am out of time. I yield back.

Mr. COMEY. I disagree with that characterization, but——

Mr. GOODLATTE. The gentleman is permitted to respond.

Mr. COMEY. I don't think so. I actually think if I—if we were to recommend she be prosecuted, that would be a double standard because Mary and Joe at the FBI or some other place, if they did this, would not be prosecuted. They would be disciplined. They'd be in big trouble. In the FBI, if you did this, you would not be prosecuted. That wouldn't be fair.

Mr. CHABOT. I will give you the benefit of the doubt because you are an alumni of William and Mary.

Mr. COMEY. Okay.

Mr. GOODLATTE. The time of the gentleman has expired. The Chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Chairman, thank you so very much. Many Americans have come to trust Hillary Clinton as a dedicated committed public servant. But I believe it is important as we address these questions, let me make one or two points. My colleagues have

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already made it, and I look forward maybe to coming back to Washington to dealing with the potential Russian intrusion on the election system. I am not asking you, Director, at this time. And also the issue of connecting the dots as we deal with terrorism across America. But I do want to acknowledge Eric Williams, an outstanding detailee to this Judiciary Committee, and thank him for his service. And I want to thank the SAC in Houston, Mr. Turner, for helping us in the shooting that occurred in Houston, as you well know, that gave us a great deal of fear and scare just a couple of days ago.

But, Director Comey, my Republican colleagues have questioned, second-guessed, and attacked you and your team of career FBI agents. They disagree with the results of your investigation. They want you to prosecute, or to ask the DOJ to prosecute Secretary Clinton regardless of the facts. So they have engaged in an almost daily ritual of holding hearings, desperately trying to tear down your investigation and your recommendations. I believe you testified previously that your recommendation in that case was unanimous, and your investigation was carried out by what you called an all star team of career agents and prosecutors. Is that right?

Mr. COMEY. Yes. These were some of our very best. And sometimes, because I am lucky enough to be the person who represents the FBI, people think it is my conclusion. Sure it is my conclusion, but I am reporting what the team thought and their supervisors and their supervisors. As I said, this was—as painful as it is for people sometimes, this was not a close call.

Ms. JACKSON LEE. Let me continue. You have written that the case itself was not a cliff hanger. Is that right?

Mr. COMEY. Correct. Correct.

Ms. JACKSON LEE. Recently, Republicans have attacked the decision to provide limited immunity to individuals during the investigation. For example, when Congressman Chaffetz learned about this, he stated, "No wonder they couldn't prosecute a case. They were handing out immunity deals like candy." I understand that the FBI does not make the final call on immunity agreements. That was the DOJ. You made that clear. So his statement was just wrong. But did you consult closely with DOJ before these immunity agreements were concluded by giving—by having facts?

Mr. COMEY. Right. Our job is to tell them what facts we would like to get access to. The prosecutor's job is figure out how to do that. And so they negotiate—I think there were five limited immunity agreements of different kinds that they negotiated.

Ms. JACKSON LEE. Did you or anyone at the FBI ever object to these decisions to grant immunity? Did you think they made sense?

Mr. COMEY. No. It was fairly ordinary stuff.

Ms. JACKSON LEE. Was the FBI or DOJ handing out immunity agreements like candy?

Mr. COMEY. That is not how I saw it. I didn't see it——

Ms. JACKSON LEE. Congressman Gowdy, a good friend, also objected to granting immunity to Bryan Pagliano and Mr. Combetta at Platte River Networks. He quoted: "These are the two people that FBI decides to give immunity to, Bryan and the guy at Platte River, if it happened." Those are the two that you would want to prosecute. So you are giving immunity to the trigger people, and

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everybody goes free." Do you agree with this assessment? Did the FBI screw up here and let everyone go free because of these limited immunity deals?

Mr. COMEY. No, I don't think so. The goal in an investigation like this is to work up. And if people have information that their lawyers are telling you that you are not going to get without some limited form of immunity and they are lower down, you try to get that information to see if you can make a case against your subjects.

Ms. JACKSON LEE. Congressman Gowdy also said this about the FBI: "I have been underwhelmed by an agency that I once had tremendous respect for." Let me just say, sitting on this Judiciary Committee for many, many years, going through a number of investigations, I have never been proud of an agency that has always been there when vulnerable people are hurting, and when there is a need for great work. But my question to you is: What is your response to that, Director Comey? Do you believe these criticisms are fair?

Mr. COMEY. I think questions are fair. I think criticism is healthy and fair. I think reasonable people can disagree about whether I should have announced it and how I should have done it. What is not fair is any implication that the Bureau acted in any way other than independently, competently, and honestly here. That is just not true. I knew this was going to be controversial. I knew there would be all kinds of rocks thrown. But this organization and the people who did this are honest, independent people. We do not carry water for one side or the other. That is hard for people to see because so much of our country we see things through sides. We are not on anybody's side. This was done exactly the way you would want it to be done. That said, questions are fair. Feedback is fair.

Ms. JACKSON LEE. Absolutely. But the foot soldiers, we use that term in the civil rights movement, your agents on the ground, you take issue with whether or not they were compromised or they were adhering to somebody else's message. Is that what you are saying?

Mr. COMEY. Absolutely. You can call us wrong, but don't call us weasels. We are not weasels. We are honest people. And we did this in that way, whether you disagree or agree with the result, this was done the way you would want it to be done.

Ms. JACKSON LEE. You were able to learn that Mr. Pagliano and Mr. Combetta—you learned what they had to say. And if anyone provided statements to the FBI had actually provided evidence that Secretary Clinton has committed a crime, would you then have recommended prosecution to the DOJ?

Mr. COMEY. Oh, yeah. If the case was there, very aggressively.

Ms. JACKSON LEE. Are you sure you wouldn't have been a little nervous about doing so, a little intimidated?

Mr. COMEY. No. I really don't care.

Ms. JACKSON LEE. You don't look like it. You are kind of tall, and that——

Mr. COMEY. I have a 10-year term. That is the beauty of this—while there is a lot of challenging things about this job, one of the great things is I have a certain amount of job security. And so no.

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Either way, we would have done what the facts told us should be done.

Ms. JACKSON LEE. So are you now second-guessing your decision regarding Hillary Clinton?

Mr. COMEY. No.

Mr. GOODLATTE. The time of the gentlewoman has expired.

Ms. JACKSON LEE. Mr. Chairman, I want to thank the Director and ask my colleagues to give the respect that this agency in this instance deserves. Thank you so very much for your service. I yield back.

Mr. GOODLATTE. The Chair thanks the gentlewoman. The Chair recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. Director, I have got a lot of concerns. But one of them refers to Reddit. At the time that the Department of Justice at your behest or your involvement gave Paul Combetta immunity, did you do so knowing about all of the posts he had on Reddit, and capturing all of those posts and correspondence where he was asking how to wipe, or completely erase on behalf of a very VIP, so to speak?

Mr. COMEY. I am not sure sitting here. My recollection is, and I will check this and fix it if I am wrong, that we had some awareness of the Reddit posts. I don't know whether our folks had read them all or not. We had a pretty good understanding of what we thought he had done. But that is my best recollection.

Mr. ISSA. Okay. In the last week, en masse, he has been deleting them from Reddit posts. Is that consistent with preserving evidence? And I say that because there is still an ongoing interest by Congress. And only in spite of Reddit's own senior, what they call, flack team trying to hide it, only because a few people caught it do we even know about it. And this and other Committees are interested in getting the backups that may exist on these deletions. You know, I guess my question to you is, is he destroying evidence relevant to Congressional inquiries? And I will answer it for you. Yes. He is. And what are you going to do about it?

Mr. COMEY. That is not something I can comment on.

Mr. ISSA. Well, let me go into something that concerns this body in a very specific way. As a former Chairman issuing subpoenas, I issued a subpoena, and additionally, I issued preserve letters in addition to that. Now-Chairman Chaffetz issued what are effectively preserve letters. Some of them were directly to Hillary Rodham Clinton while she was still Secretary. Others, the subpoena in 2013, was to Secretary Kerry. These individuals destroyed documents pursuant—or took it out of Federal custody pursuant to our subpoena and our discovery. As a result, they committed crimes. My question to you is, when I was a Chairman and I wanted to grant immunity to somebody, I had to notice the Department of Justice, and you were consulted. Isn't that correct?

Mr. COMEY. In a particular matter?

Mr. ISSA. In any matter.

Mr. COMEY. I don't know whether the FBI is consulted in that circumstance.

Mr. ISSA. Okay. For the record, yes. The Department of Justice does not grant immunity without checking with Federal law enforcement to see whether it will impact any ongoing investigation.

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That is the reason we have a requirement to give notice. When the reverse was occurring, you were granting—handing out like candy, according to some, immunity, did you or, to your knowledge, Department of Justice confer with Chairman Goodlatte, Chairman Chaffetz, Chairman Smith or any of the other Chairmen who had ongoing subpoenas and investigations?

Mr. COMEY. Not to my knowledge.

Mr. ISSA. So isn't there a double standard that when you granted immunity to these five individuals, you took them out of the reach of prosecution for crimes committed related to destruction of documents, or withholding or other crimes pursuant to Congressional subpoenas?

Mr. COMEY. I don't think anybody was given transactional immunity.

Mr. ISSA. Oh, really? Now, we have are not allowed to make your immunities public, but I am going to take the privilege of making one part of it public. I read them. You gave immunity from destruction to both of those attorneys. Not just turning the documents over, specifically destruction. You did the same thing with these other two individuals, Bryan and Paul Combetta. You gave them immunity from destruction.

Mr. COMEY. Yeah. I don't think—well, again, I could always be wrong, but I don't have them in front of me either——

Mr. ISSA. Well, because you don't let us take them out of the SCIF, it is a little hard for us too. But the fact is when you read them——

Mr. COMEY. Can I finish my answer? I am pretty sure that what was granted was use immunity in the case of those two people, coextensive with 18 U.S.C. 6001, which means no statement you make can be used against you directly or indirectly. Transactional immunity is sometimes given also by prosecutors, says you will not be prosecuted in any event for this set of facts. I don't think there was any transactional immunity.

Mr. ISSA. But when I read for both of the attorneys that immunity was granted, it, in both cases, said destruction, in addition to the turning over. Why was that—why would you believe that was necessary, or do you believe that would be necessary? You wanted the document. You wanted the physical evidence. Why did you have to give them immunity from destruction of materials? And because my time is expiring, when you look into it and hopefully get back to this Committee, I would like to know, does that immunity apply only to destruction on the computers delivered so that other destructions by Cheryl Mills could still be prosecuted?

Mr. COMEY. Yeah. Again, my recollection is no transactional immunity was given. Protection of statements was given to the Combetta guy and Mr. Pagliano.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. GOODLATTE. The Chair thanks the gentlemen. The Chair recognizes the gentleman from Tennessee, Mr. Cohen.

Mr. ISSA. Mr. Chairman, I would ask unanimous consent, quickly, that a group of documents be included, and I will summarize them. They are basically the letters and subpoenas that led up to the destruction of documents that were previously held for preser-

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vation. Additionally, the blog posts from Reddit. If those could all be placed in the record.

Mr. GOODLATTE. Without objection, they will be made a part of the record.*

Mr. ISSA. Thank you, Mr. Chairman.

Mr. GOODLATTE. The gentleman from Tennessee is recognized.

Mr. COHEN. Thank you, sir. Director Comey, would you consider the FBI's most important job presently fighting terrorism and threats to the homeland?

Mr. COMEY. Yes. That is our top priority.

Mr. COHEN. How much time do you think the FBI and you have spent responding to congressional inquiries, and on this particular email investigation? Could you give me an idea how many man months or years have been expended on responding to the different Committees that have called you in time after time after time, and repetitiously accused you of doing politics rather than being an FBI Director?

Mr. COMEY. I can't. I don't have any sense.

Mr. COHEN. Could it be—would it be months of cumulative man hours, or would it be years of cumulative man hours?

Mr. COMEY. You know, I don't know. A lot of folks have done a lot of work to try and provide the kind of transparency that we promised. It has been a lot by a lot of people. I just don't have a sense of the——

Mr. COHEN. How many hours have you spent before Congress on this?

Mr. COMEY. Testimony? Four hours and 40 minutes without a bathroom break, I want to note for the record. And whatever today is. Those would be the two main appearances. I was asked questions at Senate Homeland yesterday about this, and then House Homeland in July, I think. I am guessing 10 hours or so.

Mr. COHEN. And you prepared for this, though. I mean, the 10 hours is just like the iceberg?

Mr. COMEY. Oh, sure. Yeah.

Mr. COHEN. Could your time and the FBI's time better be used fighting terroristic threats here in America?

Mr. COMEY. You know, we are still doing it all. So no one should think that we have taken a day off because we are also doing oversight. We do both.

Mr. COHEN. In the case in New York where Mr. Rahami tried to detonate some bombs, did detonate a bomb, his father had accused him of being a terrorist at one time. And he had stabbed his brother and was in jail. Did the FBI interview him when he was in jail about his possible terrorist tendencies and his trips to Pakistan or Afghanistan?

Mr. COMEY. I will answer that. I am trying to be very circumspect at how I answer questions about the case, because the guy is alive and is entitled to a fair trial. And if I don't do anything that would allow him to argue, he lost the ability to have a fair trial. The answer is we did not interview him when he was in jail in 2014.

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*Note: The material referred to is not printed in this hearing record but is on file with the Committee, and can also be accessed at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105390

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Mr. COHEN. And why would that be? You interviewed the father, I believe. You might have talked to the brother. You might have talked to a friend. The best evidence was him. He is in jail. You didn't have to—you know. Why did they not go and talk to him?

Mr. COMEY. You know, sitting here, I don't want to answer that question yet. I have commissioned, as I do in all of these cases, a deep look back. We are trying to make the case now. We will go back very carefully, try to understand what decisions the agents made who investigated that and why, and whether there is learning from that. So I don't want to answer it just now, because I would be speculating a bit.

Mr. COHEN. Thank you, sir. Some people have suggested you made a political calculation in your recommendation dealing with Secretary Clinton and the emails. Did you make a political calculation in coming to your ultimate decision?

Mr. COMEY. None.

Mr. COHEN. Some said that on national television, that Secretary Clinton's emails were destroyed after a directive from the Clinton campaign. You announced your decision, you stated publicly, "We found no evidence that Secretary Clinton's emails were intentionally deleted in efforts to conceal them." Is that not correct?

Mr. COMEY. That is correct.

Mr. COHEN. Others have said they lost confidence in the investigation and questioned the genuine effort in which it was carried out. Did the FBI make a genuine effort to carry out a thorough investigation?

Mr. COMEY. Oh, yes. Very much.

Mr. COHEN. And did you take some hits from the position you took when you announced your decision?

Mr. COMEY. A few. A few. Yeah.

Mr. COHEN. Difficult.

Mr. COMEY. Difficult, but I just thought it was the right thing to do. I am not loving this. But I think it is important that I come and answer questions about it. As long as people have questions, I will try to answer them.

Mr. COHEN. You are not loving this? Do you need a bathroom break?

Mr. COMEY. No, no, I am good.

Mr. COHEN. Setting a record?

Mr. COMEY. I will let you know at 4:40. How I am doing?

Mr. COHEN. Thank you, sir. At FBI buildings, we know what they shouldn't be named. And you know my position on that. And I hope you keep that well in mind. You are a credit to the FBI. You are a credit to government service, and to your alma mater. And I yield back the balance of my time.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I thank you, Director, for your testimony here before this Committee. Again, I was listening in the exchange between yourself and Mr. Issa. I would just like to confirm that you were confirming that Mr. Combetta made the Reddit posts?

Mr. COMEY. I don't know whether I am confirming it. I think he did, is my understanding. But, yeah, that is my understanding. I

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think he did. I haven't dug into that myself. I have been focused on a lot of other stuff as we have talked about. But I think that is right.

Mr. KING. I certainly can accept that. And I would like to just go back to the interview with Hillary Clinton and how that all came about on that July 2 date. But first, I am looking at the dates of the conditional immunity documents that I have reviewed. And I see that Mr. Pagliano had one dated December 22, and another one dated December 28. Can you tell me what brought about that second agreement, why the first one wasn't adequate, and if there was an interview with Mr. Pagliano in between those dates? So December 22 and 28 of 2015?

Mr. COMEY. I think what it is, and Mr. Gowdy and Mr. Marino will recognize this term, the first one is what we call a queen-for-a-day agreement, which was to govern an interview, so limited use immunity for an interview. And then I believe the second one is the agreement for use immunity in connection with the investigation. So it is sort of a tryout for him to get interviewed, for the prosecutors and investigators to poke at him. And then the second one is the agreement they reached. I think that is right.

Mr. KING. And to the extent of if we are going to go any further, we will go off of the December 28 agreement. That would be how I would understand that.

Mr. COMEY. Well, I think they are both important to him and his lawyer. But the first is an intermediate step to the second.

Mr. KING. Okay. Thank you. Then were you aware of the President's statement on October 9, 2015 when he reported that Hillary Clinton would not have endangered national security?

Mr. COMEY. Obviously, I don't know the dates, but I remember public reporting on a statement like that.

Mr. KING. And the following October, and I will state it, the report I have is October 9. Then again, on April 10, 2016, it was reported that the President had said that Hillary Clinton was careless, but not intentionally endangering national security. Were you aware of that statement as well?

Mr. COMEY. Yes.

Mr. KING. And then I would like you, if you could characterize the interview, sometime around, I believe, May 16 it was reported that you said you intended to interview Hillary Clinton personally?

Mr. COMEY. I never said that because I never intended that. And I am sure I didn't say that publicly.

Mr. KING. Were you aware of the report that that was your public statement?

Mr. COMEY. Yes. I think I read it and smiled about it. People imagine the FBI Director does things that the FBI Director doesn't do.

Mr. KING. In fact, and I am not disputing your answer, I am just simply, for the record, this is a record that is dated September 28, 2016, Buffalo News, that has your picture on it, and takes us back to—that is when it was printed, excuse me. Takes us back to a document May 16, 2016, has a picture of you on the front of it, and I will ask to introduce it into the record, it says, "FBI Director James Comey told reporters that he would personally interview

Hillary Clinton 'in coming days.'" And I would ask unanimous consent to introduce this article into the record.

Mr. GOODLATTE. Without objection, it will be made a part of the reported.

[The information referred to follows:]

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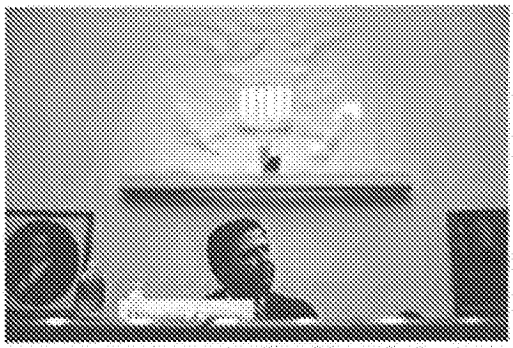
Wednesday, September 28, 2016
The Washington Examiner

Opinion



FBI Director James Comey told reporters that he would personally interview Hillary Clinton "in coming days." (Bill O'Leary/The Washington Post via Getty Images)

Remodeling of Clinton probe tarnishes FBI

By [redacted]

[redacted]

WASHINGTON — The American people, with legitimate suspicions, have every right to find FBI work technology.

We believe in the integrity of the system, the processes and many members of the average FBI special agent. The FBI is perhaps the only federal agency in which the public does still believe.

That trust is being put to a test, however, because of the handling of the investigation into the private email server used by Hillary Rodham Clinton, when she was secretary of state, and related FBI investigations now had read.

The ultimate decision, and the outcome of the investigation, including Clinton, and the beneficiaries of hours from due diligence.

[redacted] a former FBI agent and former New Orleans district attorney — Democrat — Congress. He said about former agents from an informal, closed-door talk.

"Most former FBI agents assigned understand why the FBI handling some of former Secretary of State Hillary Clinton has not been conducted," Congress said.

"But prosecutorial decision-making processes and disagreements from prosecutorial attorneys over the decisions made, [redacted] must be left to the ordinary process of internal checks and balances and professionalism."

Congressional statements that in spite by a bipartisan group of congressmen for the American people.

Indeed, how average FBI agents with the power to promptly pick some quickly. When the bureau wants nothing, any form of comment, such as not agent, subject to pressure or to existing, independent pressure to the potential charges of a felony. The former stated he pressed. Reports and FBI, and suggested that the interviewing agent like a common report within Jonathan.

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[redacted]

[redacted]

[redacted]

Mr. KING. Thank you, Mr. Chairman. And not as a matter of indictment, I don't dispute your word on this, it is what the public expectation was hanging out there is my real point. And then with that public expectation, I think the public was surprised to learn about who was or wasn't in that room. Can you tell us who was in the room involved in either listening to or conducting the interview of Hillary Clinton on that date of July 2, 2016?

Mr. COMEY. I can't tell you for sure. I can give you a general sense. The witness and her legal team. And then on our side of the table, our agents, prosecutors from the Department of Justice. I don't know if any of our analysts were in there or not. But sort of our team, their team.

Mr. KING. And how many of your team? How many FBI investigators?

Mr. COMEY. I don't know for sure, sitting here. I think we probably had eight to 10 people on our side, prosecutors and agents. That is a knowable fact. I just don't know it sitting here.

Mr. KING. Prosecutors. Did Loretta Lynch have her people in there?

Mr. COMEY. If you mean Department of Justice lawyers, yes. Sure.

Mr. KING. So how many Department of Justice lawyers would have been there?

Mr. COMEY. I don't know for sure. Again, I think it was probably about eight people; probably about four lawyers, about four from the FBI. But again, I could be wrong.

Mr. KING. Okay. So around four investigators, around four potential prosecutors from the DOJ, a couple of attorneys for Hillary Clinton, Hillary Clinton herself. That would set the scene fairly closely?

Mr. COMEY. I think Secretary Clinton's team was bigger than that. I don't know the exact number.

Mr. KING. Okay. And then, when you received the counsel as to the recommendation you were to make to Loretta Lynch, I am going to just go through this quickly, you didn't review a video tape, an audio tape, or a transcript. So you would have had to rely upon the briefings from the people that were in the room who would have been your investigative team?

Mr. COMEY. Yes. The agents who conducted the interview, yes.

Mr. KING. And they were briefing off of notes that they had taken, which are now in the SCIF, but redacted?

Mr. COMEY. Right. They write them up in what is called an FBI 302.

Mr. KING. And so Loretta Lynch had her people in the room, and they would have had access to your investigators in the room. And out of that came a piece of advice to you that she had already said she was going to hand that responsibility over to you as Director of the FBI as to making the recommendation, which turned out to be the decision on whether or not to indict Hillary Clinton?

Mr. GOODLATTE. The time of the gentleman has expired. The Director will answer the question.

Mr. COMEY. I am not sure I am following it entirely. There was no advice to me from the Attorney General or any of the lawyers working for her. My team formulated a recommendation that was

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communicated to me. And the FBI reached its conclusion as to what to do uncoordinated from the Department of Justice.

Mr. KING. Even though Justice was in the room with your investigators? And I would make that final comment and I yield back. Thank you, Chairman.

Mr. COMEY. Sure. Sure.

Mr. GOODLATTE. The Chair thanks the gentleman. The Chair recognizes the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. Russian hacking into the databases of the Democratic National Committee and the Democratic Congressional Campaign Committee, as well as Russian hacks into the voter registration systems of Illinois and Arizona, serve as ominous warnings to the American people about the risks that our electoral processes face in this modern era. Unfortunately, Trump Republicans in the House are as obsessed with Hillary Clinton's damn emails as Trump has been about President Obama's birth certificate. Just like The Donald closed his birth certificate investigation after 5 years of fruitless investigation, however, I predict that the Trump Republicans will, at some point, close this email persecution. The American people are sick of it. The attention of the American public is increasingly focused on the security of this Nation's election infrastructure. On Monday, the Ranking Members of the House and Senate Intelligence Committees, Senator Dianne Feinstein and Congressman Adam Schiff, issued a joint statement setting forth the current status of this investigation. It said this: "Based on briefings we have received, we have concluded that the Russian intelligence agencies are making a serious and concerted effort to influence the U.S. Election." They work closely with intelligence community individuals to be able to put that statement out to the American public.

Director Comey, I don't want to ask you about any classified information, but is their statement accurate?

Mr. COMEY. I don't—I can't comment on that in this forum. As I said in my opening, we are investigating to try to understand exactly what mischief the Russians might be up to in connection with our political institutions and the election system more broadly. But I don't want to comment on that at this point.

Mr. JOHNSON. Free and fair elections are the linchpin of our society. A compromise or disruption of our election process is something that this Congress certainly should be looking into. Would you agree with that?

Mr. COMEY. I can't speak, sir, to what Congress should be looking into. But the FBI is looking into this very, very hard for the reasons you say. We take this extraordinarily seriously.

Mr. JOHNSON. Thank you. In June, the FBI cyber division issued a flash alert to State officials warning that hackers were attempting to penetrate their election systems. The title of the flash alert was, "Targeting Activity Against State Board of Election Systems." The alert disclosed that the FBI is currently investigating cyber attacks against at least two States. Later in June the FBI warned officials in Arizona about Russian assaults on their election system, and hackers also attacked the election system in Illinois, where they were able to download the data of at least 200,000, or up to 200,000 voters. In August, the Department of Homeland Security

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convened a conference call warning State election officials and offering to provide Federal cyber security experts to help scan for vulnerabilities. And yesterday it was announced that at least 18 states have already requested election cybersecurity help to defend their election systems.

Director Comey, since these flash alerts and warnings went out over this summer, I would appreciate you letting us know whether or not there have been any additional attacks on State operations or databases since June.

Mr. COMEY. There have been a variety of scanning activities, which is a preamble for potential intrusion activities, as well as some attempted intrusions at voter registration databases beyond those we knew about in July and August. We are urging the States just to make sure that their dead bolts are thrown and their locks are on, and to get the best information they can from DHS just to make sure their systems are secure. And again, these are the voter registration systems. This is very different than the vote system in the United States, which is very, very hard for someone to hack into, because it is so clunky and dispersed. It is Mary and Fred putting a machine under the basketball hoop at the gym. Those things are not connected to the Internet. But the voter registration systems are. So we urge the States to make sure you have the most current information and your systems are tight. Because there is no doubt that some bad actors have been poking around.

Mr. JOHNSON. All right. With that, I will yield back the balance of my time. And thank you, sir.

Mr. GOODLATTE. The Chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. And Director Comey, thanks for being here. I was a bit astounded when you said the FBI is unable to control who a witness, coming in voluntarily, brings in to an interview. I have seen a lot of FBI agents tell people who could come into an interview and who could not. And in this case, and I am sure you have heard some of the questions raised by smart lawyers around the country about providing immunity to people like Cheryl Mills in return for her presenting a laptop that you had every authority to get a subpoena, and if you had brought a request for a search warrant, based on what we now know, I would have had no problem signing that warrant so you could go get it anywhere you want. And in fact, I have talked to former U.S. attorneys, A.U.S.A.s, who have said if an FBI agent came in and recommended that we gave immunity to a witness to get her laptop that we could get with a subpoena or warrant, then I would ask the FBI not to ever allow this agent on a case.

Can you explain succinctly why you chose to give immunity without a proffer of what was on the laptop, give immunity to Cheryl Mills while she was an important witness, and you could have gotten her laptop with a warrant or subpoena?

Mr. COMEY. Sure. I will give it my best shot. Immunity we are talking about here, and the details really matter, that we are talking about, is act of production immunity, which says we want you to give us a thing. We won't use anything we find on that thing directly against you. All right? It is a fairly——

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Mr. GOHMERT. Well, and I understand that, and I understood that from reading the immunity deal. And that is what is so shocking because she was working directly with Hillary Clinton. And, therefore, it is expected since the evidence indicates she was pretty well copied on so many of the emails that Hillary Clinton was using, that pretty much anything in there would have been useable against her. And you cleaned the slate before you ever knew.

Now, some of the immunities you give, the last paragraph mentions a proffer. Was there a proffer of what the witness would say before the immunity deals were given to those that got those immunities?

Mr. COMEY. Can I answer first, though, your question about what I think it made sense to have active production immunity for Cheryl Mills' laptop?

Mr. GOHMERT. I would rather—my time is so limited. Please.

Mr. COMEY. It is an important question, and I think there is a reasonable answer, but I will give it another time. I think in at least one of the cases, and I am mixing up the guys, but with Mr. Combetta, maybe also with Mr. Pagliano—no. I got that reversed.

Mr. GOHMERT. It is yes or no. Did you have a proffer from them as to what they would say before you gave them immunity?

Mr. COMEY. I believe there was a proffer session governed by what I just referred to is called a queen-for-a-day agreement, with at least one of them to try and understand what they would say. But——

Mr. GOHMERT. Because the deals that I have seen back 30 years ago before I went to the bench, the FBI would say you—and the DOJ. Of course, we know FBI can't give immunity. It has to come from DOJ, just like it is not the FBI's job to say what a reasonable prosecutor should do or not do. You give them the evidence and then you let them decide. But a proffer is made saying this is what my client will say. Then the DOJ decides, based on that proffer, here is the plea we will offer, here is the immunity we will offer. And if your client deviates from that proffer, the deal is off.

You got really nothing substantial. It is as if you went into the investigation determined to give immunity to people instead of getting a warrant. You gave immunity to people that you would need to make a case if a case were going to be made. And I know we have people across the aisle that are saying: Well, it is only because she is a Presidential candidate. It happens to be, in my case, I wouldn't care whether she was a Presidential candidate or not. What is important to maintaining a civilization with justice and fairness is a little righteousness where people are treated fairly across the board, and it does not appear that in this case, it comports with anything that FBI agents, with centuries of experience, have told me they have never seen anything like this.

So one other thing, I know this happened before your watch, but under Director Mueller, Kim Jensen, who prepared 700 pages of training material for those who would go undercover and try to embed with al-Qaeda, it was wiped out because CAIR and some of the people that were unindicted co-conspirators named in your Holy Land Foundation trial, they said: We don't like them. They do not allow agents to know what Kim Jensen put in that 700

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pages that was so accurate, so good about Islam, that we could imbed people in al-Qaeda and they wouldn't suspect them.

I would encourage you to start training your FBI agents so whether they are in San Bernardino, Orlando, New Jersey, wherever, they can talk to a radicalized Islamist and determine whether they are radicalized. Without Kim Jensen's type material, you will never be able to spot them again, and we will keep having people die.

Thank you. My time has expired.

Mr. GOODLATTE. The time of the gentleman has expired. The Director is permitted to respond if he chooses to do so.

Mr. COMEY. I don't think I have anything at this point.

Mr. GOODLATTE. The Chair recognizes the gentlewoman from California, Ms. Chu, for 5 minutes.

Ms. CHU. Thank you. Director Comey, during this Committee's oversight hearing last year, I asked you about the cases of Sherry Chen and Xi Xiaoxing, both U.S. citizens who were arrested by the FBI, accused of different crimes related to economic espionage for China, only to have those charges dropped without explanation.

Since you last testified before the Committee, both cases have been closed. Now, I know that you may not be personally familiar with the individuals' cases, or may not be inclined to comment on the facts of these cases to the Committee today. However, would you be willing to provide a written explanation, or possibly a summary of the investigations to clarify how and why the FBI handled the cases the way they did?

Mr. COMEY. I don't want to commit to that sitting here. We would certainly consider what we can supply consistent with things like the Privacy Act. But we will certainly consider it. I am familiar with the cases. I remember your questions about it last year. And so we will take a look at what we can share with you. We can't obviously do it in an open forum, in any event.

Ms. CHU. I understand that. But I appreciate the consideration.

Now I would like to address a different topic. Director Comey, your agency recently introduced an online initiative aimed at promoting education and awareness about violent extremism called Don't Be a Puppet. This program was designed to serve as a tool for teachers and students to prevent young people from being drawn toward violent extremism.

However, national education groups, faith groups, and community organizations have raised serious concerns about the way in which the program presents the problem of violent extremism. Particularly troublesome is the Web site's charge that teachers and students should look for warning signs that a person may be on a slippery slope of violent extremism, and to report activity that may or may not be indicative of radicalization.

For instance, the Web site encourages students and teachers to report when others use unusual language or talk about travelling to suspicious places. The user of the Web site, however, is left to draw inferences about what constitutes a suspicious place, or what language is unusual enough to be reported to a trusted authority. For example, a trip to France or Germany, which hosts many far-right extremist groups may not sound suspicious to many users.

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But a trip to Saudi Arabia or Iraq, home to various Muslims' holy sites, possibly would.

So on August 9, the American Federation of Teachers led a number of national groups in a letter written to you. And, Mr. Chair, I would like to submit this for the record.

[The information referred to follows:]

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Press Release

Civil Rights Leaders Express Outrage over FBI Student Profiling Program

For Release:
Thursday, August 11, 2016

Contact:
Richard A. Fowler
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WASHINGTON—On Wednesday, the American Federation of Teachers, civil and human rights organizations, faith leaders and community groups came together to issue a letter to the FBI condemning its Don't Be a Puppet program. In an attempt to educate students and their families about violent extremism, this program does the opposite; it promotes bigotry and hatred, and doubles down on the problematic law-enforcement strategy of profiling.

"Public schools should be safe havens that embrace all students and families, regardless of citizenship and national origin. They should instill civic pride, not fear and suspicion," said the AFT and other organizations in the two-page letter sent to FBI Director James Comey. "As educators and advocates, we have worked hard to provide safe, welcoming places of learning, free from harassment and discrimination, where all our children feel safe, welcomed and valued. The strength of the American public school system lies in its diversity and inclusion."

The letter, which was signed by 19 organizations, including the League of United Latin American Citizens and AASA, The School Superintendents Association, also highlights why programs like Don't Be a Puppet create fertile ground for bullying and hateful rhetoric: "The harmful effects of such

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a campaign cannot be overstated. Racial profiling is marginalizing and will take an emotional and psychological toll on innocent children. A generation of children is growing up living in fear due to the current hateful rhetoric in the public arena targeted at their families and communities. Efforts like Don't Be a Puppet will only exacerbate the bullying and profiling of Middle Eastern and Muslim students by creating a culture of animosity and distrust."

Click here (//www.aft.org/sites/default/files/ltr_dont_be_a_puppet_aug2016.pdf) to view the letter sent to the FBI.

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The AFT represents 1.6 million pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; nurses and healthcare workers; and early childhood educators.

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[illegible] (/press/releases)
New York Times columns (/press/nyt)
Blog (http://www.aft.org/blog/262)
Speeches (/press/speeches)
Media Kits (/press/media-kits)

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Ms. CHU. And among the many concerns they raise is the potential for such initiatives to exacerbate the profiling and bullying of students of Middle Eastern background that—and what they—over and above what they already experience. So how do you respond to the concerns expressed by the American Federation of Teachers about the impact of the FBI's Don't Be a Puppet Program, and the effect it may have on schools in immigrant communities?

Mr. COMEY. Well, thank you for that. I am glad they shared their feedback. Boy, I hope either before or after the feedback they go on and actually go through the Don't Be a Puppet. Because I have done it. I honestly can't understand the concerns. It is a very commonsense thing. One of our big challenges is how—if a kid starts to go sideways toward violence, the people closest to him are going to see something likely. How do we get folks to a place where they are sensitized to make commonsense judgments that this person may be headed in a very dangerous direction? It is never going to be perfect. But I actually think a lot of thought went into this, including faith groups, all kinds of civic groups, to make sure we got something that was good commonsense education for kids and for teachers. And so I am a little bit at a loss. Maybe we ought to meet with them and they can show me which parts of it they actually think are problematic. But I think it is a pretty darn good piece of work, is my overall reaction.

Ms. CHU. So, Director Comey, you have gone to the Web site and looked at it. So what, then, would you consider to be a place that sounds suspicious or what would you consider to be an unusual language that somebody is speaking so much so that a student should report them to the authorities?

Mr. COMEY. I think what it says is speaking—using unusual language, not speaking Pashto or French or German. I think it means speaking in an unusual way about things. And suspicious place, Syria leaps to my mind. If someone is talking to classmates about thinking about traveling to Syria, the classmates ought to be sensitized to that. The teacher ought to be sensitized to it, so we can try and intervene with that kid before we have to lock them up for most of their life.

Ms. CHU. But do you have evidence to show that this program is actually countering recruiting efforts by violent extremists?

Mr. COMEY. I don't. But it sure makes a lot of sense to me. And it seems, again, a commonsense way to equip kids to resist the siren song that comes from radical Islamists or skinhead groups or hate groups of different kinds. So, look, it is not—I am sure it is not perfect, because nothing in life is. We would welcome feedback. But the general idea makes a lot of sense to me.

Ms. CHU. I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman. Director, in your opening comments, you said this was an unusual case. I would say that is the understatement of the year. Husband of the subject meets with the attorney general 3 days before Secretary Clinton is interviewed by the FBI. Nine people get to sit in with Secretary Clinton during that interview. One of those was her chief of staff, Cheryl Mills, who was a subject of the investigation. Five people get some

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kind of immunity. Five people get some kind of immunity, and yet no one is prosecuted. Three of those people who get immunity take the Fifth in front of Congress, and one of them doesn't even both to show up whenhe is subpoenaed, supposed to have been at that very chair you are sitting at. And, of course, the Attorney General announces that she is going to follow your recommendations even though she doesn't know what those recommendations are, the only time she has ever done that.

So, of course, this was unusual. We have never seen anything like this. Which sort of brings me to the posts. I would like to put up the posts that some have talked about which is the posts on Mr. Combetta on Reddit. And you said earlier that you don't know if you examined this during your investigation. So let's examine it now. "I need to strip out a VIP's address from a bunch of archived email. Basically they don't want the VIP's email address exposed to anyone."

Now, Director, when I hear the term "strip out email address," I think of somebody is trying to hide something, somebody is trying to cover up something, and it sort of raises an important question from these two sentences. Who is the "they" who wants something hid, and who is the VIP who also wants something hid? Director Comey, is it likely the VIP—well, it is not just a VIP. It is a very, very important person, according to Mr. Combetta. Is it likely that that person is Secretary Clinton?

Mr. COMEY. Yes. Sure.

Mr. JORDAN. Okay. And is it also likely that the "they" refers to her, Secretary Clinton's staff, and, specifically, Cheryl Mills.

Mr. COMEY. I don't know that. Either her lawyers or some staff that had tasked him with the production.

Mr. JORDAN. So one other thing that is important on that, if we could but that back up, one other thing that is important is the date. The date at the top says July 24, 2014. So whenever I see a date, and I am sure you do the same thing, I always look at what is happening about that same timeframe, what may have happened directly before that and maybe directly after that.

So I went back to your reports that you guys had given to us. The first report back last month, August 18, 2016, page 15. Well, on page 15 it says, "During the summer of 2014, the State Department indicated to Cheryl Mills a request for Clinton's work-related emails would be forthcoming. State Department gives Cheryl Mills a heads-up that she has got to go round up all of Secretary Clinton's email. On that same page, it says, "The House Select Committee on Benghazi had reached an agreement with the State Department regarding production of documents on July 23, 2014," just the day before, so I find kind of interesting. Then from your report that we got just last week, "After reviewing several documents dated in and around July 23, 2014, Paul Combetta had a conversation with Cheryl Mills, and after reviewing it July 24," there is that date again, "2014 email from Bryan Pagliano, Paul Combetta explained Cheryl Mills was concerned Clinton's then-current email address would be disclosed publicly."

So it sure looks to me like it is Secretary Clinton, as you said. But also that it is Cheryl Mills and Bryan Pagliano who are urging Mr. Combetta to cover this stuff up. You agree?

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Mr. COMEY. From what you read, it sure sounds like they are trying to figure out a way to strip out the actual email address from what they produce.

Mr. JORDAN. Well, they are actually trying to strip it all out, .pst file and everything. Here is the takeaway in my mind. Mills gets a heads-up, Cheryl Mills gets a heads-up, in mid-summer of 2014; July 23, the day before Mr. Combetta's Reddit post, the Benghazi and the State Department reach an agreement on production of documents. Cheryl Mills has a conversation with Paul Combetta. He goes on Reddit then and tries to figure out how he can get rid of all this email, even though he is not successful then. He has to do it later down the road with BleachBit. And then the clincher. The clincher. Just last week, he is going online and trying to delete these Reddit posts. He is trying to cover up his tracks. He is trying to cover up the coverup.

So I guess the question, as someone was asking earlier, in light of all this, are you thinking about reopening the investigation?

Mr. COMEY. I may have misunderstood what you said during the question. I don't understand that to be talking about deleting the emails. I understand it to be talking about removing from the "from" line the actual email address. And, but anyhow, maybe I misunderstood you. But the answer——

Mr. JORDAN. Well, the same guy later BleachBit—took BleachBit and did delete emails.

Mr. COMEY. Sure. Yeah.

Mr. JORDAN. So my question is, the guy you gave immunity to, the guy who took the Fifth in front of us, is online trying to figure out how to remove email addresses, change evidence, later uses BleachBit, that guy who won't testify in front of Congress, and he has correspondence with Cheryl Mills, Cheryl Mills, a subject of the investigation, Cheryl Mills who also got some kind of immunity agreement, Cheryl Mills who walked out of certain—walked out for part of the questions during the interview with the FBI. Seems to me that is pretty compelling, and the timelineis pretty compelling as well.

Mr. COMEY. I am not following. Compelling of what? There is no doubt that Combetta was involved in deleting emails.

Mr. JORDAN. After conversations with Cheryl Mills.

Mr. COMEY. He had the "oh s-h-i-t" moment, as he told us. And that is why it was very important for us to interview this guy to find out who told you to do that, why did you do that. That is why he was given use immunity.

Mr. JORDAN. Did you know about the Reddit posts when you interviewed him?

Mr. COMEY. As I said earlier, I think we did. I think our investigators did. I am not positive as I sit here.

Mr. JORDAN. Mr. Chairman, I mean, the guy is trying to cover up the Reddit posts where he is trying to figure out how he can cover up the email addresses. And I find that compelling, particularly in light of the fact that just the day before, he is talking with Cheryl Mills, and the State Department is on notice that the Benghazi Committee wants these very documents. I find that compelling. But obviously the FBI didn't. And this is just one more, one

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more, on that list of things that make this case highly unusual. I yield back.

Mr. GOODLATTE. The Director is permitted to respond if he chooses to do so.

Mr. COMEY. No, I don't think so.

Mr. GOODLATTE. The Chair recognizes the gentleman from Florida, Mr. Deutch, for 5 minutes.

Mr. DEUTCH. Thank you, Mr. Chairman. Director Comey, the FBI is tasked with very serious responsibilities. You are on the front lines trying to prevent terrorist attacks. You are investigating public corruption. And as I told your agents on a recent visit to your Miami field office, I am grateful to you and your agents, all of the women and men of the FBI, for your dedication to the—and commitment to the pursuit of justice. We are most grateful.

Now, one critical responsibility of the FBI is to investigate when American citizens violate Federal laws involving improper contacts with foreign governments. And, Director Comey, if an American national goes outside government channels to negotiate with a foreign government on behalf of the United States, that is a very serious crime, one that would violate the Logan Act, which, as you know, is the law that prohibits unauthorized people from negotiating with foreign governments in the place of the United States Government.

Director Comey, would the FBI take allegations of Logan Act violations seriously? Is that within your jurisdiction?

Mr. COMEY. Yes. It is within our jurisdiction.

Mr. DEUTCH. And if you had credible evidence that someone had violated the Logan Act, would the FBI investigate that alleged violation of law?

Mr. COMEY. I think we have done many Logan Act investigations over the years. And we certainly will in the future.

Mr. DEUTCH. And am I correct in assuming that you are familiar with publicly quoted comments from various intelligence sources that have said that Russia has targeted the United States with a legal State-directed hacking?

Mr. COMEY. I am aware of the published reports.

Mr. DEUTCH. If an American citizen, Director Comey, conducted meetings with a Russian individual who has been sanctioned by the United States about potential weakening of U.S. sanctions policy in violation of the Logan Act, would the FBI investigate?

Mr. COMEY. I don't think it is appropriate to answer that. That gets too close to confirming or denying whether we have an investigation. Seems too close to real life. So I am not going to comment.

Mr. DEUTCH. Okay. But there are—you have investigated Logan Act violations. It is something that is clearly within your jurisdiction.

I appreciate, Director Comey, your confirming that the FBI would treat these potential violations of law both seriously and urgently, because everything that I just outlined that you said the FBI would investigate has apparently happened already. Public reports suggest that the Logan Act may have been violated by Carter Page, one of the men Donald Trump signaled out as the top foreign policy adviser.

So now the campaign appears eager to revise Mr. Page's role given the attention rightly being given to his illicit negotiations

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with a sanctioned Russian official. I read reports from Yahoo News from last week that law enforcement may already be looking into this issue. And I assume we all agree that the allegations are very serious. Russia, a Nation that hacks America, a Nation that continues to enable Assad, the Assad regime, to slaughter the Syrian people, a Nation that threatens and violates the territorial integrity of its neighbors and our European allies.

It is a dangerous violation of Federal law if Donald Trump's adviser, Carter Page, is engaging in freelance negotiations with Russia. And here is what we know. In March, Donald Trump named Carter Page as a foreign policy adviser. In July, Mr. Page traveled to Moscow to give a speech that was harshly critical of the United States. And during that trip, Mr. Page is reported to have also met with a Russian official named Igor Sechin, a member of Vladimir Putin's inner circle and the president of the petroleum company, Rosneft, who was sanctioned by the United States under executive order 13361, prohibiting him from traveling to the United States or conducting business with U.S. firms.

So Mr. Sechin has a clear and personal interest in lifting U.S. sanctions against him and other top Russian officials put in place by President Obama after Russia's military action in Ukraine. Now, if these two men met to discuss sanctions policy, or a lifting of sanctions under a potential Trump administration, this would be enormously concerning.

Just last week the press reported that U.S. intelligence officials are seeking to determine whether an American businessman identified by Donald Trump as one of his foreign policy advisers has opened up private communications with senior Russian officials, including talks about possible lifting of sanctions.

Mr. Comey, it is illegal if Trump's adviser met with Russians who have been sanctioned by the United States about lifting these sanctions. And I am grateful for your reassurances this morning that the FBI would investigate potential violations of the Logan Act by any individual who engages in unauthorized negotiations with a foreign government. I remind my colleagues that Donald Trump invited Russia to hack the United States. I remind my colleagues that Donald Trump suggested breaking America's longstanding commitment to our NATO allies and weakening U.S. sanctions against Russia. Is there a connection between these reckless and dangerous policy proposals, and the potential violation of the Logan Act by Donald Trump's Russia adviser?

Mr. Comey, we appreciate very much the FBI's vigilance in pursuing justice. And, Mr. Chairman, I yield back.

Mr. GOODLATTE. The gentleman is permitted to respond if you choose to.

So the Chair now recognizes the gentleman from Pennsylvania, Mr. Marino, for 5 minutes.

Mr. MARINO. Thank you, Chairman.

Thank you, Director, for being here. I think we have worked on a couple of cases together in our districts.

Mr. COMEY. Yes.

Mr. MARINO. Would you clarify something for me on act-of-production immunity? Does act-of-production immunity go beyond this scenario that I am going to state?

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You ask for a computer from a witness. You give that witness act-of-production immunity that, in my interpretation, is that the agent who has that now in his or her hands, the witness is immune from the agent getting on the stand and saying that person—this is that person's computer because they gave it to me.

Does it go beyond that? Or was there additional immunity for Ms. Mills stating that anything on that computer cannot be used against her?

Mr. COMEY. As I recall it, Congressman, the act-of-production immunity for Ms. Mills was: You give us this computer; we will not use—we, the Justice Department—anything we find on the computer directly against you in connection with investigation or prosecution for mishandling of classified information. I think that is how they defined it.

Mr. MARINO. But that goes beyond act of production. Doesn't act of production simply state that I am the agent, I can't get on the stand and say that belongs to that individual because they simply gave it to me? It sounds like more, additional immunity was given that says: And what is on this we cannot hold against you.

Mr. COMEY. Well, I think of it as—I still think of it as an act-of-production immunity. From my experience, that is what I would characterize that agreement.

And I guess you are right, there could be a more limited form of act-of-production immunity which simply says: Your fact of giving us this object will not be used against you directly.

Mr. MARINO. Yeah.

Mr. COMEY. I would have to think through whether it can be parsed that way. But I think I take your point.

Mr. MARINO. So that is why I am saying additional immunity was given. And I don't think it was warranted at that point.

Let me ask you this. We have both empaneled many grand juries, investigative grand juries. Why not empanel an investigative grand jury whereby you have reasonable suspicion that a crime may have been committed, and then you have the ability to get warrants, subpoenas, get this information, subpoena witnesses before the grand jury under oath, and if they take the Fifth—if it is not the target, if they take the Fifth and say, "I am not going to talk to them," you can give them, whether it is use immunity—the AG can give them that, and you had that authority. And then transactional has to come from the judge.

And if they refuse to testify then, then you can say, fine, we are going to take you before a judge, hold you in contempt, and then you are going to sit in jail until you answer our questions.

Wouldn't that have been much simpler and more effective than the way this has gone about? I know that I have done it many, many times. And sometimes we find a situation where there isn't enough evidence, and most of the time we find there is enough evidence.

Mr. COMEY. Yeah. No, it is a reasonable question. And I don't want to talk about grand jury in connection with this case or any other case——

Mr. MARINO. That is why I posed it the way I did.

Mr. COMEY. Right. From our training, we know we are never supposed to talk about grand jury——

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Mr. MARINO. Yes.

Mr. COMEY [continuing]. Publicly, but I can answer more generally than that.

Anytime you are talking about the prospect of subpoenaing a computer from a lawyer that involves the lawyer's practice of law, you know you are getting into a big megillah.

Mr. MARINO. Okay, please let me interrupt you.

Mr. COMEY. Sure.

Mr. MARINO. I understand that clearly. Why did you not decide to go to an investigative grand jury? It would have been cleaner, it would have been much simpler, and you would have had more authority to make these witnesses testify—not the target, but the witness testify.

That seems the way to go, Director. We have done it thousands of times. This just was too convoluted.

Mr. COMEY. Yeah, again, I need to steer clear of talking about grand jury use in a particular matter. In general, in my experience, you can often do things faster with informal agreements, especially when you are interacting with lawyers.

In this particular investigation, the investigative team really wanted to get access to the laptops that were used to sort these emails.

Mr. MARINO. Okay. When was——

Mr. COMEY. Those are lawyers' laptops. That is a very complicated thing. I think they were able to navigate it pretty well to get us access.

Mr. MARINO. The media says that Ms. Clinton repeated—the media says—41 times that I do not recall or I do not remember or variations of that. Is that a fact or——

Mr. COMEY. I don't know. I have not—I have not counted. I have read the 302, obviously.

Mr. MARINO. Wouldn't that have been taken into consideration?

Mr. COMEY. I am sorry?

Mr. MARINO. Wouldn't that selective memory be taken into consideration?

Mr. COMEY. Sure. The nature and quality of a subject's memory is always a factor.

Mr. MARINO. All right. My time has expired. Thank you, sir.

Mr. GOODLATTE. The Chair recognizes the gentlewoman from Washington State, Ms. DelBene, for 5 minutes.

Ms. DELBENE. Thank you, Mr. Chair.

And thank you, Director Comey, for spending all this time with us today.

In 2010, the White House set up the Vulnerabilities Equities Process, the VEP, and implemented it in 2014 so it could give the government a process for determining whether, how, and when to disclose vulnerabilities to technology companies so that they would be able to address those vulnerabilities and patch them.

And in a couple situations I know there was disclosure from the FBI. In April of this year, the FBI informed Apple of a security flaw in older versions of iOS and OS X, its first vulnerability disclosure to Apple under the Vulnerabilities Equities Process.

In May of this year, the FBI's Cyber Division warned the private sector about a fake USB device charger that can log the keystrokes

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of certain wireless keyboards. And that was 15 months after the FBI discovered the vulnerability.

In the warning, the FBI stated, "If placed strategically in an office or other location where individuals might use wireless devices, a malicious cyber actor could potentially harvest personally identifiable information, intellectual property, trade secrets, passwords, or other sensitive information."

Other instances of the FBI using the VEP are scarce, and, indeed, there have been reports that it is rare for the FBI to use this process. And so I wanted to, you know, ask you why this is and what is your view of the process.

Mr. COMEY. Thank you for that question.

The process seems to me to be a reasonable process to, in a structured fashion, bring everybody who might have an optic on this in the government together to talk about how do we think about disclosing a particular vulnerability to the private sector against the equities that may be at stake in terms of national security in particular.

And so I think it makes sense to have such a process. The FBI participates in it when we come across a vulnerability that we know the vulnerability and it falls within the VEP's jurisdiction.

I don't know the particulars of the case. You said there was a 15-month delay in disclosing a particular vulnerability. I don't know enough to react to that. I probably wouldn't react in an open forum, in any event. But that is my overall reaction.

Ms. DELBENE. And does every vulnerability discovered go through this process, in terms of understanding whether or not you would disclose?

Mr. COMEY. I think there is a definition of what falls under the process. You have to know the vulnerability. So we have to have knowledge of, so what is it that allows it, the vulnerability, to be exploited. We didn't, for example, in the San Bernardino case. We bought access, but we didn't know the vulnerability, what was behind it.

But I forget the definition, as I sit here, of which vulnerabilities have to be considered.

Ms. DELBENE. And so is there another process that you might use that is different from the VEP when you are looking at——

Mr. COMEY. I don't know of one.

Ms. DELBENE [continuing]. Vulnerabilities and whether or not they——

Mr. COMEY. Before the VEP, I know our folks would routinely have—make disclosure to private entities, but I don't think there is a—I don't know of a process outside of VEP.

Ms. DELBENE. But you are not sure if in every situation the VEP is used whenever you discover a vulnerability?

Mr. COMEY. It sounds like a circular answer, but if it is a—and, obviously, I didn't read the VEP before coming here today. We could get smart on it very quickly and have somebody talk to you about it.

But if it falls under the definition of things that have to be discussed at the VEP, of course we do. I just can't remember what that definition is exactly.

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Ms. DELBENE. Okay. I am trying to understand, if a vulnerability is discovered, if there is always a standard process that you would go through to understand whether or not that information would be disclosed, and if that process is the VEP. That is the——

Mr. COMEY. Yeah, that is a great question. I don't know the answer to that, whether there is a set of vulnerabilities that would fall outside of the VEP process. And if that is the case, how do we deal with it? I don't know, sitting here.

Ms. DELBENE. Thanks. If you have other feedback on that, I would appreciate it at another time.

Mr. COMEY. Okay.

Ms. DELBENE. In August, you said that stakeholders needed to take some time to collect information on the "going dark" issue and come back afterward to have an adult conversation. And I agree with you.

And so I wondered if you would agree that there is room for us to work together on ways to help law enforcement that don't include mandating a backdoor?

Mr. COMEY. Totally. I keep reading that I am an advocate of backdoors, I want to mandate backdoors. I am not. I have never advocated we have to have backdoors. We have to figure out how we can solve this problem together. And it has to be everybody who cares about it coming together to talk about it.

I don't know exactly what the answer is, frankly. I can see the problem, which I think is my job, is to tell people the tools you are counting on us to use to keep you safe, they are less and less effective. That is a big problem. But what to do and how to do it is a really complicated thing, and I think everybody has to participate.

Ms. DELBENE. Thank you. Thank you so much for that.

And I yield back, Mr. Chair.

Mr. GOODLATTE. The Chair thanks the gentlewoman, recognizes the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Well, thank you, Mr. Chairman.

I want to start by acknowledging progress. I think it is important that we do so. This morning, we have had nine straight Democrats talk to the FBI about emails without asking for immunity. That is a record.

And I suspect the reason that they have not asked for immunity from Director Comey is they would say they have done nothing wrong. I find that interesting, because that is exactly what Heather Samuelson and Cheryl Mills' attorneys said. In fact, they said it just a few days ago, and I will quote it: "The FBI considered my clients to be witnesses and nothing more."

And then Ms. Mills and Ms. Samuelson's attorneys said this. I think this is the most interesting part. "The Justice Department assured us my clients did nothing wrong."

Well, Mr. Chairman, if you are assuring subjects or targets or witnesses, whatever you want to call them, that they have done nothing wrong, it does beg the question, what are you seeking and receiving immunity from? I mean, if you have done nothing wrong—laptops don't go to the Bureau of Prisons, Mr. Chairman; people do. So the immunity was not for the laptop. The immunity was for Cheryl Mills.

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And if the Department of Justice says you have done nothing wrong, it does beg the question of why you are seeking or receiving immunity. And it could be, Mr. Chairman, it could be for the classified information that was the genesis of the investigation. It could be for the destruction of Federal records which came from that initial investigation. Or it could be both.

Mr. Comey, I want to ask you this: Did the Bureau interview everyone who originated an email that ultimately went to Secretary Clinton that contained classified information?

Mr. COMEY. I don't think so. Nearly everyone, but not everyone.

Mr. GOWDY. Well, you and I had a discussion the last time about intent. You and I see the statute differently. My opinion doesn't matter; yours does. You are the head of the Bureau. But, in my judgment, you read an element into the statute that does not appear on the face of the statute. And then we had a discussion about intent.

So why would you not interview the originator of the email to, number one, determine whether or not that originator had a conversation with the Secretary herself?

Mr. COMEY. There are a handful of people who the team decided it wasn't a smart use of resources to track down. One was a civilian in Japan, as I recall, who had forwarded something that somehow got classified as it went up. And the other were a group of low-level State Department people deployed around the world who had written things that ended up being classified.

Nearly everyone was interviewed, but there was a small group that the team decided it isn't worth the resources.

Mr. GOWDY. Well, to that extent, if you interviewed the overwhelming majority of the originators of the email, will you make those 302s available to Congress? Because I counted this morning 30-something 302s that we do not have.

Mr. COMEY. Okay. I will go back and check. My goal is maximum transparency, consistent with our obligations under the law. I will check on that.

Mr. GOWDY. Well—and I appreciate it, for this reason: Intent is awfully hard to prove. Very rarely do defendants announce ahead of time, "I intend to commit this crime on this date. Go ahead and check the code section. I am going to do it." That rarely happens.

So you have to prove it by circumstantial evidence, such as whether or not the person intended to set up an email system outside the State Department; such as whether or not the person knew or should have known that his or her job involved handling classified information; whether or not the person was truthful about the use of multiple devices; whether or not the person knew that a frequent emailer to her had been hacked; and whether she took any remedial steps after being put on notice that your email or someone who has been emailing with you prolifically had been hacked; and whether or not—and I think you would agree with this, Director.

False exculpatory statements are gold in a courtroom. I would rather have a false exculpatory statement than a confession. I would rather have someone lie about something and it be provable that that is a lie, such as that I neither sent nor received classified

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information; such as that I turned over all of my work-related emails. All of that, to me, goes to the issue of intent.

So I got two more questions. Then I am going to be out of time.

For those who may have to prosecute these cases in the future, what would she have had to do to warrant your recommendation of a prosecution? If all of that was not enough—because all of that is what she did. If all of that is not enough, I mean, surely you cannot be arguing that you have to have an intent to harm the United States to be subject to this prosecution. I mean, that is treason. That is not a violation of this statute.

Mr. COMEY. No. I think we would have to be able to prove beyond a reasonable doubt a general awareness of the unlawfulness of your conduct, you knew you were doing something you shouldn't do. And then—obviously, that is on the face of the statute itself. Then you need to consider, so who else has been prosecuted and in what circumstances, because it is all about prosecutorial judgment.

But those two things would be the key questions: Can you prove that the person knew they were doing something they shouldn't do, a general criminal intent, general mens rea?

Mr. GOWDY. But the way to prove——

Mr. COMEY. And have you treated other people similarly?

Mr. GOWDY. The way to prove that is whether or not someone took steps to conceal or destroy what they had done. That is the best evidence you have that they knew it was wrong, that they lied about it.

Mr. COMEY. It is very good evidence. You always want to look at what the subject said about their conduct.

Mr. GOWDY. Well, there is a lot. There is a lot. If you saw her initial press conference, it all falls under the heading of "false, exculpatory statement."

I am out of time, Mr. Chairman, but the Director did—you started off by giving us examples of things the Bureau has done. And every one of us who has worked with the FBI, that is the FBI that I know. The one that went and saved that girl in North Carolina, that is the FBI that I know.

What concerns me, Director, is when you have five immunity agreements and no prosecution; when you are allowing witnesses who happen to be lawyers, who happen to be targets, to sit in on an interview. That is not the FBI that I used to work with.

So I have been really careful to not criticize you. In fact, I said it again this morning. They wanted to know was he gotten to, did somebody corrupt him. No, I just disagree with you. But it is really important to me that the FBI be respected. And you have to help us understand, because it looks to me like some things were done differently that I don't recall being done back when I used to work with them.

And, with that, I would yield back to the Chairman.

Mr. COMEY. Can I respond to that?

Mr. GOODLATTE. Yes, you may.

Mr. COMEY. I hope someday when this political craziness is over you will look back again on this, because this is the FBI you know and love. This was done by pros in the right way. That is the part I have no patience for. Sorry, sir.

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Mr. GOODLATTE. The Chair recognizes the gentleman from Rhode Island, Mr. Cicilline, for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman.

And thank you, Director Comey, for your extraordinary service to our country. And please convey to the professionals at the FBI my gratitude for their exemplary service to the people of this country. And, particularly, I want to acknowledge the extraordinary, prompt, and effective response to the recent bombings in New Jersey and New York. It is just another example of this extraordinary agency and your extraordinary leadership.

Director Comey, many of us have expressed a concern about the growing incidence of gun violence in this country. And we expressed condolences and concern of following the recent mass shootings in Burlington, Washington, where five people lost their lives. We shared the same sentiments after incidents in Aurora and Newtown and Charleston. But as more Americans lose their lives to senseless gun violence, this Congress has been absolutely silent and inactive on this issue.

So I would like to really turn to you and your career in public service, both as a U.S. attorney and now as the FBI Director, with so much experience in dealing with the consequences of gun violence, and ask you to kind of share with us what you think might be some things Congress could do to help reduce gun violence in this country.

If I recall correctly, in 2013, during your confirmation hearings, you at least alluded to your support for universal background checks, bans on illegal trafficking of guns, assault weapons, and high-capacity magazines.

So I am wondering what you think would be effective for us to do to help reduce the incidence of gun violence in this country.

Mr. COMEY. Thank you, Congressman.

And you are exactly right. We just spend a lot of time thinking, investigating, and mourning the deaths in mass shootings. I think it is really important, though, the Bureau not be in the policy business, and be in the enforcement business. And so I am going to respectfully avoid your question, honestly, because I think we should not be in the place of—we should be a factual input to you. We should not be suggesting particular laws with respect to guns or anything else.

Mr. CICILLINE. So let me ask you, Director, about a very specific enforcement challenge.

I introduced a piece of legislation called the Unlawful Gun Buyer Alert Act to get at this issue of a default process. This is where people buy a gun, they purchase a gun, but they are not permitted to buy one under law, but the 3-day time period has elapsed. And, between 2010 and 2014, 15,729 sales to prohibited persons occurred. That means people who were not lawfully permitted to buy guns got a gun 15,000 times.

So my legislation would require that when that happens that local law enforcement is notified. They can then make a decision, should we go prosecute this person who is now in possession of a gun illegally, should we, you know, execute a search warrant, but they would at least be put on notice, in your community, a person

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who should not have a gun bought one, so they can take some action.

Would that make sense in terms of your enforcement responsibilities?

Mr. COMEY. It might. I know ATF is notified in those circumstances——

Mr. CICILLINE. Which, of course, is a very different set of priorities for ATF; do they go and actually execute a warrant and charge somebody. But there are State and local prohibitions on that that could be acted upon. So would it also make sense to notify local law enforcement?

Mr. COMEY. It might. I would want to think through and ask ATF how do they think through the deconfliction issues that might arise there, but it is a reasonable think to look at.

Mr. CICILLINE. Now, the second—my next question, Director, is: There has been recent discussion about implementing stop-and-frisk in cities to address crime even at the national level. And, although the data shows that this disproportionately targets people of color—and just to give you some context, in 2011, when stop-and-frisk activity reached an all-time high in New York City, police stopped 685,000 people; 53 percent of those individuals were Black, 34 percent were Latino, and 9 percent were White. More than half were ages 14 to 24 years old. And of the 685,000 people that were stopped and frisked, 88 percent were neither arrested nor received any sort of citation.

Do you believe this stop-and-frisk policy is an effective tactic to address crime in our Nation's cities? What would a Federal implementation look like that Mr. Trump has called for? And how can Congress minimize racial profiling and discriminatory, ineffective techniques like stop-and-frisk and, instead, promote activities that build trust and confidence between the police and the community?

Mr. COMEY. I don't know what a Federal program would look like, because we are not in the policing business; we are investigative agencies at the Federal level. But the Terry stop—the "stop-and-frisk" is not a term we use in the Federal system—the Terry stop, which is the stop of an individual based on reasonable suspicion that they are engaged in a criminal activity, is a very important law enforcement tool.

To my mind, its effectiveness depends upon the conversation after the stop. When it is done well, someone is stopped, then they are told, "I stopped you because we have a report of a guy with a gray sweatshirt who matches you. That is why I stopped you, sir. I am sorry." Or, "I stopped you because I saw you do this behavior."

Because the danger is what is an effective law enforcement technique can become a source of estrangement for a community, and you need the help of the community. So it is an important tool when used right, and what makes the difference between right and wrong is what is the nature of the conversation with the person you stopped.

Mr. CICILLINE. Thank you. Very good.

Mr. Chairman, I would just like to finally associate myself with the remarks with Congressman Deutch regarding the Logan Act violations and the remarks of many of my colleagues regarding the attempts by the Russians to interfere with our democracy and elec-

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toral process, and take great comfort in the Director's commitment to continue to understand this as an important responsibility of the agency to protect the integrity of our democracy.

And, with that, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Utah, Mr. Chaffetz. And as I do, I want to thank him for making, as Chairman of the Oversight and Government Reform Committee, this very nice hearing room available to us while the Judiciary Committee hearing room is under renovation.

So the gentleman is recognized for 5 minutes, with my thanks.

Mr. CHAFFETZ. Well, and I appreciate the extra 5 minutes of questioning for doing so. So thank you very much.

Director, thank you for your accessibility. You have been very readily available, and we do appreciate that.

This investigation started because the inspector general found classified information in a nonsecure setting and the FBI went to a law firm and found this information. They seized at least one computer and at least one thumb drive.

Did you need an immunity agreement to get those?

Mr. COMEY. It was not—I don't think there was—in fact, I am certain there was no immunity agreement used in connection with that.

Mr. CHAFFETZ. So did it really take the FBI a full year to figure out that Cheryl Mills and Heather Samuelson also had computers with classified information on it?

Mr. COMEY. No. It took us to that point in the investigation to insist that we try to get them.

Mr. CHAFFETZ. Were you getting them because they had classified information or because there was some other information you wanted?

Mr. COMEY. No. We thought those were the tools, as we understood it, that had been used to sort the emails. And the investigative team very much wanted to understand, if they could, whether there was an electronic——

Mr. CHAFFETZ. Well——

Mr. COMEY [continuing]. Tale of how that had been done. Because the big, big issue was what did they delete, what did they keep, and——

Mr. CHAFFETZ. But why did you need an immunity agreement? Why didn't they just cooperate and hand them over? The law firm did, didn't they?

Mr. COMEY. Well, yes. That is a question really I can't answer. That is between a lawyer and her client and the Justice Department lawyers. For whatever reason, her lawyer thought it was in her interest to get an act-of-production immunity agreement with the Department of Justice.

Mr. CHAFFETZ. The FBI interviewed David Kendall's partner but did not interview David Kendall. Why didn't you interview David Kendall?

Mr. COMEY. I don't remember. I don't remember that decision.

Mr. CHAFFETZ. Going back to this Reddit post, this was put up on July 24 of 2014. You believe this to be associated with Mr. Combetta, correct?

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Mr. COMEY. Yes, I think that is right.

Mr. CHAFFETZ. This is the one that Mr. Jordan put up about the need to strip out a "VIP's (VERY VIP) email address from a bunch of archived emails." He is referring to a Federal record, isn't he?

Mr. COMEY. I don't know exactly which records he is referring to.

Mr. CHAFFETZ. How is this not a conscious effort to alter Federal records? I mean, the proximity to the date is just stunning.

Mr. COMEY. I am sorry, what is the question?

Mr. CHAFFETZ. How is this not a conscious effort to alter a Federal record?

Mr. COMEY. Well, depending upon what the record was and exactly what he was trying to do and whether there would be disclosure to the people they were producing it to saying, we changed this for privacy purposes. I just don't know, sitting here.

Mr. CHAFFETZ. These are documents that were under subpoena. These Federal records were under subpoena. They were under a preservation order. Did Mr. Combetta destroy documents?

Mr. COMEY. I don't know whether that was true in July of 2014, they were under a subpoena.

Mr. CHAFFETZ. Did he ultimately destroy Federal records, Mr. Combetta?

Mr. COMEY. Oh. I have no reason to believe he destroyed Federal records.

Mr. CHAFFETZ. He used BleachBit, did he not?

Mr. COMEY. Yeah, the question is what was already produced before he used the BleachBit. The reason he wanted immunity was he had done the BleachBit business after there was publicity about the demand from Congress for the records. That is a potential——

Mr. CHAFFETZ. And not just publicity. There was a subpoena.

Mr. COMEY. Right. That is potentially——

Mr. CHAFFETZ. And there was communication from Cheryl Mills that there was a preservation order, correct?

Mr. COMEY. Yes.

Mr. CHAFFETZ. And he did indeed use BleachBit on these records.

Mr. COMEY. Sure. That is why the guy wouldn't talk to us without immunity.

Mr. CHAFFETZ. And so when he got immunity, what did you learn?

Mr. COMEY. We learned that no one had directed him to do that, that he had done it——

Mr. CHAFFETZ. You really think that he just did this by himself?

Mr. COMEY. I think his account—again, I never affirmatively believe anybody except my wife. But the question is do I have evidence to disbelieve him, and I don't. His account is credible, that he was told to do it in 2014, screwed up and didn't do it, panicked when he realized he hadn't, and then raced back in and did it after Congress asked for the records and The New York Times wrote about them. That was his, "Oh, s-h-i-t," moment.

Mr. CHAFFETZ. But he——

Mr. COMEY. And that was credible. Again, I don't believe people, but we did not have evidence to disbelieve that and establish someone told him to do that—no email, no phone call, nothing.

The hope was, if he had been told to do that, that would be a great piece of evidence; if we give him immunity, maybe he will tell

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us so-and-so told me to, so-and-so asked me to, and then we are working up the chain.

Mr. CHAFFETZ. But he did indeed destroy Federal records, and he was told at some point to do this, correct? Who told him to do that initially? When he was supposed to do it in December and he didn't do it, who told him to do that?

Mr. COMEY. One of Secretary Clinton's staff members. I mean, I can't remember, sitting here. We know that. One of her lawyers; it might have been Cheryl Mills. Someone on the team said, "We don't need those emails anymore. Get rid of the archived file."

Mr. CHAFFETZ. This is what is unbelievable about this, because there is classified information, there is—there are Federal records that were indeed destroyed. And that is just the fact pattern.

Here is the other thing that I would draw to your attention that is new. September 15 of this year, I issued a subpoena from the Oversight and Government Reform Committee on these Reddit posts. Four days later, they were destroyed—or taken down. They were deleted. I would hope the FBI would take that into consideration. Again, we are trying, under a properly issued subpoena, to get to this information.

Let's go to Heather Mills real quick. How does the—in the 2016 interview with Cheryl Mills, she says, quote, Mills did not learn—in the interview report that you—the interview summary from the FBI—Mills did not learn Clinton use using a private email server until after Clinton's tenure.

Also, you have this interview with Mr. Pagliano, who said he approached—quote, Pagliano then approached Cheryl Mills in her office and relayed a State Department employee's concerns regarding Federal records retention and the use of a private server. Pagliano remembers Mills replying that former Secretaries of State had done similar things, to include Colin Powell.

It goes, then, on to a page 10, and this is what I don't understand. The FBI writes, Clinton's immediate aides, to include Mills, Abedin, Sullivan, and a redacted name, told the FBI they were unaware of the existence of a private server until after Clinton's tenure at State or when it become public knowledge.

But if you look back at the email from Heather Mills, if you go back to 2010—this is to Justin Cooper, okay? Mills to Cooper, who does not—he works for Clinton; he doesn't work for the State Department. "FYI, HRC email coming back. Is server okay?" Cooper writes back, "You are funny. We are on the same server."

She knew there was a server. When there is a problem with Hillary Rodham Clinton's emails, what did they do? She called the person who has no background in this, who is not a State Department employee, no security clearance, and then tells the FBI, "Well, I never knew about that," but there is direct evidence that contradicts this.

How do you come to that conclusion and write that in the summary statement, that she had no knowledge of this?

Mr. COMEY. That is a question?

Mr. CHAFFETZ. Yes.

Mr. GOODLATTE. The time of the gentleman has expired, but the Director will answer the question.

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Mr. COMEY. I don't remember exactly, sitting here. All—having done many investigations myself, there is always conflicting recollections of fact, some of which are central, some of which are peripheral. I don't remember, sitting here, about that one.

Mr. GOODLATTE. The Chair recognizes the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Director Comey, violent crime is up in this country, isn't it?

Mr. COMEY. Our UCR stats we just released show a rise in homicide and other violent crime in 2015.

Mr. DESANTIS. Violent crime, I think, was about 4 percent, but the homicides were up 10 percent. Is that correct?

Mr. COMEY. Ten-point-eight percent.

Mr. DESANTIS. And that is a pretty startling, concerning increase. Do you agree?

Mr. COMEY. Yes. It is concerning.

Mr. DESANTIS. Now, I don't know if you have data in 2016, but is your sense that 2016 is going to look closer to 2015, is there any indication that the rate is going to go back down?

Mr. COMEY. No. We continue to see spikes in some big cities in a way we can't quite make sense of. There is no doubt that some 15 to 30 cities are continuing to experience a spike. Whether that will drive the whole number up, I don't know.

Mr. DESANTIS. Now, the FBI has now assumed control of the Dahir Adan, the Minnesota stabbing terrorist investigation. Is that confirmed, that that was a terrorist attack, at this point?

Mr. COMEY. We are still working on it. It does look like, at least in part, he was motivated by some sort of inspiration from radical Islamic groups. Which groups and how we are not sure of yet.

Mr. DESANTIS. But he was praising Allah, was asking at least one of the potential victims whether they were Muslim, and I know ISIS did take responsibility for it, correct?

Mr. COMEY. They claim responsibility. That isn't dispositive for us, because they will claim responsibility for any savagery they can get their name on. But we are going through his entire electronic record and history of all of his associations to try and understand that.

Mr. DESANTIS. Now, there was a report from the House Homeland Security last year that said that Minnesota was actually the number-one source for ISIS fighters in the United States. One, do you acknowledge that that—or do you agree that that is true? And, if so, why is Minnesota churning out so many jihadists?

Mr. COMEY. I don't know for sure whether that is true, but it sounds about right. We have very few ISIL fighters from the United States, even over the last 2 years.

There have been a number of Somali-American-heritage young men who have gone to fight with Al Shabaab in Somalia and with ISIL. I suspect the reason is that is one of the few areas in the United States where we have a large concentration that is susceptible to that recruiting.

The great thing about America is everybody is kind of dispersed. That is one of the areas where there is an immigrant Muslim community that seems to be susceptible for some reason—in small

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measure. Again, we are talk about eight people, I think the number is. But that is my reaction to that.

Mr. DESANTIS. Well, what is the FBI doing to deal with the problem? You have an insular community that may make this problem more significant, so how is the FBI combating that?

Mr. COMEY. Oh, in a bunch of difference ways. With lots of partners to make sure we know the folks in the—especially the Somali-American community in Minneapolis. The U.S. attorney there has done a great job of——

Mr. DESANTIS. Have they been helpful with the FBI?

Mr. COMEY. Very. Very. Because they don't want their sons or daughters involved in this craziness any more than anybody else does.

Mr. DESANTIS. Now, with Paul Combetta, I am just trying to figure out what happened here. He never said that he remembered anything from that March 25 phone conversation with the Clinton people. Of course, that was days before he BleachBit'd the emails. He never said he had any factual knowledge of anything that happened on that call. Is that his basic statement? As I read the 302s, he didn't really provide any information.

Mr. COMEY. I can't remember for sure. It would be in the 302. You have probably seen it more recently than I have.

Mr. DESANTIS. Well, I saw one 302 said that he pled the Fifth. Obviously, he was given immunity. Another said that there was an invocation of attorney-client privilege at one time in one of the other summaries.

So I am just trying to figure out, you know, what happened with Combetta, why was he not able to provide information. He had immunity. This was something that was much more fresh in his mind than previous conversations with Clinton people would have been. And yet you said he was credible. To me, feigning ignorance, that is not credible given the timeline, where you have The New York Times saying that this server existed, the House immediately sends a subpoena, he has this conversation, and then, lo and behold, a few days later, all the emails are BleachBit'd.

Mr. COMEY. Well, he told us that, with immunity, that no one directed him to do it, instructed him to do it. We developed no evidence to contradict that.

Again, we are never in the business of believing people; the question is always what evidence do we have that establishes disbelief. We don't have any contrary evidence. His account is uncontradicted by hard facts.

Mr. DESANTIS. Well, it is—he is in a situation where he has—these things are now under a subpoena, and he has conversations with people who they potentially could implicate, and then he takes this action. So I guess the question is, is it more reasonable to think that he just would have said, "Oh, you know what? I just need to all of a sudden BleachBit this stuff," without any direction at all? I just find that to be something that is difficult to square.

Let me ask you this. In September, you sent a memo to your employees at the FBI basically defending the way the Bureau handled this investigation. Why did you send that?

Mr. COMEY. It was about how we were doing transparency, because there was all kinds of business about whether we were trying

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to hide stuff by putting it out on a Friday, and I wanted to equip our workforce with transparency about how we were doing our productions to Congress so they could answer questions from their family and friends.

Mr. DESANTIS. But you——

Mr. COMEY. I want them to know we are conducting ourselves the way they would want us to.

Mr. DESANTIS. And you have—because you mentioned former agents and people in the community. I mean, this has provoked some controversy within the ranks of current and former agents?

Mr. COMEY. Not within the FBI. Again, who knows what people don't tell the Director, but I should have—I should have asked Mr. Gohmert.

If there are agents in the FBI who are concerned or confused about this, please contact me. We will get you the transparency you need to see that your brothers and sisters did this the way you would want them to.

Mr. DESANTIS. All right. I am out of time, but I will say just, when I was in the military—you had said no one would be prosecuted. I mean, maybe that was just for civilian, but I can tell you that people, if you had compromised Top Secret information, there would have been a court marshal in your future.

And I yield back.

Mr. GOODLATTE. Would the Director care to respond to that?

Mr. COMEY. No. Fine.

Mr. GOODLATTE. That is a direct comparison to the finding of yourself, that, as you stated in your news conference, that no prosecutor would prosecute somebody under similar circumstances.

Mr. COMEY. I understood Mr. DeSantis to be expressing a personal opinion. I accept that at face value. I just haven't seen the cases that show me on the public record that that is true. But I accept his good faith.

Mr. GOODLATTE. The Chair recognizes the gentleman from Texas, Mr. Ratcliffe, for 5 minutes.

Mr. RATCLIFFE. Thank you, Mr. Chairman.

Director, did you make the decision not to recommend criminal charges relating to classified information before or after Hillary Clinton was interviewed by the FBI on July the 2nd?

Mr. COMEY. After.

Mr. RATCLIFFE. Okay. Then I am going to need your help in trying to understand how that is possible. I think there are a lot of prosecutors or former prosecutors that are shaking our heads at how that could be the case.

Because if there was ever any real possibility that Hillary Clinton might be charged for something that she admitted to on July the 2nd, why would two of the central witnesses in a potential prosecution against her be allowed to sit in the same room to hear the testimony?

And I have heard your earlier answers to that. You said that, well, it was because the interview was voluntary and they were her lawyers. But I think you are skirting the real issue there, Director.

First of all, the fact that it was voluntary, it didn't have to be, right? You could have empaneled an investigative grand jury, she could have been subpoenaed. And I know you have said that you

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can't comment on that, and I don't really care about the decision about whether or not there should have been a grand jury here, but since you didn't have one, it goes to the issue at hand about whether or not this interview should have ever taken place.

With due respect to the answers that you have given, the FBI and the Department of Justice absolutely control whether or not an interview is going to take place with other witnesses in the room. Because the simple truth is that under the circumstances as you have described those interviews never take place. If there was ever any possibility that something Hillary Clinton might have said on July 2 could have possibly resulted in criminal charges that might possibly have resulted in a trial against her relating to this classified information, well, then, to use your words, Director, I don't think that there is any reasonable prosecutor out there who would have allowed two immunized witnesses central to the prosecution proving the case against her to sit in the room with the interview, the FBI interview, of the subject of that investigation.

And if I heard you earlier today, in your long career, I heard you say that you have never had that circumstance. Is that—did I hear you correctly?

Mr. COMEY. That is correct, but——

Mr. RATCLIFFE. Okay. And I never have either, and I have never met a prosecutor that has ever had that.

So, to me, the only way that an interview takes place with the two central witnesses and the subject of the investigation is if the decision has already been made that all three people in that room are not going to be charged.

Mr. COMEY. Can I respond?

Mr. RATCLIFFE. Yes. Please.

Mr. COMEY. I know in our political lives sometimes people casually accuse each other of being dishonest, but if colleagues of ours believe I am lying about when I made this decision, please urge them to contact me privately so we can have a conversation about this.

All I can do is to tell you again, the decision was made after that, because I didn't know what was going to happen in that interview. She would maybe lie during the interview in a way we could prove—let me finish.

I would also urge you to tell me what tools we have as prosecutors and investigators to kick out of an interview someone that the subject says is their lawyer.

Mr. RATCLIFFE. That is not my point. The interview never should have taken place if you were going to allow the central witnesses that you needed to prove the case to sit there and listen to the testimony that the subject was going to give. It never happens. It has never happened to you, and it has never happened to me or any other prosecutor that I have met.

And you know you have defended the people that were involved in this of being great, but if it has never happened, I wonder why this is a case of first precedent with respect to that practice that you and I have never seen in our careers.

Mr. COMEY. You and I don't control the universe of what has happened. I suspect it is very unusual.

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A key fact, though, that maybe is leading to some confusion here is we had already concluded we didn't have a prosecutable case against Heather Samuelson or Cheryl Mills at that point. If they were targets of our investigation, maybe we would have canceled the interview, but, frankly, our focus was on the subject. The subject at that point was Hillary Clinton.

Mr. RATCLIFFE. All right. Let me move on.

According to the FBI's own documents, Paul Combetta, in his first interview on February the 18th told FBI agents that he had no knowledge about the preservation order for the Clinton emails, correct?

Mr. COMEY. I don't know the dates of that, but I am sure it is in the 302.

Mr. RATCLIFFE. Okay.

But then 2½ months later, on May the 3rd, his second interview, he made a 180-degree turn, and he admitted that, in fact, he was aware of the preservation order and he was aware of the fact that that meant that he shouldn't disturb the Clinton emails, correct?

Mr. COMEY. Yep.

Mr. RATCLIFFE. Okay. Well, then I need your help again here, because when I was at the Department of Justice, your reward for lying to Federal agents was an 18 U.S.C. 1001 charge or potential obstruction-of-justice charge; it wasn't immunity.

Mr. COMEY. Depends on where you are trying to go with the investigation. If it is a low-level guy and you are trying move up in the chain, you might think about it differently.

Mr. RATCLIFFE. But he lied to an FBI agent. You don't think that is important?

Mr. COMEY. Oh, it is very important. It happens all the time, unfortunately. It is very, very important. Sometimes you prosecute that person and end their cooperation; sometimes you try and sign them up.

Mr. RATCLIFFE. But if they lie to an FBI agent after they are given immunity, they have violated the terms of their immunity agreement.

Mr. COMEY. Oh, sure, after, after the agreement.

Mr. RATCLIFFE. And so that is my point. He shouldn't have immunity anymore.

Mr. COMEY. Oh, I am sorry. I may have misunderstood you. He lied to us before he came clean under the immunity agreement and admitted that he had deleted the emails.

Mr. RATCLIFFE. No, not according to the FBI's documents. He had the immunity agreement in December of 2015. These interviews took place in February and March and May of this year, 2016.

Mr. COMEY. Combetta?

Mr. RATCLIFFE. Combetta.

Mr. COMEY. Okay. Then I am—then I am confused and misremembering, but I don't think that is right.

Mr. RATCLIFFE. Okay. Well, let me—my time has expired, but I have one last question, and I think that it is important.

At this point, based on everything, do you think that any laws were broken by Hillary Clinton or her lawyers?

Mr. COMEY. Do I think that any laws were broken?

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Mr. RATCLIFFE. Yeah.

Mr. COMEY. I don't think there is evidence to establish that.

Mr. RATCLIFFE. Okay. Well, I think you are making my point when you say there is no evidence to establish that. Maybe not in the way she handled classified information, but with respect to obstruction of justice—and you have a pen here—I just want to make the sure the record is clear about the evidence that you didn't have, that you can't use to prove. So this comes from the FBI's own report.

It says that the FBI didn't have the Clintons' personal Apple server used for Hillary Clinton work emails. That was never located, so the FBI could never examine it. An Apple MacBook laptop and thumb drive that contained Hillary Clinton's email archives was lost, so the FBI never examined that. Two BlackBerry devices provided to the FBI didn't have SIM cards or SD data cards. Thirteen Hillary Clinton personal mobile devices were lost, discarded, or destroyed with a hammer, so the FBI clearly didn't examine those. Various server backups were deleted over time, so the FBI didn't examine that.

After the State Department and my colleague Mr. Gowdy here notified Ms. Clinton that her records would be sought by the Benghazi Committee, copies of her emails on the laptops of both of her lawyers, Cheryl Mills and Heather Samuelson, were wiped clean with BleachBit, so the FBI didn't review that. After those emails were subpoenaed, Hillary Clinton's email archive was also permanently deleted from the Platte River Network with BleachBit, so the FBI didn't review that. And also after the subpoena, backups of the Platte River server were manually deleted.

Now, Director, hopefully that list is substantially accurate, because it comes from your own documents. My question to you is this: Any one of those in that very, very long list, to me, says obstruction of justice. Collectively, they scream obstruction of justice. And to ignore them, I think, really allows not just reasonable prosecutors but reasonable people to believe that maybe the decision on this was made a long time ago not to prosecute Hillary Clinton.

And, with that, I yield back.

Mr. GOODLATTE. Director, do you care to respond?

Mr. COMEY. Just very briefly. To ignore that which we don't have—we are in a fact-based world, so we make evaluations based on the evidence we are able to gather using the tools that we have. So it is hard for me to react to these things that you don't have. So that is my—that is my reaction to it.

Mr. GOODLATTE. The Chair recognizes the gentleman from Texas, Mr. Farenthold, for 5 minutes.

Mr. FARENTHOLD. Thank you very much.

Director Comey, thank you for being here. I know this is—there are a lot of things you would probably much rather be doing than sitting on the hot seat, so to speak.

And here is where I am coming from on this. You have been asked a lot of questions today about the Clinton investigation. And what I am hearing from folks back in Texas—and I am just going to take a big-picture view of this—is this stuff just simply doesn't pass the smell test on a lot of areas.

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You just had my colleague from Texas, Mr. Ratcliffe, list a long list of things that you all didn't have in the investigation. You have been asked earlier today, well, you know, would you reopen the investigation, what would it take to get you to reopen the investigation.

We have had five people given immunity, which, basically, we got nothing, when, you know, perhaps a plea agreement or something else might have worked. You have your interpretation in your previous testimony before Congress that section 793(f) required intent, when, in fact, the standard is gross negligence.

And it is just a long list of things that just have people scratching their heads, going, "If this were to happen to me, I would be in a world of hurt, probably in jail." And how do you respond to people who are saying that this is not how an average American would be treated, this is only how Hillary Clinton would be treated?

Mr. COMEY. Yeah. Look, I have heard that a lot, and my response is: Demand—when people tell you that, that others have been treated differently, demand from a trustworthy source the details of those cases. Because I am a very aggressive investigator, I was a very aggressive prosecutor. I have gone back through 40 years of cases, and I am telling you under oath that to prosecute on these facts would be a double standard, because Jane and Joe Smith would not be prosecuted on these facts.

Now, you would be in trouble. That is the other thing I have had to explain to the FBI workforce. You use an unclassified email system to do our business, and in the course of doing our business—talk about classified topics—you will be in big trouble at the FBI, I am highly confident of that. I am also highly confident, in fact certain, you would not be prosecuted. That is what folks tend to lump together.

So I care deeply about what people think about the justice system and that it not have two standards. It does not, and this demonstrates it.

Mr. FARENTHOLD. But you look at General Petraeus and his handling of classified information. You look at—and I will go back to what you are saying——

Mr. COMEY. But when you look at it, demand to know the facts. I don't want to dump on General Petraeus because the case is over, but I would be happy to go through how very different that circumstance is than this circumstance.

Mr. FARENTHOLD. And you talk about you tell your FBI agents, if you do what we are investigating here with material from the FBI, you would be in a world of trouble. I would assume that could potentially be fired.

Is Hillary Clinton in—she didn't get in any trouble at the State Department. The only trouble she has got now is trying to explain it to the American people.

Mr. COMEY. Right. She is not a government employee, so the normal range of discipline that would be applied to FBI employees if they did do something similar doesn't apply. And I gather—I think that is some of the reason for people's confusion, lumping these two together, and their frustration, but it is what it is.

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And all I can tell people is: Demand the facts. When people tell you, oh, so-and-so has been treated differently, demand the facts on that.

Mr. FARENTHOLD. All right. Let's just do a hypothetical. Let's say somebody here in Congress were to email my personal email some classified information, and I am on my—I get it on my phone. It comes to my cell phone too. My personal email comes to my personal cell phone. I look at it and go, "Wow, that probably shouldn't be on there," and don't do anything.

I mean, to me, that is being grossly negligent with classified information, and I should—and that is a violation of 793(f). And that is exactly what Hillary Clinton did, I think.

I mean, at what point do you get to intent? The classified information was on an unsecured server, you knew it was there, and you didn't do anything about it. To me, that is gross negligence, period. I would think I would be prosecuted for that.

Mr. COMEY. Yeah. I am confident that you wouldn't. But we just have to agree to disagree.

Mr. FARENTHOLD. All right. If I ever get in trouble——

Mr. COMEY. Don't do it.

Mr. FARENTHOLD.—I am going to save this clip.

Mr. COMEY. Don't do it. I guess I can't control Congress. If you work for us, don't do it.

Mr. FARENTHOLD. No, I have absolutely no intention of doing it.

So, again, I just want to say, don't get frustrated when we continue to ask these questions. Because we are not badgering you because we want to badger you; we are talking to you because the American people are upset about this and don't think it was handled appropriately. And that is the basis, at least, of my questioning. And I thank you for appearing here.

Mr. COMEY. And I totally understand that, that I think there are lots of questions people have, which is why I have worked so hard to try and be transparent. There has never been this kind of transparency in a criminal case ever, but because I understand the questions and the importance of it, I have tried.

But I hope people will separate two things: questions about facts and judgment, from questions and accusations about integrity. As I said before, you can call us wrong, you can call me a fool. You cannot call us weasels. Okay? That is just not fair.

And I hope we haven't gotten to a place in American public life where everything has to be torn down on an integrity basis just to disagree. You can disagree with this. There is just not a fair basis for saying that we did it in any way that wasn't honest and independent. That is when I get a little worked up. Sorry.

Mr. FARENTHOLD. I am out of time. I——

Mr. GOODLATTE. The Chair recognizes the gentleman from Michigan, Mr. Bishop, for 5 minutes.

Mr. BISHOP. Thank you.

Thank you, Director Comey, and I appreciate your testimony here today.

Just in followup to all this discussion regarding the Clinton investigation, specifically with regard to the interview of Secretary Clinton, I am holding in my hand a memorandum from Deputy Attorney General James Cole. It is dated May 12, 2014. This memo-

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randum was issued to you and others on the policy concerning electronic recording of statements.

Are you familiar with this memorandum?

Mr. COMEY. Yes. Uh-huh.

Mr. BISHOP. The policy establishes a presumption that the FBI will electronically record statements made by individuals in their custody. Now, I know that Secretary Clinton was not technically in custody, but the policy also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances where that presumption does not exist.

The policy also encourages agents and prosecutors to consult with each other in such circumstances. And given the magnitude of what we have been talking about today and the huge public interest and demand for information with regard to the public trust, I think this is specifically important to this discussion.

Now, you are aware of this policy, correct?

Mr. COMEY. Right, that applies to people that are in handcuffs.

Mr. BISHOP. But not—it also applies to—the policy also encourages agents and prosecutors to consider electronic recording in investigative matter—in other matters where that presumption does not exist, does——

Mr. COMEY. Sure.

Mr. BISHOP [continuing]. It not?

Mr. COMEY. The FBI doesn't do it, but, sure, I understand that they encouraged us to talk about it.

Mr. BISHOP. So the agents, then, did not consider to conduct the interview in a recorded situation then?

Mr. COMEY. We do not record noncustodial interviews. Now, maybe someday folks will urge us to change that policy, but we don't. And we sure wouldn't want to change it in one particular case.

Mr. BISHOP. Well, that is the policy. I am just reading the policy that is issued by the Deputy Attorney General, James Cole, that—it was to you and to others in the Department of Justice—that establishes the policy. So if you don't do it, I assume that you are doing it against the policy of the Department of Justice.

Mr. COMEY. No. That policy only governs custodial interrogations, so people who have been locked up. We do not—and it is not inconsistent with Department of Justice policy—record noncustodial, that is, voluntary interviews, where someone is not in our custody.

Mr. BISHOP. Well, I am reading this differently then, because it does say that there is an exception, that it is within your discretion to record such——

Mr. COMEY. Well, sure, you could. And I don't know, maybe some other Federal investigative agencies do. The FBI's practice is we do not record noncustodial interviews.

Mr. BISHOP. Okay. Thank you, Director.

I want to pivot, if I can, and build off Representative DeSantis' questions with regard to the refugees attempting to enter the United States and specifically with regard to Syrian refugees.

I am wondering if you can tell me—we have talked about this process and the fact that we do not have a process in place that we can rely upon. You have indicated before when you testified and

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I asked the question that we just simply don't have enough information to ensure that we have the information that we need to ensure that these people are not a threat to our country.

Can you expand upon that now after a year? Can you tell me whether or not we have more information, more capabilities to vet these refugees?

And I say this because, in my district in Michigan, in this fiscal year, Michigan has taken the fourth most refugees of all States, 4,178. And we are the—we have taken the third most for Iraq, the second most from Syria. Michigan has absorbed an enormous number of refugees, and I think you can understand our concern with regard to the fact that we don't have information necessary to identify whether or not they are a threat.

Can you assuage my concern and the concerns of my constituents that we have a system in place that we can vet these individuals and they don't pose a threat to our country?

Mr. COMEY. I can assuage in part and restate my concern in part.

Our process inside the United States Government has gotten much better at making sure we touch all possible sources of information about a refugee. The interview process has gotten more robust. So we have gotten our act together in that respect.

The challenge remains, especially with respect to folks coming from Syria, we are unlikely to have anything in our holdings. That is, with people coming from Iraq, the United States Government was there for a very long period of time, we had biometrics, we had source information. We are unlikely to have that kind of picture about someone coming from Syria, and that is the piece I just wanted folks to be aware of.

Mr. BISHOP. Has anything changed in your vetting process? Have you updated it? Do you have any concerns with an increased terrorist activity in the last 6 months, including New York, New Jersey, and Minneapolis.

Has anything changed in the vetting process? Can you be confident that foreign fighters or other refugees entering the country are not planning future attacks on our country?

Mr. COMEY. Well, as I said, over the last year, since I was last before you, the vetting process has gotten more effective in the ways I described.

I am in the business where I can't ever say there is no risk associated with someone. So we wake up every day, in the FBI, worrying about who might have gotten through in any form or fashion into the United States or who might be getting inspired while they are here. So I can't ever give a blanket assurance.

Mr. BISHOP. Director, I respect your opinion. And this is not a policy question. I am asking you based on your personal opinion as a law enforcement officer that we rely upon to keep this country safe. Is there anything that you would do to ensure, as you said, that our country is safe with regard to this refugee process?

Mr. COMEY. Anything that I would do?

Mr. BISHOP. Anything that you would do, any recommendations you have for Congress, for this country, that would ensure our safety?

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Mr. COMEY. Yeah, I shy away from assurances of safety, given the nature of the threats we face. I do think that there may be opportunities to do more in the social media space, with refugees in particular. And I talked to Jeh Johnson yesterday about it. I know this is a work in progress.

So much of people's lives, even if we don't have it in our holdings, may be in digital dust that they have left in different places. Are we harvesting that dust on people who want to come into this country in the best way? And I think there may be ground for improvement there.

Mr. BISHOP. Thank you, Director.

And I will yield back. But, Mr. Chairman, I would ask unanimous consent to enter the memorandum that I referenced earlier dated May 12, 2014, into the record.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

[The information referred to follows:]

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U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202)

MEMORANDUM: Sent via Electronic Mail

DATE: MAY 12 2014

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL APPELLATE CHIEFS

FROM: Monty Wilkinson
Director

SUBJECT: New Department Policy Concerning Electronic Recording of Statements

CONTACT: Andrew Goldsmith
National Criminal Discovery Coordinator
Office of the Deputy Attorney General
Phone: (202) 514 -5705
Email: Andrew.Goldsmith@usdoj.gov

David L. Smith
Counsel for Legal Initiatives
Phone: (202) 252-1326
Email: David.L.Smith2@usdoj.gov

Attached is a Memorandum from the Deputy Attorney General, outlining a new Department of Justice policy with respect to the electronic recording of statements. The policy establishes a presumption in favor of electronically recording custodial interviews, with certain exceptions, and encourages agents and prosecutors to consider taping outside of custodial interrogations. The policy will go into effect on Friday, July 11, 2014. Please distribute the Deputy Attorney General's Memorandum to all prosecutors in your office.

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This policy resulted from the collaborative and lengthy efforts of a working group comprised of several United States Attorneys and representatives from the Office of the Deputy Attorney General, EOUSA, the Criminal Division, and the National Security Division, as well as the General Counsel, or their representatives, from the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration, and the United States Marshals Service.

Earlier today during a conference call with all United States Attorneys, the Deputy Attorney General discussed the background of the policy and explained its basic terms. The policy will be the subject of training provided by the Office of Legal Education, including 2014 LearnDOJ training videos.

Attachment

cc: All United States Attorneys' Secretaries

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U. S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 12, 2014

MEMORANDUM FOR THE ASSOCIATE ATTORNEY GENERAL AND
THE ASSISTANT ATTORNEYS GENERAL FOR THE
CRIMINAL DIVISION
NATIONAL SECURITY DIVISION
CIVIL RIGHTS DIVISION
ANTITRUST DIVISION
ENVIRONMENT AND NATURAL RESOURCES DIVISION
TAX DIVISION
CIVIL DIVISION

DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION
DIRECTOR, UNITED STATES MARSHALS SERVICE
DIRECTOR, BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES
DIRECTOR, BUREAU OF PRISONS

ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Policy Concerning Electronic Recording of Statements

This policy establishes a presumption that the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the United States Marshals Service (USMS) will electronically record statements made by individuals in their custody in the circumstances set forth below.

This policy also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances where the presumption does not apply. The policy encourages agents and prosecutors to consult with each other in such circumstances.

This policy is solely for internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights or benefits, substantive or procedural,

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enforceable at law or in equity in any matter, civil or criminal, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, nor does it place any limitation on otherwise lawful investigative and litigative prerogatives of the Department of Justice.

I. Presumption of Recording. There is a presumption that the custodial statement of an individual in a place of detention with suitable recording equipment, following arrest but prior to initial appearance, will be electronically recorded, subject to the exceptions defined below. Such custodial interviews will be recorded without the need for supervisory approval.

a. Electronic recording. This policy strongly encourages the use of video recording to satisfy the presumption. When video recording equipment considered suitable under agency policy is not available, audio recording may be utilized.

b. Custodial interviews. The presumption applies only to interviews of persons in FBI, DEA, ATF or USMS custody. Interviews in non-custodial settings are excluded from the presumption.

c. Place of detention. A place of detention is any structure where persons are held in connection with federal criminal charges where those persons can be interviewed. This includes not only federal facilities, but also any state, local, or tribal law enforcement facility, office, correctional or detention facility, jail, police or sheriff's station, holding cell, or other structure used for such purpose. Recording under this policy is not required while a person is waiting for transportation, or is en route, to a place of detention.

d. Suitable recording equipment. The presumption is limited to a place of detention that has suitable recording equipment. With respect to a place of detention owned or controlled by FBI, DEA, ATF, or USMS, suitable recording equipment means:

(i) an electronic recording device deemed suitable by the agency for the recording of interviews that,

(ii) is reasonably designed to capture electronically the entirety of the interview.

Each agency will draft its own policy governing placement, maintenance and upkeep of such equipment, as well as requirements for preservation and transfer of recorded content.
With respect to an interview by FBI, DEA, ATF, or USMS in a place of detention they do not own or control, but which has recording equipment, FBI, DEA, ATF, or USMS will each determine on a case by case basis whether that recording equipment meets or is equivalent to that agency's own requirements or is otherwise suitable for use in recording interviews for purposes of this policy.

e. Timing. The presumption applies to persons in custody in a place of detention with suitable recording equipment following arrest but who have not yet made an initial appearance before a judicial officer under Federal Rule of Criminal Procedure 5.

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f. Scope of offenses. The presumption applies to interviews in connection with all federal crimes.

g. Scope of recording. Electronic recording will begin as soon as the subject enters the interview area or room and will continue until the interview is completed.

h. Recording may be overt or covert. Recording under this policy may be covert or overt. Covert recording constitutes consensual monitoring, which is allowed by federal law. *See* 18 U.S.C. § 2511(2)(c). Covert recording in fulfilling the requirement of this policy may be carried out without constraint by the procedures and approval requirements prescribed by other Department policies for consensual monitoring.

II. Exceptions to the Presumption. A decision not to record any interview that would otherwise presumptively be recorded under this policy must be documented by the agent as soon as practicable. Such documentation shall be made available to the United States Attorney and should be reviewed in connection with a periodic assessment of this policy by the United States Attorney and the Special Agent in Charge or their designees.

a. Refusal by interviewee. If the interviewee is informed that the interview will be recorded and indicates that he or she is willing to give a statement but only if it is not electronically recorded, then a recording need not take place.

b. Public Safety and National Security Exception. Recording is not prohibited in any of the circumstances covered by this exception and the decision whether or not to record should wherever possible be the subject of consultation between the agent and the prosecutor. There is no presumption of electronic recording where questioning is done for the purpose of gathering public safety information under *New York v. Quarles*. The presumption of recording likewise does not apply to those limited circumstances where questioning is undertaken to gather national security-related intelligence or questioning concerning intelligence, sources, or methods, the public disclosure of which would cause damage to national security.

c. Recording is not reasonably practicable. Circumstances may prevent, or render not reasonably practicable, the electronic recording of an interview that would otherwise be presumptively recorded. Such circumstances may include equipment malfunction, an unexpected need to move the interview, or a need for multiple interviews in a limited timeframe exceeding the available number of recording devices.

d. Residual exception. The presumption in favor of recording may be overcome where the Special Agent in Charge and the United States Attorney, or their designees, agree that a significant and articulable law enforcement purpose requires setting it aside. This exception is to be used sparingly.

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III. Extraterritoriality. The presumption does not apply outside of the United States. However, recording may be appropriate outside the United States where it is not otherwise precluded or made infeasible by law, regulation, treaty, policy, or practical concerns such as the suitability of recording equipment. The decision whether to record an interview – whether the subject is in foreign custody, U.S. custody, or not in custody – outside the United States should be the subject of consultation between the agent and the prosecutor, in addition to other applicable requirements and authorities.

IV. Administrative Issues.

a. Training. Field offices of each agency shall, in connection with the implementation of this policy, collaborate with the local U.S. Attorney's Office to provide district-wide joint training for agents and prosecutors on best practices associated with electronic recording of interviews.

b. Assignment of responsibilities. The investigative agencies will bear the cost of acquiring and maintaining, in places of detention they control where custodial interviews occur, recording equipment in sufficient numbers to meet expected needs for the recording of such interviews. Agencies will pay for electronic copies of recordings for distribution pre-indictment. Post-indictment, the United States Attorneys' offices will pay for transcripts of recordings, as necessary.

V. Effective Date. This policy shall take effect on July 11, 2014.

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Mr. GOODLATTE. The Chair recognizes the gentleman from Georgia, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman.

Director Comey, I appreciate you being here. You are, I believe, forthright, much more so than, you said, in any other criminal case we have had. But I am also still in the military. I am still in the Air Force Reserve. I went to my drill back in July. I was hit by an amazing amount of questions from different servicemembers on this issue of how does the former Secretary of State get to do this and yet we have members of the military who are prosecuted all the time.

Your statements earlier were fairly startling when you said, I don't know of anybody else that has been classified as this. Just since 2009, Department of Justice has prosecuted at least seven people under the Espionage Act, all for very similar cases.

Now, you said go look at the facts. Well, we are looking at the facts in these cases. The interesting one—and, you know, you said that, in looking back at your investigation, mishandling or removal of classified information, we cannot find a case that would support bringing criminal charges on these facts. All right. Well, it didn't take nothing but a simple legal search to find a Marine that fall in it. Now, I guess their name is not Jane or Joe, so they did get prosecuted. Okay?

And this is the issue under 18 U.S.C. 793(f), gross negligence. This is what the Marine did. They took classified information that was put into a gym bag, cleaned out, washed, and took. All right? Simple mishandling. The court of appeals actually upheld this case, and this is what they said, that the purpose of Federal espionage statutes is to protect classified documents from unauthorized procedures, such as removal from proper place of custody, which would mean how you deal with this. Regardless of means of removal, it was apparent gross negligence and was a proximate cause of the document's removal.

United States v. McGinnis, said it is clear the Congress' intent is to create a hierarchy of defenses against national security, ranging from classic spying to merely losing classified materials through gross negligence or the mishandling of.

It was sort of also ironic for me that when I had to go back in July and this past month when I went back, I had to do my annual information assurance training. They went through everything that we have to do with handling classified information. I had been in a war zone, I have been in—this is just common knowledge among most everybody in the world. Obviously not to the Secretary.

How can you then explain to me this Marine's mistake in taking classified documents or mishandling them is more severe than the Secretary of State, who sent and received classified emails on a regular basis, including those that were originally classified, not those that were classified later but were originally classified?

Mr. COMEY. I am familiar with the case, and I am quite certain it is not a 793(f) case. It was prosecuted——

Mr. COLLINS. His conviction was under 793(f).

Mr. COMEY. Yeah, I don't think—I mean, I will go back and check again. I would urge you to too. I am pretty sure it is not under the gross negligence prong of 793(f). But it is a Uniform

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Court of Military Justice prosecution, not by the Department of Justice. Am I remembering correctly?

Mr. COLLINS. This was from and is appealed out in the U.S. Court of Appeals for the Armed Forces of the United States.

Mr. COMEY. Okay. But, regardless, I think even—I don't think this is under the same provision, but even there, that is a case involving someone who actually stole classified information, hard copies.

What people need to remember—and I don't say this to make little of it. I think it is a very serious matter. What happened here is the Secretary used an unclassified email system, her personal system, to conduct her business.

Mr. COLLINS. And let's just stop right there. That, in and of itself—and I understand it's an uncomfortable—we have been through a lot—you have been through a lot of questions. I apologize. But let's just come back to the basics here.

We are trying to parse that I didn't have such as Sandy Berger or all these others who have been prosecuted, they took a hard copy. In today's society, and even understanding if you go through any information assurance class, anything else, they tell you it cannot be on a personal laptop. In fact, there was another chief petty officer who had classified information on a personal computer. It went back and forth to a war zone. That is not physical documents.

It's on a—to parse words like that is why the American people are fed up. They are fed up with the IRS Commissioner when he does it. They are fed up here. I am not attacking your—I think you are one of the more upright people I met. I think you just blew it. I think the Attorney General blew it. I shared this with her.

And I think when we come to this thing, there is no other way that you can say that there is no others that resemble this. As a lawyer, you are taught all the time to take facts and put them—they might not be exact, but they fit under the law. You can't—I mean, so I guess maybe I am going to change the question, because we are going to go down a dead end. You are going to say it wasn't and——

Mr. COMEY. Congressman, can I respond——

Mr. COLLINS. So let me ask you this. I want to change questions.

Do you honestly believe that a lady, a woman of vast intelligence, who was the First Lady of the United States, who was a Senator who had access to classified information all of the Members here do, who was Secretary of State who had even further classification ability even beyond what we have here, do you believe that in this case, honestly, she was not grossly negligent or criminal in her acts?

Mr. COMEY. First of all, I don't believe anyone other than my wife. My question is what evidence do I have to establish that state of mind. And I don't believe I have evidence to establish it beyond a reasonable doubt.

Mr. COLLINS. Then, really, what we are saying here is this, is she is—this is in essence what you are saying. You said I can't prove it, and I understand. There are a lot of out folks out there in the law that, you know, they come to us all the time. I am an attorney as well. And they come to us and say, it is not what we know, it is not what we think, it is what we can prove. I get it.

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But here is the problem with this. And this is the person who is asking to lead this country. If she can hide behind this and blatantly get approval from the FBI through an investigation, which has been covered here thoroughly, then I just do not understand. She is either the most arrogant, which probably so, or the most insanely naive person we have ever met.

Because when I actually show evidences of basically the same thing, which you can take fact and correlate to law, this is why the Armed Forces right now have the new term called the Clinton defense. "I didn't know. I didn't mean to." It is the Clinton defense.

With questions like this, Director, we have given the ability now to where nobody takes this seriously. And this is why people are upset. When it was originally classified, she can tell all the stories she wants. She can have the backup from you that no prosecutor—which is, again, amazing to me, that a law enforcement would tell the prosecutor—because how many times I have been on both sides of this where the law enforcement agent says I am not sure we have a case here, but when the prosecutor looks at it, the prosecutor says, yeah, there is a case here.

I don't really, frankly—no offense—care what—if I am prosecuting, what the law enforcement officer—if I can see the case and I can make it, that is my job, not yours. And yet now we have a whole system that has been turned upsidedown, not because I don't believe your honesty of your people, but I believe you blew it because you, frankly, didn't have the whole situation into effect where the FBI would look political.

And, unfortunately, that is all you have become in this. And it is a sad thing. Because you all do great work, you have done great work, and you will do great work. But I think it is time to start—we just bring down the curtain. There is a wizard behind the thing, Ms. Hillary Clinton, who is playing all of us. Because she is not that naive. She is not stupid. She knew what she was doing, because she was simply too bored. If she, God forbid, gets into 1600 Pennsylvania Avenue and just gets bored with the process, then God help us all.

Mr. Chairman, I yield back.

Mr. COMEY. Mr. Chairman, there are only two——

Mr. GOODLATTE. The Director is permitted to respond.

Mr. COMEY. Yeah, two pieces of that I need to respond to.

First, you said hiding behind something. This case was investigated by a group of professionals. So if I blew it, they blew it too. Career FBI agents, the very best we have, were put on this case, and career analysts. We are a team. No one hid behind anything.

American citizens should insist that we bring criminal charges if we are able to investigate and produce evidence beyond reasonable doubt to charge somebody. That should be true whether you are investigating me or you or Joe Smith on the street. That is the way this case was done. It is about evidence.

And the rest of it I will let go.

Mr. COLLINS. Mr. Chairman, I will—and I apologize—I am not—this is the problem, though. When you take it as a whole—it has been said up here this is a unique case. You talk about it being a unique case. Director, this is a unique because I truly—and I don't think you convince hardly anybody except your own group that—

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I don't think you ever said they couldn't blow it. They blew it. Anybody else would have been prosecuted under this, in my humble opinion.

Mr. COMEY. You are just wrong.

Mr. COLLINS. You say no.

Mr. COMEY. You are just wrong. We will just have to agree to disagree.

Mr. COLLINS. Well, unfortunately, there is a lot to disagree on this.

Thank you, Mr. Chairman.

Mr. GOODLATTE. The time of the gentleman has expired.

The gentleman from Idaho, Mr. Labrador, is recognized for 5 minutes.

Mr. LABRADOR. Thank you, Mr. Chairman.

And, Director Comey, I have always appreciated your testimony before this Committee, and I respect the work that you do for the FBI.

When you made your recommendations to the Department of Justice to not prosecute Hillary Clinton, I actually disagreed with your decision, but I appreciated your candor in explaining to the American people and to us those recommendations.

Since that decision, I continue to view you as honorable and a strong leader for the critical Federal agency. In fact, I did 20 townhall meetings over the recess, and I was lambasted at every one of them, in fact I think I lost votes, because I defended your integrity at every one of those townhall meetings and I told them why, even though I disagreed with your conclusions, I thought you came to it from an honorable place.

However, as more information has come to light, I question the thoroughness—and I am not questioning your integrity, but the thoroughness and the scope of the FBI's investigation.

In the past week, we have learned of the grants of immunity to several key witnesses in the Clinton investigation, including Hillary Clinton's former chief of staff and one of the individuals responsible for setting up her server.

I am really disappointed by this revelation and confused as to why these immunity grants were necessary and appropriate, given the circumstances. It appears to me that the FBI was, very early in this investigation, too willing to strike deals and ensure that top officials could never be prosecuted for their role in what we now know was a massive breach of national security protocol.

We have a duty to ensure that our FBI is still in the business of investigating criminal activity. So at what point in the investigation was Cheryl Mills offered immunity?

Mr. COMEY. Cheryl Mills was never offered immunity. Not to quibble, but she was given letter immunity to govern——

Mr. LABRADOR. At what point?

Mr. COMEY. June of 2016. So June of this year. So about 11 months into the investigation.

Mr. LABRADOR. So, and to be clear, was she offered immunity for interview and potential testimony or for turning over the laptop as evidence?

Mr. COMEY. Turning over the laptop as evidence. It governed what could be done in terms of using it against her, that laptop.

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Mr. LABRADOR. To your knowledge, was Cheryl Mills an uncooperative witness prior to the immunity deal?

Mr. COMEY. I think our assessment was she was cooperative. I forget the month she was interviewed, but she was interviewed fully before that.

Mr. LABRADOR. And she always cooperated?

Mr. COMEY. I think our assessment was—again, this is the odd way I look at the world—we had no reason to believe she was being uncooperative.

Mr. LABRADOR. So could this investigation have been completed without these grants of immunity in place?

Mr. COMEY. In my view, it couldn't be concluded professionally without doing our best to figure out what was on those laptops. So getting the laptops was very important to me and to the investigative team.

Mr. LABRADOR. So in your vast experience as an investigator, as a DOJ attorney, now as an FBI Director, how many times have you allowed a person who is a material witness to a crime you are investigating to act as the lawyer in that same investigation?

Mr. COMEY. Well, "to let" is what I am stumbling on. The FBI has no power to stop someone in a voluntary——

Mr. LABRADOR. No, no, no, no. You are speaking—let's just be honest. You allowed, the FBI allowed Cheryl Mills to act as the attorney in a case that she was a material witness. How many times have you——

Mr. COMEY. In the same sense that I am "allowing" you to question me——

Mr. LABRADOR. How many times have you——

Mr. COMEY.—I can't stop you from questioning me.

Mr. LABRADOR. How many times have you done that prior?

Mr. COMEY. I have not had an experience where the subject of the interview was represented by a lawyer who was also a witness in the investigation.

Mr. LABRADOR. Okay. So you have never had that experience.

Mr. COMEY. Not in my experience.

Mr. LABRADOR. You prosecuted terrorists and mobsters, right?

Mr. COMEY. Correct.

Mr. LABRADOR. And during your time in Justice, how many times did you allow a lawyer who was a material witness to the case that you were prosecuting to also act as the subject of—as the attorney to the subject of that investigation?

Mr. COMEY. As I said, I don't think I have encountered this situation where a witness—a lawyer for the subject of the investigation was also a witness to the investigation. I don't——

Mr. LABRADOR. So this was highly unusual, to have——

Mr. COMEY. In my experience, yes.

Mr. LABRADOR. Okay.

In your answer to Chairman Chaffetz, you indicated that you had no reason to disbelieve Paul Combetta when he told you that he erased the hard drive on his own. Is that correct?

Mr. COMEY. Correct.

Mr. LABRADOR. However, in the exchange on Reddit, he said, "I need to strip out a VIP's email address from a bunch of archived

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emails. Basically, they don't want the VIP's email address exposed to anyone."

Those two statements are not consistent. How can you say that he was truthful when he told you nobody told him to act this way but yet you saw this Reddit account that says where "they" told him that he needed to act in this way?

Mr. COMEY. I think the assessment of the investigative team is those are two very—about two different subjects. One is a year before about—in the summer of 2014 about how to produce emails and whether there was a way to remove or mask the actual email address, the HRC, whatever it is, dot-com. And the other is about actually deleting the content of those emails sitting on the server.

Mr. LABRADOR. It seems like in your investigation you found, time after time, evidence of destruction, evidence of breaking iPhones and other phones, all these different things, but yet you find that there is no evidence of intent.

And I am a little bit confused as to your interpretation of 18 U.S.C. 793(f). On the one hand, you have said that Secretary Clinton couldn't be charged because her conduct was extremely careless but not grossly negligent, correct?

Mr. COMEY. That is not exactly what I said.

Mr. LABRADOR. That is what you said today. But you have also said——

Mr. COMEY. I don't remember saying that.

Mr. LABRADOR [continuing]. There was no evidence of her intent to harm the United States.

But you will agree that a person can act with gross negligence or even act knowingly without possessing some additional specific intent. So which is it? Is it a lack of gross negligence that she had or a lack of intent?

Mr. COMEY. In terms of my overall judgment about whether the case was worthy of prosecution, it is the lack of evidence to meet what I understand to be the elements of the crime, one; and, two, a consideration of what would be fair with respect to how other people have been treated. Those two things together tell me—and nothing has happened that has changed my view on this—that no reasonable prosecutor would bring such a case.

The specific-intent question, yes, I agree that specific intent to harm the United States is a different thing than a gross negligence or a willfulness.

Mr. LABRADOR. So just one last question. You have talked about Mary and Joe. And Mary and Joe would be disciplined at the FBI if they did what Hillary Clinton did. If Mary and Joe came to you and asked for a promotion immediately after being disciplined, would you give them that promotion?

Mr. COMEY. Tough to answer that hypothetical. It would depend upon the nature of the conduct and what discipline had been imposed.

Mr. LABRADOR. And what if they ever asked for a promotion that would give them management and control of cybersecurity of your agency and the secrets of your agency after they had done these things? Would you give them that promotion?

Mr. COMEY. That is a question that I don't want to answer.

Mr. LABRADOR. All right.

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Mr. GOODLATTE. The time of the gentleman has expired.

The Chair recognizes the gentlewoman from California, Mrs. Walters, for 5 minutes.

Mrs. WALTERS. Hi, Director Comey.

Despite the absence of an intent mens rea standard in 18 U.S.C. section 793(f), you have said that there has never been a prosecution without evidence of intent. Thus, the standard has been read into the statute despite the specific language enacted. What exactly are the legal precedents that justify reading intent into the statute?

Mr. COMEY. Well, my understanding of 793(f) is governed by a couple things—three things, really: one, the legislative history from 1917, which I have read, and the one case that was prosecuted in the case. And those two things combined tell me that, when Congress enacted 793(f), they were very worried about the "gross negligence" language and actually put in legislative history we understand it to be something very close to "willfulness."

Then the next 100 years of treatment of that actually tell me that the Department of Justice for a century has had that same reservation, because they have only used it once. And that was in a case involving an FBI agent who was—in an espionage context.

So those things together inform my judgment of it.

Mrs. WALTERS. Okay.

Considering the importance of protecting classified information for national security purposes, a lot of people disagree that an intent standard should be read into that statute. What specific language would you recommend we enact to ensure gross negligence is the actual standard for the statute, not intent?

Mr. COMEY. I don't think that is something the Bureau ought to give advice on. It is a good question, as to what the standard should be. I could imagine Federal employees being very concerned about how you draw the line for criminal liability. But I don't think that is something we ought to advise on, the legislation.

Mrs. WALTERS. Okay.

Should we enact a mens rea standard for extreme carelessness for the statute?

Mr. COMEY. Same answer, I think, is appropriate.

Mrs. WALTERS. Should we enact a civil fine?

Mr. COMEY. A civil fine for mishandling classified information?

Mrs. WALTERS. Uh-huh.

Mr. COMEY. I don't know, actually, because it is already subject to discipline, which is suspension or loss of clearance or loss of job, which is a big monetary impact to the people disciplined. So I don't know whether it is necessary.

Mrs. WALTERS. Okay.

I want to change subjects——

Mr. COMEY. Okay.

Mrs. WALTERS [continuing]. For my next question. As you know, the number of criminal background checks for noncriminal purposes, such as for employment decisions, continues to increase annually.

I don't expect that you have this information on hand; however, would you be willing to provide the Committee and my staff with the number of criminal history record checks for fingerprint-based

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background checks that the FBI has conducted over each of the past 5 years?

And what are your thoughts regarding whether the FBI has the capacity to process the increasing number of background check requests?

Mr. COMEY. I am sure we can get you that number, because I am sure we track it. So I will make sure my staff follows up with you.

Mrs. WALTERS. Okay.

Mr. COMEY. I do believe we have the resources. Where we have been strained is on the background checks for firearms purchases. The other background check processes we run, my overall sense is we have enough troops to do that. We are able to—we charge a fee for those, and I think we are able to generate the resources we need.

Mrs. WALTERS. Okay. Thank you.

I yield back my time.

Mr. ISSA. Could the gentlelady yield to me?

Mrs. WALTERS. Sure. I would be happy to yield to you, Mr. Issa.

Mr. ISSA. Thank you.

Director, some time ago, you appeared before this Committee, and you told us that you had exhausted all of the capability to unlock the San Bernardino iPhone, the 5C. Did that turn out to be true?

Mr. COMEY. It is still true.

Mr. ISSA. That you had exhausted all of your capability?

Mr. COMEY. That the FBI had, yes.

Mr. ISSA. So shouldn't we be concerned from a cyber standpoint that you couldn't unlock a phone that, in fact, an Israeli company came forward and unlocked for you and basically a Cambridge professor or student for 90 bucks has shown also to be able to unlock and mirror or duplicate the memory?

I mean, and this is purely a question of—you apparently do not have the resources to do that which others can do. Isn't that correct?

Mr. COMEY. I am sure that is true in a whole bunch of respects, but, first, I have to correct you. I am not confirming—you said an Israeli company? I am not confirming——

Mr. ISSA. Well, okay. A contractor for you, reported to be, for a million dollars, unlocked the phone. So I would ask you to confirm, the phone got unlocked, right?

Mr. COMEY. Yes, it did.

Mr. ISSA. Okay. So the technology could be created outside of ordering a company to essentially, you know, reengineer their software for you, correct?

Mr. COMEY. In this particular case, yes.

Mr. ISSA. Okay. And so you lack that capability. How can this Committee know that you are in the process of developing that sort of technology, the equivalent of the Cambridge $90 technology?

Mr. COMEY. How can the Committee know?

Mr. ISSA. Yeah. I mean, in other words, where are the assurances that you are going to get robust enough?

We have an encryption working group that was formed between multiple Committees to no small extent because of your action of

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going to a magistrate and getting an order because you lacked that capability and were trying a new technique of ordering a company to go invent for you.

The question is, how do we know that won't happen again, that you will go to the court, ask for something when, in fact, the technology exists or could exist to do it in some other way, a technology that you should have at your disposal, or at least some Federal agency should, like the NSA?

Mr. COMEY. Well, first of all, it could well happen again, which is why I think it is great that people are talking about what we might do about this problem.

It is an interesting question as to whether we ought to invest in us having the ability to hack into people's devices, whether that is the best solution. It doesn't strike me as the best solution. But we are—and I have asked for more money in the 2017 budget—trying to invest in building those capabilities so when we really need to be able to get into a device we can.

It is not scaleable, and I am not sure it would be thrilling to companies like Apple to know we are investing money to try and figure out how to hack into their stuff.

Mr. ISSA. Well, isn't it true that we have clandestine organizations who have the mandate to do just that, to look around the world and to be able to find information that people don't know you can find, keep it secret, get it out there?

And my question to you is, shouldn't we, instead of giving you the money, simply continue to leverage other agencies who already have that mandate and then ask you to ask them to be your conduit for that when you have an appropriate need?

Mr. COMEY. That is a reasonable question. It may be part of the solution. Real challenges in using those kinds of techniques in the bulk of our work, because it becomes public and exposed. But that has to be an important part of the conversation.

Mr. ISSA. Thank you.

I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Arizona, Mr. Franks, for 5 minutes.

Mr. FRANKS. Thank you, Mr. Chairman.

And thank you for being here, Director Comey.

Director Comey, I—the last thing I want to do is to lecture you on anything related to the law, because I think you have given your whole life to that effort.

And I guess, in the face of so many things already having been said here and asked, that all I can do is to try to sort of reassociate this in a reference of why there is a rule of law. You know, we had that little unpleasantness in the late 1770's with England over this rule of law, because we realized there is really only two main ways to govern, and that is by the rule of men or the rule of law. And sometimes it is important for all of us just to kind of reconnect what this whole enterprise of America is all about. And I, again, don't seek to lecture you in that regard.

And I know—and you have to forgive me for being a Republican partisan here, because I am very biased in this case. But I know that when you interviewed Mrs. Clinton you were up against someone that really should have an earned doctorate of duplicity and

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deception hanging on her wall. I don't know that you probably could have interviewed a more gifting prevaricator. So I know you were up against the best.

But, having said that, when I read the law here that I know so many have already referenced—I think maybe that is the best way for me to do that. 18 U.S.C. 1924 provides that any Federal official who "becomes possessed of documents or materials containing classified information of the United States and knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than 1 year or both."

Now, I didn't miss one word there. It does not require—that section does not require an intent to profit. It doesn't require harm to the United States or otherwise to act in any manner disloyal to the United States. It only requires intent to retain classified documents at an unauthorized location.

And I believe, sir, in all sincerity to you, person to person, I belive that some of your comments reflected that that is what occurred. And, over the last several months, I believe that is the case.

And so I have to—it is my job to ask you again why the simple clarity of that law was not applied in this case. Because the implications here are so profound. For your children and mine, for this country, they are so profound.

And, again, I don't envy your job, but I want to give you the remainder of the time to help me understand why a law like this that any law school graduate—if we can't apply this one in this case, how in God's name can we apply it in any case in the world? Why is it even written?

So I am going to stop there and ask your forbearance and just go for it.

Mr. COMEY. Sure. No, it is a reasonable question.

That is the—18 U.S.C. 1924 is the misdemeanor mishandling statue that is the basis on which most people have been prosecuted for mishandling classified information have been prosecuted. It is not a strict liability statute. I was one of the people, when I was in the private sector, who argued against strict liability criminal statues. It requires, in the view of the Department of Justice and over long practice, proof of some criminal intent, not specific intent to harm the United States but a general awareness that you are doing that is unlawful. So you have to prove criminal intent.

So there are two problems in this case. One is developing the evidence to prove beyond a reasonable doubt that Secretary Clinton acted with that criminal intent. And, second, even if you could do that, which you can't, looking at the history of other cases, what would be the right thing to do here? Has anybody ever been prosecuted on anything near these facts?

And, again, I keep telling the folks at home, when people tell you lots of people have been prosecuted for this, please demand the details of those cases. Because I have been through them all.

So that combination of what the statute requires and the history of prosecutions told me—and, again, people can take a different view, and it is reasonable to disagree—that no reasonable prosecutor would bring that case. That, in a nutshell, is what it is.

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Mr. FRANKS. Well, you said it was a reasonable question. That was a reasonable answer. But I can't find that in the statute.

Thank you, sir.

Mr. GOODLATTE. The Chair recognizes the gentleman from Louisiana, Mr. Richmond, for 5 minutes.

Mr. RICHMOND. Thank you, Mr. Chairman.

Director Comey—and I am going down a completely different path. Our law enforcement in this country have a consistent enemy in a group called sovereign citizens. And what I have seen in my district, we lost two officers in St. John Parrish about 4 years ago, and we just lost another three officers in Baton Rouge, with another couple injured.

In the case in St. John Parrish, we actually had the perpetrators on the radar in north Louisiana, and, at some point, they moved to south Louisiana in my district and we lost contact. So, when St. John Parrish deputies went to their trailer park, they had no idea what they were walking into, and they walked into an ambush with AR-15s and AK-47s, and the unimaginable happened.

So, through NCCIC and other things, are you all focused on making sure—and I think there are about 100,000 of them. But are you all focused on making sure that our law enforcement has the best information when dealing with, whether it is sovereign citizens or terrorist cells or other bad actors, that that information gets to the locals so they are not surprised and ambushed?

Mr. COMEY. Well, we sure are. And I don't know the circumstances of that case, but I will find out the circumstances.

In two respects, we want, obviously, people to know when someone is wanted. But, more than that, we have a known or suspected terrorist file that should have information in that about people we are worried about so that if an officeris making a stop or going up to execute a search warrant and they run that address of that person, they will get a hit on what we call the KST file.

So that is our objective. And if there are ways to make it better, we want to.

Mr. RICHMOND. Now, let's switch lanes a little bit, because this is one of—I think an issue when we start talking about criminal justice reform and we start talking about the FBI. In my community and communities of color and with elected officials, there seems to be two standards: one for low-level elected officials and then one for other people.

So I guess the facts I will give you of some of our cases—and you tell me if it sounds inconsistent with your knowledge of the law and your protocol, but nonprofit organizations where elected officials have either been on boards or had some affiliation with, when those funds are used in a manner that benefits them personally, they have been prosecuted. And I mean for amounts that range from anywhere from $2,000 upwards to $100,000.

Your interpretation of the law, that if nonprofit funds are used to benefit a person and not the organization, that that is a theft of funds—because I believe that those are a lot of the charges that I have seen in my community. Would you agree with that?

Director COMEY. Sure, it could be. And I know from personal experience, having done these cases, that is often—that is at the center of a case involving a corrupt official.

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Mr. RICHMOND. Now, let's take elected official out and just take any foundation director or board director or executive director who would use the funds of a nonprofit to pay personal debts or bills or just takes money. You would agree that that would constitute a violation of the law, criminal statute?

Mr. COMEY. Potentially. On the Federal side, potentially of wire fraud, mail fraud, or a tax charge, potentially.

Mr. RICHMOND. The other thing that I would say is that, in our community, we feel that it is selective prosecution; that if you are rich, you have another standard; that if you are an African-American, you have another standard.

And there are a number of cases that I will give you off-line, but it appears that—and my concern is the authority of your agents to decide that a person is bad and then take them through holy hell to try to get to the ultimate conclusion that the agent made, and they don't let the facts get in their way. And at the end of the day, you have businesspeople who spend hundreds of thousands of dollars to protect their reputation and to fight a charge that they ultimately win, but now they are broke, they are defeated, because, when it comes out, it says the United States of America versus you.

So I would just ask you to create a mindset within the Department that they understand the consequences of leaks to the press, charges, and what happens if—when those charges are really not substantiated, you still break a person. And I think that you all have a responsibility to be very careful with the awesome power that you all are given.

And, with that, Mr. Chairman, I thank back—I would yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

The Director is welcome to respond.

Mr. COMEY. I very much agree with what you said, Congressman, at the end of that. The power to investigate is the power to ruin. Obviously, charging people can also be ruinous. So it is when we have to be extraordinarily prudent in exercising fair, open-minded, and careful. So I very much agree with that.

Mr. GOODLATTE. The Chair recognizes the gentleman from Michigan, Mr. Trott, for 5 minutes.

Mr. TROTT. Thank you, Mr. Chairman.

And thank you, Director, for being here. And thank you for your service to our country.

When you made your statement at the press conference on July 5, you said, "I have not coordinate or reviewed this statement in any way with the Department of Justice or any part of government. They do not know what I am about to say."

I have no reason to question your integrity, but is there any chance that someone working in your office or as part of this investigation knew what you were going to decide and recommend and maybe told one of the Attorney General's staff what was about to happen on July 5?

Mr. COMEY. Anything is possible. I would—I think I would be willing to bet my life that didn't happen——

Mr. TROTT. Okay.

Mr. COMEY [continuing]. Just because I know my folks.

Mr. TROTT. So here is why I ask. The facts give me pause. The investigation started in July of 2015. Many of us in Congress, in-

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cluding myself, suggested that the Attorney General should recuse herself because of her friendship with the Clintons and because of her desire to continue on as Attorney General in a Clinton administration.

Then she had the fortuitous meeting on the airplane with former President Clinton on June 30. Then on July 2, give or take, she came out and said, you know, I have created an appearance of impropriety, and so I am going to just follow whatever the FBI Director's recommendation is.

And then, 3 days later, you had your press conference. And in your press conference, you said, "In our system of justice, the prosecutors make the decisions about what charges are appropriate based on the evidence." That is not what happened in this case. Ultimately, you made the decision. Isn't that what happened?

Mr. COMEY. Well, I made public my recommendation. The decision to decline the case was made at the Justice Department.

Mr. TROTT. But before you had that press conference, you knew, based on the Attorney General's public comments that she was going to follow whatever you recommended. So, ultimately, you made the decision in this case as to whether or not charges should be filed against Secretary Clinton. Isn't that the reality of what happened?

Mr. COMEY. I think that is a fair characterization. The only thing I would add to that is I think she said—I don't remember exactly—that she would defer to the FBI and the career prosecutors at the Department of Justice.

But, look, I knew that once I made public the FBI's view that this wasn't a prosecutable case that there was virtually zero chance that the Department of Justice was going to go in a different direction. But part of my decision was based on my prediction that there was no way the Department of Justice would prosecute on these facts in any event.

So I think your characterization is fair, but I just wanted to add that color to it.

Mr. TROTT. But you can see how some of us would look at the dates and the facts leading up to your press conference and think, okay, for a year we have been suggesting she is not the appropriate person to make the ultimate decision as to whether charges should be filed; she won't recuse herself. And then 3 days before you come out with your recommendation, which she has already said she is going to follow, she basically decides to recuse herself. Those facts give me pause.

Mr. COMEY. I get why folks would ask about that, but I actually think it is—there are two dates that matter. But I think what generated that was the controversy around her meeting with President Clinton, not the interview with Secretary Clinton.

Mr. TROTT. That is a whole other discussion.

So let's talk about Cheryl Mills. So you have said earlier today that it really wasn't up to you to weigh in on whether there was a conflict for Ms. Mills to act as Secretary Clinton's lawyer in the interview.

But, again, you are kind of taking your attorney hat on and off whenever it is convenient. You decided that at the beginning of that interview it wasn't appropriate for you to weigh in as a lawyer

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suggesting there was a conflict. But then again, your recommendation is, ultimately, as a lawyer, what is being done in this case. Do you see little bit of inconsistency there or no?

Mr. COMEY. No, I see the point about the—look, I would rather not have an attorney hat on at any time. I put it on because I thought that was what was necessary at the conclusion of this investigation. But I stand by that. The agents of the FBI, it is not to them to try and kick out someone's lawyer.

Mr. TROTT. Well, what would have happened if you had said, Ms. Mills, because of the history here, you can't be in this interview?

Mr. COMEY. I don't know. I don't know.

Mr. TROTT. Could you have said that to her?

Mr. COMEY. I guess you could. It would be well outside our normal role.

Mr. TROTT. So, a number of times today, you have said there really is no double standard. And so now I am just asking you as a citizen and not even in your capacity as Director of FBI, can you sort of see why a lot of Americans are bothered by a perceived double standard?

Because if any of the gentlemen sitting behind you this morning, who I assume are with the Department, had done some of the things Ms. Clinton did and told some of the lies that she told, you said in your statement that this is not to suggest under similar circumstances there wouldn't be consequences. In fact, there would be—they would be subjected to administrative sanctions.

And now we have an election going on where she is seeking a pretty big promotion. So maybe your point is she wouldn't be charged under similar facts, but can you sort of see why so many people are bothered by the facts in this case, given that really nothing happened to her and now she is running for President of the United States? I mean, just, can you see the optics on that are troubling?

Mr. COMEY. Oh, I totally get that. That is one of the reasons I am trying to answer as many questions as I can, because I get that question.

But, again, folks need to realize, in the FBI, if you did this, you would be in huge trouble. I am certain of that. You would be disciplined in some serious way. You might be fired. I am also certain you would not be prosecuted criminally on these facts.

Mr. TROTT. And you have said that, and I appreciate it.

Let me just ask one quick question, because I am out of time. But Mr. Bishop started to talk about this, and his district is affected, as well, in Michigan. But my district in southeast Michigan has the third-largest settlement of Syrian refugees of any city in the country, behind San Diego and Chicago. That is Troy, Michigan.

And you said last fall in front of a Homeland Security Committee hearing that you really didn't have the data to properly vet the Syrian refugees that are trying to come in, and you said that again this morning.

But, you know, last weekend, I am at a grocery store and a Starbucks, and two different constituents walked up to me and said, "Can't you stop the President's resettlement of Syrian refugees into Troy, Michigan? We are all afraid." And they are based

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on, largely, your comment that we don't have the database to really vet these folks.

Anything I can tell the folks back in Michigan that we are doing, other than—all I say now is we just have to wait for a new President, because this President has increased the number of refugees by 60 and 30 percent year over year the last 2 years, we just have to wait for a new President. I would like to be able to say the FBI is doing something different than they were doing last year when you made those comments.

Mr. COMEY. Well, as I said earlier, they can know that we are—if there is a whiff about this person somewhere in the U.S. Government's vast holdings, we will find it. And the second thing they can know is, if we get a whiff about somebody once they are in, we are going to cover that in a pretty tight way.

What I can't promise people is that if—I can't query what is not in our holdings. That is the only reservation I offer to people.

Mr. TROTT. Thank you, sir.

I yield back.

Mr. GOODLATTE. Well, Director Comey, during questioning earlier, there was a dispute that arose over the contents of one or more of the immunity letters that were issued, particularly with regard to the issue of whether or not it contained immunity for destroying documents, emails.

The individual who was questioning you about that was former Chairman Issa of the Oversight and Government Reform Committee, and I want him to be able to clarify. Because we have contacted the Department of Justice and asked them to read the immunity letters to us.

So the gentleman is recognized briefly.

Mr. ISSA. Thank you, Mr. Chairman. And I will try to be very brief.

Under the immunity agreement with one or more individuals—we will use Cheryl Mills as, clearly, one of the individuals—she negotiated a very, very good deal from what we can discover. She did not just receive immunity related to the production of the drive, computer, and the contents but, in fact, received immunity under 18 U.S.C. 793(e) and (f), 1924 U.S.C.—18 U.S.C. 1924, and the so-called David Petraeus portion, 18 U.S.C. 2071. And I will focus on 2071. Her immunity is against any and all taking, destruction—or even obstruction, the way we read it—of documents, classified or unclassified.

Now, the only question I have for you is—and I know you are going to put this to Justice and we may have to ask them separately—for the purposes of what you needed as an investigator, because you were the person that wanted access to the computer, does that deal make any sense, to, in return for things which she could have objected to as an attorney and held back but which had no known proffer of leading to some criminal indictment of somebody else, she received complete immunity, as we read it, from obstruction or destruction of documents, classified and unclassified. And that is based on a re-review of the immunity agreement.

Mr. COMEY. You know, I think this is—you are right, this is a question best addressed to Justice. But I think you are misunderstanding it.

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As I understand it, this was a promise in writing from the Department of Justice: If you give us the laptops, we will not use anything on the laptops directly against you in a prosecution for that list of offenses. It is not immunity for those offenses if there is some other evidence.

Now, that said, I am not exactly sure why her lawyer asked for it, because, by that point in the investigation, we didn't have a case on her to begin with.

Mr. ISSA. Well, I understand that. But based on the Reddit discovery and others, the "they asked me to do it"—and you said so yourself, it was probably Cheryl Mills, the "they." You have an immune witness who has to tell you who they were. If the "they were" told me to delete, and that is Cheryl Mills, then, in fact, you have evidence from an immune witness of a crime perpetrated by Cheryl Mills, the ordering of the destruction of any document, classified or unclassified, which, clearly, she seems to have done.

Mr. COMEY. Then she wouldn't be protected from that. If we developed evidence that she had obstructed justice in some fashion—all she is protected from is we can't use as evidence something that is on the laptop she gave us——

Mr. ISSA. Right. So the information put into the record today, which included these Reddit discoveries, show that there is a they who asked to have the destruction of information. Under 18 U.S.C. 2071, if she doesn't have immunity for that order, she could, and by definition should, be charged. Because ordering somebody else to destroy something, as an attorney, well after there were subpoenas in place that were very specific, that is clearly a willful act, isn't it?

Ms. JACKSON LEE. Mr. Chairman, would you yield?

Mr. ISSA. Of course.

Ms. JACKSON LEE. Your line of questioning—well, first, let me show my cards. I believe that Cheryl Mills has an impeccable character, as my line of questioning suggested that Director Comey and his staff have impeccable character.

But, my good friend, there is immunity given—I don't think this applies to Ms. Mills, and I looked at the sections that you are speaking of—if you take local, criminal, and State actions, given to the worst of characters for a variety of reasons. That was not the reason given to Ms. Mills. I am sure that it is a lawyer that was trying to be the most effective counsel to Ms. Mills as possible.

Mr. ISSA. Well, reclaiming my time, the gentlelady's point may be true. I am only speaking to the Director based on things were done that should not have been done. We now have evidence in front of this Committee, in the record, of people destroying records of activities as late as a few days ago.

So the fact that there still should be an open question, first of all, as to could she be prosecuted, and if in fact the "they have told me to destroy this," under the exact same statute that included David Petraeus, who was no longer on Active Duty, 18 U.S.C. 2071, there is at least a case to be made.

Now, the problem we have is the lawyer negotiated a set of terms which hopefully doesn't mean that she gets a free pass even if she willfully ordered the destruction of documents, which it does appear she did.

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And, look, my job is not to be judge, jury, or hangman. My job is to look at what has been presented to us, ask the highest law enforcement officer in the land to, in fact, look into it. Because it does appear as though it is there.

Ms. JACKSON LEE. A brief yield, my good friend.

Mr. ISSA. Of course.

Ms. JACKSON LEE. Certainly, we have an oversight responsibility of the Director. I think he has been very forthright. But none of the actions of destruction can be—I don't think we have anything in evidence that suggests that Ms. Mills contributed to the dictating or directing——

Mr. ISSA. Well, the gentlelady may not have been——

Ms. JACKSON LEE [continuing]. Any destruction.

Mr. ISSA. The gentlelady may not have been here——

Ms. JACKSON LEE. So we can't speculate here.

Mr. ISSA. The gentlelady may not have been here at the time, but the Director himself, when asked who would the "they" would have been in that order to destroy, at least said it probably was or likely could have been Cheryl Mills. We are not saying it is. What we are saying is you have an immune witness.

Mr. GOODLATTE. The gentleman will suspend.

Mr. ISSA. Of course.

Mr. GOODLATTE. The purpose of this was to set the record straight as to what the content of the document was. That has been accomplished. And the debate will continue on——

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. GOODLATTE [continuing]. And continue on outside of this hearing room.

Mr. ISSA. And I would only——

Ms. JACKSON LEE. We can state; we cannot speculate. I yield——

Mr. ISSA. And I would only ask the Director be able to review those document at Justice and follow up with the Committee. It would be very helpful to all of us.

I thank the Chairman.

Mr. GOODLATTE. The Director has answered in the affirmative that he will do that.

Mr. COMEY. Yes, we will follow up.

Mr. GOODLATTE. First of all, I want to thank Director Comey. We didn't make 4 hours and 40 minutes, but we did almost make 4 hours, and I know you have been generous with your time.

However, I will also say that I think a lot of the questions here indicate a great deal of concern about the manner in which this investigation was conducted, how the conclusions were drawn, and the close proximity to that and the meeting of the Attorney General with former President Clinton on a tarmac. At the same time, she then said, "Well, I am going to recuse myself," and then, shortly after that, you took over and announced your conclusions in this case, which are hotly disputed, as you can tell.

The Committee and the Oversight and Government Reform Committee have referred to the United States Attorney for the Eastern District of—for the District of Columbia a referral based upon her testimony before the Select Committee on Benghazi, suggesting that your statement at your press conference and your testimony before the Oversight and Government Reform Committee very

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clearly contradicted a number of statements she made under oath before that Committee.

And I want to stress to you how important I think it is that we made that referral for the purpose of making sure that no one is above the law. And in many cases regarding investigations, it is not just the underlying actions that are important, but they are the efforts of people to cover those up through perjury, through obstruction of justice, through destruction of documents.

And so I would ask that this matter be taken very, very seriously as you pursue whatever actions the Department chooses to take, making sure that no one is above the law.

Mr. COMEY. Thank you, sir.

Mr. GOODLATTE. With that, that concludes today's hearing, and I thank our distinguished witness for attending.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

And the hearing is adjourned.

[Whereupon, at 12:56 p.m., the Committee was adjourned.]

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APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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Questions for the Record submitted to the Honorable James B. Comey, Director, Federal Bureau of Investigation*

BOB GOODLATTE, Virginia
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
LAMAR S. SMITH, Texas
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
J. RANDY FORBES, Virginia
STEVE KING, Iowa
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LOUIE GOHMERT, Texas
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TOM MARINO, Pennsylvania
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ONE HUNDRED FOURTEENTH CONGRESS

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November 22, 2016

James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Dear Director Comey,

The Committee on the Judiciary held a hearing on oversight of the Federal Bureau of Investigation on September 28, 2016 in room 2154 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Friday, December 23, 2016 to Alley Adcock at alley.adcock@mail.house.gov or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,

Bob Goodlatte
Chairman

Enclosure

1

Note: The Committee did not receive a response from the witness at the time this hearing record was finalized.

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Submitted by Rep. Ted Poe

1. On July 15th 2016, you gave a public press conference which was carried live on numerous news channels in which you spoke in great detail (over 2,300 words to be exact) on how Secretary Clinton violated numerous laws and procedures in her use of a personal email server while working as Secretary of State. During this press conference, you stated: "Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case.".

   A) Is such a public statement by you or other high level officials at the FBI typical at the conclusion of an investigation?

   B) Can you provide specific examples of another public statement of this fashion that has been made by the FBI at the conclusion of any other investigation?

2. Per DOJ regulations, in federal cases, the prosecutor's decision to bring criminal charges is governed by the United States Attorney's Manual. USAM 9-27.000, titled "Principles of Federal Prosecution" contains the DOJ's written guidance to prosecutors about decisions to initiate or decline prosecution. Specifically, 9-27.220(A) instructs prosecutors to file criminal charges in all cases where there is a violation of federal law and the evidence is sufficient to obtain a conviction, unless one of three grounds exist:
   i. Lack of a substantial federal interest;
   ii. The defendant is subject to prosecution in another jurisdiction; or
   iii. The existence of adequate non-criminal alternatives to prosecution.

   B) As you stated publically that "no reasonable prosecutor would bring a case" based on the facts of your Clinton investigation, specifically which element of the DOJ grounds for non-prosecution do you contend applies in this situation?

   C) When you, as the Director of the FBI, an investigatory agency, publically stated that "no reasonable prosecutor would bring a case" do you believe that DOJ prosecutors tasked with reviewing the evidence under 9-27.000(A) would be able to adequately do their job to review the evidence you presented them?

   D) What if the attorneys at DOJ believed that there was sufficient evidence to warrant a prosecution, how could they move forward given your public statement saying otherwise?

   E) What do you say to those who argue that this maneuver was done to divert criticism of the decision not to prosecute from DOJ to the FBI?

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2. In the FBI "Manual of Investigative Operations and Guidelines" section 1-2, a number of policies and procedures are laid out for how the FBI should behave and conduct criminal investigations. Specifically, section 1-2 (1) states: "The FBI is charged with the duty of investigating violations of the laws of the United States and collective evidence in cases in which the United States is or may be a party in interest". In addition, section 1-2 (3) states: "Results of investigations are furnished to United States Attorneys and/or Department of Justice."

   A) During my review, I found no section in this manual that permits or directs the FBI to publically state that the facts they investigated were not sufficient to warrant prosecution, in fact the manual clearly indicates that these facts should be turned over to either a US Attorney or the DOJ when there is sufficient evidence that a crime occurred. You stated in your public statement that "there is evidence of potential violations of the statutes regarding the handling of classified information". Specifically, in spite of your own admission that there was evidence of a crime, why did you veer from FBI procedures and make a public statement that no prosecution was warranted?

   B) Why did you go outside the scope of the FBI's procedures and unilaterally declare that there should be no prosecution?

   C) What legal standard did you use to determine that "no reasonable prosecutor would bring such a case"?

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Submitted by Rep. Mimi Walters

1. Federal law concerning background checks for prospective firearms purchases is different from the criminal history record checks conducted by employers. Does the NICS, "instant check" system, cost more for the FBI to administer when compared to criminal history record checks for employers? What is the feasibility of implementing an employer version of NICS, perhaps funded by user fees, in order to increase the efficiency of the background checks?

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§ 49.1 Purpose.

The regulations in this part are issued in compliance with the requirements imposed by the provisions of section 4(c) of the Antitrust Civil Process Act, as amended (15 U.S.C. 1313(c)). The terms used in this part shall be deemed to have the same meaning as similar terms used in that Act.

§ 49.2 Duties of custodian.

(a) Upon taking physical possession of documentary material, answers to interrogatories, or transcripts of oral testimony delivered pursuant to a civil investigative demand issued under section 3(a) of the Act, the antitrust document custodian designated pursuant to section 4(a) of the Act (subject to the general supervision of the Assistant Attorney General in charge of the Antitrust Division), shall, unless otherwise directed by a court of competent jurisdiction, select, from time to time, from among such documentary material, answers to interrogatories or transcripts of oral testimony, the documentary material, answers to interrogatories or transcripts of oral testimony the copying of which the custodian deems necessary or appropriate for the official use of the Department of Justice, and shall determine, from time to time, the number of copies of any such documentary material, answers to interrogatories or transcripts of oral testimony that are to be reproduced pursuant to the Act.

(b) Copies of documentary material, answers to interrogatories, or transcripts of oral testimony in the physical possession of the custodian pursuant to a civil investigative demand may be reproduced by or under the authority of any officer, employee, or agent of the Department of Justice designated by the custodian. Documentary material for which a civil investigative demand has been issued but which is still in the physical possession of the person upon whom the demand has been served may, by agreement between such person and the custodian, be reproduced by such person, in which case the custodian may require that the copies so produced be duly certified as true copies of the original of the material involved.

[60 FR 44277, Aug. 25, 1995; 60 FR 61290, Nov. 29, 1995]

§ 49.3 Examination of the material.

Documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to the Act, while in the custody of the custodian, shall be for the official use of officers, employees, and agents of the Department of Justice in accordance with the Act. Upon reasonable notice to the custodian—

(a) Such documentary material or answers to interrogatories shall be made available for examination by the person who produced such documentary material or answers to interrogatories, or by any duly authorized representative of such person; and

(b) Such transcripts of oral testimony shall be made available for examination by the person who produced such testimony, or by such person's counsel, during regular office hours established for the Department of Justice. Examination of such documentary material, answers to interrogatories, or transcripts of oral testimony at other times may be authorized by the Assistant Attorney General or the custodian.

[60 FR 44277, Aug. 25, 1995; 60 FR 61290, Nov. 29, 1995]

§ 49.4 Deputy custodians.

Deputy custodians may perform such of the duties assigned to the custodian as may be authorized or required by the Assistant Attorney General.

PART 50—STATEMENTS OF POLICY

Sec.

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50.20 Participation by the United States in court-annexed arbitration.
50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.
50.22 Young American Medals Program.
50.23 Policy against entering into final settlement agreements or consent decree that are subject to confidentiality provisions and against seeking or concurring in the sealing of such documents.
50.24 Annuity broker minimum qualifications.
50.25 Assumption of concurrent Federal criminal jurisdiction in certain areas of Indian country.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.*, 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

§ 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

(a) *General.* (1) The availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice. The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.

(2) While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law and by representatives of the press and other media.

(3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement, to a considerable extent, reflects and formalizes the standards to which representatives of the Department have adhered in the past. Nonetheless, it will be helpful in ensuring uniformity of practice to set forth the following guidelines for all personnel of the Department of Justice.

(4) Because of the difficulty and importance of the questions they raise, it is felt that some portions of the matters covered by this statement, such as the authorization to make available Federal conviction records and a description of items seized at the time of arrest, should be the subject of continuing review and consideration by the Department on the basis of experience and suggestions from those within and outside the Department.

(b) *Guidelines to criminal actions.* (1) These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

(2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

(3) Personnel of the Department of Justice, subject to specific limitations

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imposed by law or court rule or order, may make public the following information:

(i) The defendant's name, age, residence, employment, marital status, and similar background information.

(ii) The substance or text of the charge, such as a complaint, indictment, or information.

(iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.

(iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

(5) Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

(6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

(i) Observations about a defendant's character.

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

(iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

(vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

(7) Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

(8) This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

(9) Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

(c) *Guidelines to civil actions.* Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved.

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(2) The character, credibility, or criminal records of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

[Order No. 469–71, 36 FR 21028, Nov. 3, 1971, as amended by Order No. 602–75, 40 FR 22119, May 20, 1975]

§ 50.3 Guidelines for the enforcement of title VI, Civil Rights Act of 1964.

(a) Where the heads of agencies having responsibilities under title VI of the Civil Rights Act of 1964 conclude there is noncompliance with regulations issued under that title, several alternative courses of action are open. In each case, the objective should be to secure prompt and full compliance so that needed Federal assistance may commence or continue.

(b) Primary responsibility for prompt and vigorous enforcement of title VI rests with the head of each department and agency administering programs of Federal financial assistance. Title VI itself and relevant Presidential directives preserve in each agency the authority and the duty to select, from among the available sanctions, the methods best designed to secure compliance in individual cases. The decision to terminate or refuse assistance is to be made by the agency head or his designated representative.

(c) This statement is intended to provide procedural guidance to the responsible department and agency officials in exercising their statutory discretion and in selecting, for each noncompliance situation, a course of action that fully conforms to the letter and spirit of section 602 of the Act and to the implementing regulations promulgated thereunder.

I. ALTERNATIVE COURSES OF ACTION

A. ULTIMATE SANCTIONS

The ultimate sanctions under title VI are the refusal to grant an application for assistance and the termination of assistance being rendered. Before these sanctions may be invoked, the Act requires completion of the procedures called for by section 602. That section require the department or agency concerned (1) to determine that compliance cannot be secured by voluntary means, (2) to consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance, (3) to afford the applicant an opportunity for a hearing, and (4) to complete the other procedural steps outlined in section 602, including notification to the appropriate committees of the Congress.

In some instances, as outlined below, it is legally permissible temporarily to defer action on an application for assistance, pending initiation and completion of section 602 procedures—including attempts to secure voluntary compliance with title VI. Normally, this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for programs of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application.

Whenever action upon an application is deferred pending the outcome of a hearing and subsequent section 602 procedures, the efforts to secure voluntary compliance and the hearing and such subsequent procedures, if found necessary, should be conducted without delay and completed as soon as possible.

B. AVAILABLE ALTERNATIVES

1. Court Enforcement

Compliance with the nondiscrimination mandate of title VI may often be obtained more promptly by appropriate court action than by hearings and termination of assistance. Possibilities of judicial enforcement include (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements or compliance or desegregation plans filed pursuant to agency regulations, (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination, and (3) initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance.

The possibility of court enforcement should not be rejected without consulting the Department of Justice. Once litigation has been begun, the affected agency should consult with the Department of Justice before taking any further action with respect to the noncomplying party.

2. Administrative Action

A number of effective alternative courses not involving litigation may also be available in many cases. These possibilities include (1) consulting with or seeking assistance from other Federal agencies (such as

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the Contract Compliance Division of the Department of Labor) having authority to enforce nondiscrimination requirements; (2) consulting with or seeking assistance from State or local agencies having such authority; (3) bypassing a recalcitrant central agency applicant in order to obtain assurances from, or to grant assistance to complying local agencies; and (4) bypassing all recalcitrant non-Federal agencies and providing assistance directly to the complying ultimate beneficiaries. The possibility of utilizing such administrative alternatives should be considered at all stages of enforcement and used as appropriate or feasible.

C. INDUCING VOLUNTARY COMPLIANCE

Title VI requires that a concerted effort be made to persuade any noncomplying applicant or recipient voluntarily to comply with title VI. Efforts to secure voluntary compliance should be undertaken at the outset in every noncompliance situation and should be pursued through each stage of enforcement action. Similarly, where an applicant fails to file an adequate assurance or apparently breaches its terms, notice should be promptly given of the nature of the noncompliance problem and of the possible consequences thereof, and an immediate effort made to secure voluntary compliance.

II. PROCEDURES

A. NEW APPLICATIONS

The following procedures are designed to apply in cases of noncompliance involving applications for one-time or noncontinuing assistance and initial applications for new or existing programs of continuing assistance.

1. Where the Requisite Assurance Has Not Been Filed or Is Inadequate on Its Face.

Where the assurance, statement of compliance or plan of desegregation required by agency regulations has not been filed or where, in the judgment of the head of the agency in question, the filed assurance fails on its face to satisfy the regulations, the agency head should defer action on the application pending prompt initiation and completion of section 602 procedures. The applicant should be notified immediately and attempts made to secure voluntary compliance. If such efforts fail, the applicant should promptly be offered a hearing for the purpose of determining whether an adequate assurance has in fact been filed.

If it is found that an adequate assurance has not been filed, and if administrative alternatives are ineffective or inappropriate, and court enforcement is not feasible, section 602 procedures may be completed and assistance finally refused.

2. Where it Appears that the Filed Assurance Is Untrue or Is Not Being Honored.

Where an otherwise adequate assurance, statement of compliance, or plan has been filed in connection with an application for assistance, but prior to completion of action on the application the head of the agency in question has reasonable grounds, based on a substantiated complaint, the agency's own investigation, or otherwise, to believe that the representations as to compliance are in some material respect untrue or are not being honored, the agency head may defer action on the application pending prompt initiation and completion of section 602 procedures. The applicant should be notified immediately and attempts made to secure voluntary compliance. If such efforts fail and court enforcement is determined to be ineffective or inadequate, a hearing should be promptly initiated to determine whether, in fact, there is noncompliance.

If noncompliance is found, and if administrative alternatives are ineffective or inappropriate and court enforcement is still not feasible, section 602 procedures may be completed and assistance finally refused.

The above-described deferral and related compliance procedures would normally be appropriate in cases of an application for noncontinuing assistance. In the case of an initial application for a new or existing program of continuing assistance, deferral would often be less appropriate because of the opportunity to secure full compliance during the life of the assistance program. In those cases in which the agency does not defer action on the application, the applicant should be given prompt notice of the asserted noncompliance; funds should be paid out for short periods only, with no long-term commitment of assistance given; and the applicant advised that acceptance of the funds carries an enforceable obligation of nondiscrimination and the risk of invocation of severe sanctions, if noncompliance in fact is found.

B. REQUESTS FOR CONTINUATION OR RENEWAL OF ASSISTANCE

The following procedures are designed to apply in cases of noncompliance involving all submissions seeking continuation or renewal under programs of continuing assistance.

In cases in which commitments for Federal financial assistance have been made prior to the effective date of title VI regulations and funds have not been fully disbursed, or in which there is provision for future periodic payments to continue the program or activity for which a present recipient has previously applied and qualified, or in which assistance is given without formal application pursuant to statutory direction or authorization, the responsible agency may nonetheless

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require an assurance, statement of compliance, or plan in connection with disbursement or further funds. However, once a particular program grant or loan has been made or an application for a certain type of assistance for a specific or indefinite period has been approved, no funds due and payable pursuant to that grant, loan, or application, may normally be deferred or withheld without first completing the procedures prescribed in section 602.

Accordingly, where the assurance, statement of compliance, or plan required by agency regulations has not been filed or where, in the judgment of the head of the agency in question, the filed assurance fails on its face to satisfy the regulations, or there is reasonable cause to believe it untrue or not being honored, the agency head should, if efforts to secure voluntary compliance are unsuccessful, promptly institute a hearing to determine whether an adequate assurance has in fact been filed, or whether, in fact, there is noncompliance, as the case may be. There should ordinarily be no deferral of action on the submission or withholding of funds in this class of cases, although the limitation of the payout of funds to short periods may appropriately be ordered. If noncompliance is found, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, section 602 procedures may be completed and assistance terminated.

C. SHORT-TERM PROGRAMS

Special procedures may sometimes be required where there is noncompliance with title VI regulations in connection with a program of such short total duration that all assistance funds will have to be paid out before the agency's usual administrative procedures can be completed and where deferral in accordance with these guidelines would be tantamount to a final refusal to grant assistance.

In such a case, the agency head may, although otherwise following these guidelines, suspend normal agency procedures and institute expedited administrative proceedings to determine whether the regulations have been violated. He should simultaneously refer the matter to the Department of Justice for consideration of possible court enforcement, including interim injunctive relief. Deferral of action on an application is appropriate, in accordance with these guidelines, for a reasonable period of time, provided such action is consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with the action taken. As in other cases, where noncompliance is found in the hearing proceeding, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, section 602 procedures may be completed and assistance finally refused.

III. PROCEDURES IN CASES OF SUBGRANTEES

In situations in which applications for Federal assistance are approved by some agency other than the Federal granting agency, the same rules and procedures would apply. Thus, the Federal Agency should instruct the approving agency—typically a State agency—to defer approval or refuse to grant funds, in individual cases in which such action would be taken by the original granting agency itself under the above procedures. Provision should be made for appropriate notice of such action to the Federal agency which retains responsibility for compliance with section 602 procedures.

IV. EXCEPTIONAL CIRCUMSTANCES

The Attorney General should be consulted in individual cases in which the head of an agency believes that the objectives of title VI will be best achieved by proceeding other than as provided in these guidelines.

V. COORDINATION

While primary responsibility for enforcement of title VI rests directly with the head of each agency, in order to assure coordination of title VI enforcement and consistency among agencies, the Department of Justice should be notified in advance of applications on which action is to be deferred, hearings to be scheduled, and refusals and terminations of assistance or other enforcement actions or procedures to be undertaken. The Department also should be kept advised of the progress and results of hearings and other enforcement actions.

[31 FR 5292, Apr. 2, 1966]

§ 50.5 Notification of Consular Officers upon the arrest of foreign nationals.

(a) This statement is designed to establish a uniform procedure for consular notification where nationals of foreign countries are arrested by officers of this Department on charges of criminal violations. It conforms to practice under international law and in particular implements obligations undertaken by the United States pursuant to treaties with respect to the arrest and detention of foreign nationals. Some of the treaties obligate the United States to notify the consular officer only upon the demand or request of the arrested foreign national. On the other hand, some of the treaties require notifying the consul of the arrest of a foreign national whether or not

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the arrested person requests such notification.

(1) In every case in which a foreign national is arrested the arresting officer shall inform the foreign national that his consul will be advised of his arrest unless he does not wish such notification to be given. If the foreign national does not wish to have his consul notified, the arresting officer shall also inform him that in the event there is a treaty in force between the United States and his country which requires such notification, his consul must be notified regardless of his wishes and, if such is the case, he will be advised of such notification by the U.S. Attorney.

(2) In all cases (including those where the foreign national has stated that he does not wish his consul to be notified) the local office of the Federal Bureau of Investigation or the local Marshal's office, as the case may be, shall inform the nearest U.S. Attorney of the arrest and of the arrested person's wishes regarding consular notification.

(3) The U.S. Attorney shall then notify the appropriate consul except where he has been informed that the foreign national does not desire such notification to be made. However, if there is a treaty provision in effect which requires notification of consul, without reference to a demand or request of the arrested national, the consul shall be notified even if the arrested person has asked that he not be notified. In such case, the U.S. Attorney shall advise the foreign national that his consul has been notified and inform him that notification was necessary because of the treaty obligation.

(b) The procedure prescribed by this statement shall not apply to cases involving arrests made by the Immigration and Naturalization Service in administrative expulsion or exclusion proceedings, since that Service has heretofore established procedures for the direct notification of the appropriate consular officer upon such arrest. With respect to arrests made by the Service for violations of the criminal provisions of the immigration laws, the U.S. Marshal, upon delivery of the foreign national into his custody, shall be responsible for informing the U.S. Attorney of the arrest in accordance with numbered paragraph 2 of this statement.

[Order No. 375–67, 32 FR 1040, Jan. 28, 1967]

§ 50.6 Antitrust Division business review procedure.

Although the Department of Justice is not authorized to give advisory opinions to private parties, for several decades the Antitrust Division has been willing in certain circumstances to review proposed business conduct and state its enforcement intentions. This originated with a "railroad release" procedure under which the Division would forego the initiation of criminal antitrust proceedings. The procedure was subsequently expanded to encompass a "merger clearance" procedure under which the Division would state its present enforcement intention with respect to a merger or acquisition; and the Department issued a written statement entitled "Business Review Procedure." That statement has been revised several times.

1. A request for a business review letter must be submitted in writing to the Assistant Attorney General, Antitrust Division, Department of Justice, Washington, DC 20530.

2. The Division will consider only requests with respect to proposed business conduct, which may involve either domestic or foreign commerce.

3. The Division may, in its discretion, refuse to consider a request.

4. A business review letter shall have no application to any party which does not join in the request therefor.

5. The requesting parties are under an affirmative obligation to make full and true disclosure with respect to the business conduct for which review is requested. Each request must be accompanied by all relevant data including background information, complete copies of all operative documents and detailed statements of all collateral oral understandings, if any. All parties requesting the review letter must provide the Division with whatever additional information or documents the Division may thereafter request in order to review the matter. Such additional information, if furnished orally, shall be promptly confirmed in writing. In connection with any request for review the Division will also conduct whatever independent investigation it believes is appropriate.

6. No oral clearance, release or other statement purporting to bind the enforcement discretion of the Division may be given. The

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requesting party may rely upon only a written business review letter signed by the Assistant Attorney General in charge of the Antitrust Division or his delegate.

7. (a) If the business conduct for which review is requested is subject to approval by a regulatory agency, a review request may be considered before agency approval has been obtained only where it appears that exceptional and unnecessary burdens might otherwise be imposed on the party or parties requesting review, or where the agency specifically requests that a party or parties request review. However, any business review letter issued in these as in any other circumstances will state only the Department's present enforcement intentions under the antitrust laws. It shall in no way be taken to indicate the Department's views on the legal or factual issues that may be raised before the regulatory agency, or in an appeal from the regulatory agency's decision. In particular, the issuance of such a letter is not to be represented to mean that the Division believes that there are no anticompetitive consequences warranting agency consideration.

(b) The submission of a request for a business review, or its pendency, shall in no way alter any responsibility of any party to comply with the Premerger Notification provisions of the Antitrust Improvements Act of 1976, 15 U.S.C. 18A, and the regulations promulgated thereunder, 16 CFR, part 801.

8. After review of a request submitted hereunder the Division may: state its present enforcement intention with respect to the proposed business conduct; decline to pass on the request; or take such other position or action as it considers appropriate.

9. A business review letter states only the enforcement intention of the Division as of the date of the letter, and the Division remains completely free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest. As to a stated present intention not to bring an action, however, the Division has never exercised its right to bring a criminal action where there has been full and true disclosure at the time of presenting the request.

10. (a) Simultaneously upon notifying the requesting party of and Division action described in paragraph 8, the business review request, and the Division's letter in response shall be indexed and placed in a file available to the public upon request.

(b) On that date or within thirty days after the date upon which the Division takes any action as described in paragraph 8, the information supplied to support the business review request and any other information supplied by the requesting party in connection with the transaction that is the subject of the business review request, shall be indexed and placed in a file with the request and the Division's letter, available to the public upon request. This file shall remain open for one year, after which time it shall be closed and the documents either returned to the requesting party or otherwise disposed of, at the discretion of the Antitrust Division.

(c) Prior to the time the information described in subparagraphs (a) and (b) is indexed and made publicly available in accordance with the terms of that subparagraph, the requesting party may ask the Division to delay making public some or all of such information. However the requesting party must: (1) Specify precisely the documents or parts thereof that he asks not be made public; (2) state the minimum period of time during which nondisclosure is considered necessary; and (3) justify the request for nondisclosure, both as to content and time, by showing good cause therefor, including a showing that disclosure would have a detrimental effect upon the requesting party's operations or relationships with actual or potential customers, employees, suppliers (including suppliers of credit), stockholders, or competitors. The Department of Justice, in its discretion, shall make the final determination as to whether good cause for nondisclosure has been shown.

(d) Nothing contained in subparagraphs (a), (b) and (c) shall limit the Division's right, in its discretion, to issue a press release describing generally the identity of the requesting party or parties and the nature of action taken by the Division upon the request.

(e) This paragraph reflects a policy determination by the Justice Department and is subject to any limitations on public disclosure arising from statutory restrictions, Executive Order, or the national interest.

11. Any requesting party may withdraw a request for review at any time. The Division remains free, however, to submit such comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Division from taking such action at such time thereafter as it deems appropriate. The Division reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

[42 FR 11831, Mar. 1, 1977]

§ 50.7 Consent judgments in actions to enjoin discharges of pollutants.

(a) It is hereby established as the policy of the Department of Justice to consent to a proposed judgment in an action to enjoin discharges of pollutants into the environment only after or on condition that an opportunity is afforded persons (natural or corporate)

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who are not named as parties to the action to comment on the proposed judgment prior to its entry by the court.

(b) To effectuate this policy, each proposed judgment which is within the scope of paragraph (a) of this section shall be lodged with the court as early as feasible but at least 30 days before the judgment is entered by the court. Prior to entry of the judgment, or some earlier specified date, the Department of Justice will receive and consider, and file with the court, any written comments, views or allegations relating to the proposed judgment. The Department shall reserve the right (1) to withdraw or withhold its consent to the proposed judgment if the comments, views and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate and (2) to oppose an attempt by any person to intervene in the action.

(c) The Assistant Attorney General in charge of the Land and Natural Resources Division may establish procedures for implementing this policy. Where it is clear that the public interest in the policy hereby established is not compromised, the Assistant Attorney General may permit an exception to this policy in a specific case where extraordinary circumstances require a period shorter than 30 days or a procedure other than stated herein.

[Order No. 529-73, 38 FR 19029, July 17, 1973]

§ 50.8 [Reserved]

§ 50.9 Policy with regard to open judicial proceedings.

Because of the vital public interest in open judicial proceedings, the Government has a general overriding affirmative duty to oppose their closure. There is, moreover, a strong presumption against closing proceedings or portions thereof, and the Department of Justice foresees very few cases in which closure would be warranted. The Government should take a position on any motion to close a judicial proceeding, and should ordinarily oppose closure; it should move for or consent to closed proceedings only when closure is plainly essential to the interests of justice. In furtherance of the Department's concern for the right of the public to attend judicial proceedings and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all attorneys for the United States.

(a) These guidelines apply to all federal trials, pre- and post-trial evidentiary proceedings, arraignments, bond hearings, plea proceedings, sentencing proceedings, or portions thereof, except as indicated in paragraph (e) of this section.

(b) A Government attorney has a compelling duty to protect the societal interest in open proceedings.

(c) A Government attorney shall not move for or consent to closure of a proceeding covered by these guidelines unless:

(1) No reasonable alternative exists for protecting the interests at stake;

(2) Closure is clearly likely to prevent the harm sought to be avoided;

(3) The degree of closure is minimized to the greatest extent possible;

(4) The public is given adequate notice of the proposed closure; and, in addition, the motion for closure is made on the record, except where the disclosure of the details of the motion papers would clearly defeat the reason for closure specified under paragraph (c)(6) of this section;

(5) Transcripts of the closed proceedings will be unsealed as soon as the interests requiring closure no longer obtain; and

(6) Failure to close the proceedings will produce;

(i) A substantial likelihood of denial of the right of any person to a fair trial; or

(ii) A substantial likelihood of imminent danger to the safety of parties, witnesses, or other persons; or

(iii) A substantial likelihood that ongoing investigations will be seriously jeopardized.

(d) A government attorney shall not move for or consent to the closure of any proceeding, civil or criminal, except with the express authorization of:

(1) The Deputy Attorney General, or,

(2) The Associate Attorney General, if the Division seeking authorization is under the supervision of the Associate Attorney General.

(e) These guidelines do not apply to:

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(1) The closure of part of a judicial proceeding where necessary to protect national security information or classified documents; or

(2) *In camera* inspection, consideration or sealing of documents, including documents provided to the Government under a promise of confidentiality, where permitted by statute, rule of evidence or privilege; or

(3) Grand jury proceedings or proceedings ancillary thereto; or

(4) Conferences traditionally held at the bench or in chambers during the course of an open proceeding; or

(5) The closure of judicial proceedings pursuant to 18 U.S.C. 3509 (d) and (e) for the protection of child victims or child witnesses.

(f) Because of the vital public interest in open judicial proceedings, the records of any proceeding closed pursuant to this section, and still sealed 60 days after termination of the proceeding, shall be reviewed to determine if the reasons for closure are still applicable. If they are not, an appropriate motion will be made to have the records unsealed. If the reasons for closure are still applicable after 60 days, this review is to be repeated every 60 days until such time as the records are unsealed. Compliance with this section will be monitored by the Criminal Division.

(g) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

[Order No. 914–80, 45 FR 69214, Oct. 20, 1980, as amended by Order No. 1031–83, 48 FR 49509, Oct. 26, 1983; Order No. 1115–85, 50 FR 51677, Dec. 19, 1985; Order No. 1507–91, 56 FR 32327, July 16, 1991]

§ 50.10 Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media.

(a) *Statement of principles.* (1) Because freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news, the Department's policy is intended to provide protection to members of the news media from certain law enforcement tools, whether criminal or civil, that might unreasonably impair newsgathering activities. The policy is not intended to extend special protections to members of the news media who are subjects or targets of criminal investigations for conduct not based on, or within the scope of, newsgathering activities.

(2) In determining whether to seek information from, or records of, members of the news media, the approach in every instance must be to strike the proper balance among several vital interests: Protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society.

(3) The Department views the use of certain law enforcement tools, including subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, and search warrants to seek information from, or records of, non-consenting members of the news media as extraordinary measures, not standard investigatory practices. In particular, subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 may be used, after authorization by the Attorney General, or by another senior official in accordance with the exceptions set forth in paragraph (c)(3) of this section, only to obtain information from, or records of, members of the news media when the information sought is essential to a successful investigation, prosecution, or litigation; after all reasonable alternative attempts have been made to obtain the information from alternative sources; and after negotiations with the affected member of the news media have been pursued and appropriate notice to the affected member of the news media has been provided, unless the Attorney General determines that, for compelling reasons, such negotiations or notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(4) When the Attorney General has authorized the use of a subpoena, court order issued pursuant to 18 U.S.C. 2703(d) or 3123, or warrant to obtain

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from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(b) *Scope.*—(1) *Covered individuals and entities.* (i) The policy governs the use of certain law enforcement tools to obtain information from, or records of, members of the news media.

(ii) The protections of the policy do not extend to any individual or entity where there are reasonable grounds to believe that the individual or entity is—

(A) A foreign power or agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(B) A member or affiliate of a foreign terrorist organization designated under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(C) Designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order 13224 of September 23, 2001 (66 FR 49079);

(D) A specially designated terrorist as that term is defined in 31 CFR 595.311 (or any successor thereto);

(E) A terrorist organization as that term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi));

(F) Committing or attempting to commit a crime of terrorism, as that offense is described in 18 U.S.C. 2331(5) or 2332b(g)(5);

(G) Committing or attempting the crime of providing material support or resources to terrorists, as that offense is defined in 18 U.S.C. 2339A; or

(H) Aiding, abetting, or conspiring in illegal activity with a person or organization described in paragraphs (b)(1)(ii)(A) through (G) of this section.

(2) *Covered law enforcement tools and records.* (i) The policy governs the use by law enforcement authorities of subpoenas or, in civil matters, other similar compulsory process such as a civil investigative demand (collectively "subpoenas") to obtain information from members of the news media, including documents, testimony, and other materials; and the use by law enforcement authorities of subpoenas, or court orders issued pursuant to 18 U.S.C. 2703(d) ("2703(d) order") or 18 U.S.C. 3123 ("3123 order"), to obtain from third parties "communications records" or "business records" of members of the news media.

(ii) The policy also governs applications for warrants to search the premises or property of members of the news media, pursuant to Federal Rule of Criminal Procedure 41; or to obtain from third-party "communication service providers" the communications records or business records of members of the news media, pursuant to 18 U.S.C. 2703(a) and (b).

(3) *Definitions.* (i)(A) "Communications records" include the contents of electronic communications as well as source and destination information associated with communications, such as email transaction logs and local and long distance telephone connection records, stored or transmitted by a third-party communication service provider with which the member of the news media has a contractual relationship.

(B) Communications records do not include information described in 18 U.S.C. 2703(c)(2)(A), (B), (D), (E), and (F).

(ii) A "communication service provider" is a provider of an electronic communication service or remote computing service as defined, respectively, in 18 U.S.C. 2510(15) and 18 U.S.C. 2711(2).

(iii) (A) "Business records" include work product and other documentary materials, and records of the activities, including the financial transactions, of a member of the news media related to the coverage, investigation, or reporting of news. Business records are limited to those generated or maintained

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by a third party with which the member of the news media has a contractual relationship, and which could provide information about the newsgathering techniques or sources of a member of the news media.

(B) Business records do not include records unrelated to newsgathering activities, such as those related to the purely commercial, financial, administrative, or technical, operations of a news media entity.

(C) Business records do not include records that are created or maintained either by the government or by a contractor on behalf of the government.

(c) *Issuing subpoenas to members of the news media, or using subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain from third parties communications records or business records of a member of the news media.* (1) Except as set forth in paragraph (c)(3) of this section, members of the Department must obtain the authorization of the Attorney General to issue a subpoena to a member of the news media; or to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media.

(2) Requests for the authorization of the Attorney General for the issuance of a subpoena to a member of the news media, or to use a subpoena, 2703(d) order, or 3123 order to obtain communications records or business records of a member of the news media, must be personally endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) *Exceptions to the Attorney General authorization requirement.* (i)(A) A United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media (*e.g.*, for documents, video or audio recordings, testimony, or other materials) if the member of the news media expressly agrees to provide the requested information in response to a subpoena. This exception applies, but is not limited, to both published and unpublished materials and aired and unaired recordings.

(B) In the case of an authorization under paragraph (c)(3)(i)(A) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide notice to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization of the issuance of the subpoena.

(ii) In light of the intent of this policy to protect freedom of the press, newsgathering activities, and confidential news media sources, authorization of the Attorney General will not be required of members of the Department in the following circumstances:

(A) To issue subpoenas to news media entities for purely commercial, financial, administrative, technical, or other information unrelated to newsgathering activities; or for information or records relating to personnel not involved in newsgathering activities.

(B) To issue subpoenas to members of the news media for information related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which the member of the news media does not exercise editorial control prior to publication.

(C) To use subpoenas to obtain information from, or to use subpoenas, 2703(d) orders, or 3123 orders to obtain communications records or business records of, members of the news media who may be perpetrators or victims of, or witnesses to, crimes or other events, when such status (as a perpetrator, victim, or witness) is not based on, or within the scope of, newsgathering activities.

(iii) In the circumstances identified in paragraphs (c)(3)(ii)(A) through (C) of this section, the United States Attorney or Assistant Attorney General responsible for the matter must—

(A) Authorize the use of the subpoena or court order;

(B) Consult with the Criminal Division regarding appropriate review and safeguarding protocols; and

(C) Provide a copy of the subpoena or court order to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization.

(4) *Considerations for the Attorney General in determining whether to authorize the issuance of a subpoena to a member of the news media.* (i) In matters in which

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a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to issue a subpoena to a member of the news media shall provide all facts necessary for determinations by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the issuance of such subpoena. If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the Attorney General's determination regarding the issuance of the proposed subpoena should take into account the principles reflected in paragraph (a) of this section, but need not take into account the considerations identified in paragraphs (c)(4)(ii) through (viii) of this section.

(ii)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation or prosecution. The subpoena should not be used to obtain peripheral, nonessential, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(iii) The government should have made all reasonable attempts to obtain the information from alternative, non-media sources.

(iv)(A) The government should have pursued negotiations with the affected member of the news media, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. Where the nature of the investigation permits, the government should have explained to the member of the news media the government's needs in a particular investigation or prosecution, as well as its willingness to address the concerns of the member of the news media.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as required in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(v) The proposed subpoena generally should be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

(vi) In investigations or prosecutions of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation or prosecution, the Attorney General may authorize members of the Department, in such investigations, to issue subpoenas to members of the news media. The certification, which the Attorney General should take into account along with other considerations identified in paragraphs (c)(4)(ii) through (viii) of this section, will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(vii) Requests should be treated with care to avoid interference with

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newsgathering activities and to avoid claims of harassment.

(viii) The proposed subpoena should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period of time, should avoid requiring production of a large volume of material, and should give reasonable and timely notice of the demand.

(5) *Considerations for the Attorney General in determining whether to authorize the use of a subpoena, 2703(d) order, or 3123 order to obtain from third parties the communications records or business records of a member of the news media.* (i) In matters in which a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party the communications records or business records of a member of the news media shall provide all facts necessary for determinations by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the use of such subpoena or order. If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the Attorney General's determination regarding the use of the proposed subpoena or order should take into account the principles reflected in paragraph (a) of this section, but need not take into account the considerations identified in paragraphs (c)(5)(ii) through (viii) of this section.

(ii)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has been committed, and that the information sought is essential to the successful investigation or prosecution of that crime. The subpoena or court order should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(iii) The use of a subpoena or court order to obtain from a third party communications records or business records of a member of the news media should be pursued only after the government has made all reasonable attempts to obtain the information from alternative sources.

(iv)(A) The government should have pursued negotiations with the affected member of the news media unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as set forth in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(v) In investigations or prosecutions of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation or prosecution, the Attorney General may authorize members of the Department, in

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