AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 28, 2016

Serial No. 114–91

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

22–125 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

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
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
RAÚL LABRADOR, Idaho
BLAKE FARENTHOLD, Texas
DOUG COLLINS, Georgia
RON DeSANTIS, Florida
MIMI WALTERS, California
KEN BUCK, Colorado
JOHN RATCLIFFE, Texas
DAVE TROTT, Michigan
MIKE BISHOP, Michigan

JOHN CONYERS, JR., Michigan
JERROLD NADLER, New York
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
JUDY CHU, California
TED DEUTCH, Florida
LUIS V. GUTIERREZ, Illinois
KAREN BASS, California
CEDRIC RICHMOND, Louisiana
SUZAN DelBENE, Washington
HAKEEM JEFFRIES, New York
DAVID N. CICILLINE, Rhode Island
SCOTT PETERS, California

SHELLEY HUSBAND, *Chief of Staff & General Counsel*
PERRY APELBAUM, *Minority Staff Director & Chief Counsel*

CONTENTS

SEPTEMBER 28, 2016

Page

OPENING STATEMENTS

The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary 1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 5

WITNESS

The Honorable James B. Comey, Director, Federal Bureau of Investigation
Oral Testimony 18
Prepared Statement 21

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Material submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 6
Additional material submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 15
Material submitted by the Honorable Darrell E. Issa, a Representative in Congress from the State of California, and Member, Committee on the Judiciary 45
Material submitted by the Honorable Steve King, a Representative in Congress from the State of Iowa, and Member, Committee on the Judiciary 59
Material submitted by the Honorable Judy Chu, a Representative in Congress from the State of California, and Member, Committee on the Judiciary 67
Material submitted by the Honorable Mike Bishop, a Representative in Congress from the State of Michigan, and Member, Committee on the Judiciary 96

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Questions for the Record submitted to the Honorable James B. Comey, Director, Federal Bureau of Investigation 122

OFFICIAL HEARING RECORD

UNPRINTED MATERIAL SUBMITTED FOR THE HEARING RECORD

Material submitted by the Honorable Darrell E. Issa, a Representative in Congress from the State of California, and Member Committee on the Judiciary. This material is available at the Committee and can also be accessed at:

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

OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

WEDNESDAY, SEPTEMBER 28, 2016

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 9:04 a.m., in Room 2154, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Smith, Chabot, Issa, King, Franks, Gohmert, Jordan, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Collins, DeSantis, Walters, Ratcliffe, Trott, Bishop, Conyers, Nadler, Lofgren, Jackson Lee, Cohen, Johnson, Chu, Deutch, DelBene, Jeffries, Cicilline, and Peters.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Zach Somers, Parliamentarian & General Counsel; Caroline Lynch, Chief Counsel, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; Ryan Breitenbach, Counsel, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian & Chief Legislative Counsel; Aaron Hiller, Chief Oversight Counsel; Joe Graupensperger, Chief Counsel, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations; and Veronica Eligan, Professional Staff Member.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order.

And, without objection, the Chair is authorized to declare a recess of the Committee at any time.

We welcome everyone to this morning's hearing on "Oversight of the Federal Bureau of Investigation."

Before I begin this hearing, I want to take a few minutes to recognize the chief counsel of the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, Caroline Lynch. After 15 years working on Capitol Hill, Caroline has decided to move back to her home State of Arizona to be close to her family and to pursue the next steps in her career. Needless to say, we are very sad to see Caroline go.

During her time in Washington, D.C., Caroline worked for Representative John Shadegg, both in his personal office and as chief counsel of the House Republican Policy Committee. In 2006, Caro-

line came to work for the House Judiciary Committee, and in 2008, she became chief counsel of the Judiciary Committee's Crime Subcommittee.

At the Committee, Caroline has had an enormous impact on the reform of our criminal and national security laws. Few people in Washington have done as much to promote the safety of our communities. Caroline has overseen the drafting, negotiation, and passage of critical legislation regarding the Foreign Intelligence Surveillance Act, the Electronic Communications Privacy Act, and the most sweeping set of reforms to government surveillance practices in nearly 40 years, the USA Freedom Act, among many other priority legislative initiatives.

Anyone who has met Caroline knows she is immensely intelligent, hardworking, loyal, and a discerning chief counsel. And, of course, those people she has negotiated with have found her to be a skillful and formidable but fair advocate. Her team at the Subcommittee know her to be a determined leader and a steadfast friend. I have appreciated Caroline's deep knowledge of criminal laws, the strength of her convictions, and her courage to speak the truth in a place where it is rarely convenient to do so.

We wish Caroline well in her new endeavors, and I thank her for her years of dedicated service to this Committee, the U.S. House of Representatives, and the American people.

[Applause.]

Mr. GOODLATTE. And I know the Ranking Member, Mr. Conyers, would like to say a few words as well.

Mr. CONYERS. Thank you very much, Chairman Goodlatte.

This is indeed a unique moment in our history, and on behalf of the Democratic staff and Democratic Members of the Committee, I want to recognize Caroline Lynch for her hard work and her dedication for the past 10 years.

As chief crime counsel for the Republicans during this time, she worked collegially with her Democratic colleagues on a broad range of criminal justice issues. The Crime Subcommittee is legislatively the busiest Subcommittee, to me, in all of Congress, and every crime-related bill that has been enacted during her time here has had the benefit of her expertise.

There are many examples of this, but I will cite her role in helping Members find common ground on section 215 of the PATRIOT Act so that we could enact important reforms in the USA Freedom Act. This important law will both safeguard our national security and our civil liberties, and it set a precedent for how we can proceed on such issues in the future. Her work on this legislation was essential to its ultimate success.

We will miss her insight on these issues as well as her friendship and her friendliness as she leaves the Committee for other endeavors in her home State of Arizona.

We wish you all the best.

[Applause.]

Mr. GOODLATTE. I think you would agree with me in saying that, while her work is not quite done today and the rest of the week, she has also been very critical to the bipartisan work that we have been doing here the past few years, culminating in 11 bills so far passing out of this Committee dealing with criminal justice reform.

And we thank you for the contribution you have made for that. And that work has been, indeed, very bipartisan, so we thank you all.

We now welcome Director Comey to your fourth appearance before the House Judiciary Committee since your confirmation as the seventh Director of the FBI. Needless to say, the past year since our last oversight hearing has been challenging for the FBI on a number of fronts that we hope to review with you today.

I want to begin by commending the men and women of the FBI and the NYPD and the New Jersey Police Department for their swift action in identifying and apprehending Ahmad Khan Rahami, whose cold and cowardly acts of terrorism last week injured 29 American citizens.

This was the latest in a string of attacks stretching back to the 2013 Boston Marathon bombing and continuing through the terror attacks in San Bernardino, Orlando, and Minneapolis. They all share one common thread—namely, radical Islam.

This Administration, however, including the FBI, has coined this cancer with the euphemism of "countering violent extremism." If the FBI and the rest of our national security apparatus continues its myopia about focusing on ethereal issues of extremism, their mission to protect the American people will always be one of following up on terrorism's aftermath.

I look forward to hearing from you about how the FBI is working to proactively combat radical Islamic terrorism and put an end to this string of violence.

While terrorism is a malignancy which must be purged, other events at home have called into question the confidence that Americans have historically held in a blind and impartial justice system.

Former Secretary of State Hillary Clinton and the FBI's investigation into her seemingly criminal conduct is a case in point. It seems clear that former Secretary of State Hillary Clinton committed multiple felonies involving the passing of classified information through her private email server. The FBI, however, declined to refer the case for prosecution on some very questionable bases.

This past Friday afternoon, the FBI released additional investigative documents from the Clinton investigation which demonstrate, among other things, that more than 100 of the emails on Secretary Clinton's private server contained classified information and that emails required to be preserved under Federal law were, in fact, destroyed.

Even more alarming, we have recently learned that President Obama used a pseudonym to communicate with Secretary Clinton on her email server. Why is this relevant? As Secretary Clinton's top aide, Huma Abedin claimed, when informed by the FBI of the existence of an email between her boss and the President, "How is that not classified?"

Armed with knowledge of the President's now-known-to-be-false claim that he only learned of Clinton's private email account "at the same time everybody else learned it, through news reports," did the FBI review why the President was also sending classified information over unsecure means. In effect, this President and the former Secretary of State improperly transmitted communications

through nonsecure channels, placing our Nation's secrets in harm's way.

Secretary Clinton's decision to play fast and loose with our national security concerned not simply her daughter's wedding planning or yoga routines but, instead, quoting you, Director Comey, "Seven email chains concerned matters that were classified at the Top Secret/Special Access Program level when they were sent and received." Top Secret/Special Access Programs contain some of the most sensitive secret information maintained by our government. This is a truly remarkable fact. Were anyone of lesser notoriety than Hillary Clinton guilty of doing this, that person would already be in jail.

For Americans unsure what a special access program, or SAP, is, it is the kind of information that a war-planner would use to defeat an enemy or even clandestine intelligence operations. The Wall Street Journal explained that an SAP usually refers to highly covert technology programs often involving weaponry. Knowledge of these programs is usually restricted to small groups of people on a need-to-know basis.

For those wondering whether this kind of information on an unsecure server is a problem, you need read no further than the Huffington Post, which reported Hillary Clinton's private email server, containing tens of thousands of messages from her tenure as Secretary of State, was the subject of hacking attempts from China, South Korea, and Germany after she stepped down in 2016.

To conclude, let me ask everyone to engage in a thought experiment. One of this Nation's signature accomplishments in the war on terror was the raid on Abbottabad, Pakistan, on May 2, 2011, that resulted in the killing of Osama bin Laden. That operation, which was conducted by an elite team of U.S. Navy special operators, was, of course, highly classified.

Now, imagine, if you will, that classified information relating to the raid was passed through a nonsecure email server and was accessed by Nations or individuals hostile to the United States. Rather than a highly successful covert operation, we might have had a team of dead U.S. servicemen.

Hillary Clinton chose to send and receive Top Secret information over a personal, unsecure computer server housed in her various homes and once reportedly placed in a bathroom closet. These actions, without a doubt, opened these communications to hostile interception by our enemies and those who wish America harm.

These facts, and not the imagined history I have asked you to contemplate, were the basis of the investigation by the FBI. And these are the facts that you, Director Comey, chose to hold unworthy of a recommendation to prosecute, saying that no reasonable prosecutor would bring such a case.

We, as Congress and the American people, are troubled how such gross negligence is not punished and why there seems to be a different standard for the politically well-connected, particularly if your name is Clinton.

Mr. Director, I look forward to your testimony today.

At this time, I am pleased to recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte.

Welcome again, Director Comey, for your appearance here today.

The FBI's mission is a complex undertaking: to protect the United States from terrorism, to enforce our criminal laws, and to lead the Nation's law enforcement community.

That mission ought to mirror our own priorities in this Committee. In the past few days, for example, we have witnessed near-fatal terrorist attacks in Minnesota, New York, and New Jersey. These attacks underscore the growing fear that individuals can be moved to violence at home by the propaganda of ISIS and other terrorist groups abroad even though they have no direct connection to those organizations.

To me, this threat is dire. We should be doing all we can within our communities and within our constitutional framework to mitigate the danger. But will our majority here in the House use their time today to discuss these attacks? I suspect that they will not be in their focus in this campaign season.

In Charlotte, in Tulsa, in Dallas, right here in Washington, and in other cities across this country, our citizens demand answers to questions about race and policing and the use of lethal force by law enforcement. Our police are under siege, often underresourced, and, in some cases, hard-pressed to build trust with the communities they serve.

Director Comey, your continued work to foster lines of communication between police officers and the general public is commendable—and necessary if we are to keep our citizens safe from harm.

But will my colleagues discuss this pressing issue with the Director of the FBI, whose leadership in the law enforcement community is paramount? I hope so. I am also afraid the focus may be elsewhere.

The FBI is the lead agency in the investigation of cyber-based terrorism, computer intrusions, online sexual exploitation, and major cyber fraud. We have known for some years about the persistent cyber threat to our critical infrastructure. Now we hear reports of a new cyber threat to the very basis of our democratic process.

Twice this summer, Director Comey, I wrote to you with my fellow Ranking Members to ask you to look into reports that Russian state actors are working to undermine our election process.

Without objection, Mr. Chairman, I ask that both these letters be placed in the record.

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

[The information referred to follows:]

Congress of the United States
Washington, DC 20515

July 25, 2016

The Honorable James B. Comey
Director of the Federal Bureau of Investigation
FBI Headquarters
935 Pennsylvania Avenue NW
Washington, D.C. 20535

The Honorable Ashton B. Carter
Secretary of Defense
U.S. Department of Defense
1300 Defense Pentagon
Washington, D.C. 20301

The Honorable John F. Kerry
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

The Honorable James R. Clapper
Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Director Comey, Secretaries Kerry and Carter, and General Clapper:

As senior Members of national-security committees in Congress, we are deeply troubled by reports of a Russia-supported hacking of Democratic National Committee data, and we applaud the FBI's quick action launching an investigation. We request that the Administration brief members of Congress on this situation as soon as possible in unclassified or classified settings as needed.

We see two separate issues at play here, both of which deserve the focus of investigators and Congressional overseers.

First, the DNC hack was plainly cyber-crime. More and more, America's adversaries are employing cyber-theft and cyber-terrorism as tactics to threaten our security. We need to understand fully the extent of the hack and work to determine who was responsible. We need to assess whose personal information was compromised by the attack and ensure those individuals have what they need to prevent any further damage. We need to determine what vulnerabilities allowed this attack to succeed, and provide information to the public about how to guard against future attacks of this nature.

Second—and perhaps more important—the timing and content of the theft, targeting one of our two major political parties, makes clear that this cyber-attack amounts to more than a public embarrassment or harmless mischief. If reports of Russia's involvement are confirmed, the only reasonable conclusion is that leaders in Russia are stealing and disseminating information in an effort to sway an election in the United States.

PRINTED ON RECYCLED PAPER

Honorable James B. Comey
Honorable John F. Kerry
Honorable Ashton B. Carter
Honorable James R. Clapper
Page Two
July 25, 2016

This is an action right out of President Putin's playbook. In recent years, Russia has influenced elections, infiltrated political parties across Europe, and stoked divisive politics in the hope of fracturing Western unity. It doesn't stretch the imagination that Mr. Putin would now try his hand at manipulating the course of American democracy—leaking information through a syndicate that has repeated anti-Semitic insinuations, endangered lives, and threatened American security by recklessly releasing stolen information. That scenario should sound the alarm for people across this country.

That's why we also ask that the FBI collaborate with the Departments of State and Defense and the Intelligence Community to obtain a complete picture of Russia's involvement and its leaders intentions. Nearly a half century ago, a break-in at the DNC headquarters eventually led to the end of a Presidency. For a foreign government to engage in the same sort of behavior cannot be tolerated. Russia doesn't get to put its thumb on the scale in our elections. In the days ahead, we need to send a clear message to Russia's leaders and all who mean us harm: we will not allow the Kremlin or any other foreign power to dictate the terms of political debate in this country.

With the clock ticking down to our election, we ask for quick action on this matter. The American people deserve to go to the polls in November confident that Russian subterfuge has had no role in setting the agenda for our country's future.

Sincerely,

ELIOT L. ENGEL
Ranking Member
House Foreign Affairs Committee

JOHN CONYERS, JR.
Ranking Member
House Judiciary Committee

BENNIE G. THOMPSON
Ranking Member
House Homeland Security Committee

Congress of the United States
Washington, DC 20515

August 30, 2016

The Honorable James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Mr. Director:

Based on multiple press reports, it appears that the Federal Bureau of Investigation (FBI) is investigating whether Russia executed cyber attacks against the Democratic National Committee (DNC) and the Democratic Congressional Campaign Committee (DCCC) that resulted in the illegal hacking of a wide range of emails and other documents.[1]

We are writing to request that the FBI assess whether connections between Trump campaign officials and Russian interests may have contributed to these attacks in order to interfere with the U.S. presidential election.

Serious questions have been raised about overt and covert actions by Trump campaign officials on behalf of Russian interests. It is critical for the American public to know whether those actions may have directly caused or indirectly motivated attacks against Democratic institutions and our fundamental election process.

On July 22, 2016, just days before the Democratic convention, approximately 20,000 pages of illegally hacked documents were leaked by WikiLeaks in an apparent attempt to influence the U.S. presidential election in favor of Donald Trump.[2] According to one press report:

> The FBI suspects that Russian government hackers breached the networks of the Democratic National Committee and stole emails that were posted to the anti-secrecy site

---

[1] *See, e.g., FBI Investigating Whether Russians Hacked Democratic Party's Emails to Help Donald Trump,* Los Angeles Times (July 25, 2016) (online at www.latimes.com/nation/la-na-pol-fbi-hack-dnc-russia-20160725-snap-story.html). *See also Growing Evidence Suggests Recent Hacks the Work of Russian-Backed Cyber Militias,* Fox News (Aug. 20, 2016) (online at www.foxnews.com/politics/2016/08/20/growing-evidence-suggest-recent-hacks-work-russian-backed-cyber-militias.html).

[2] *WikiLeaks Releases Thousands of Documents About Clinton and Internal Deliberations,* Washington Post (July 22, 2016) (online at www.washingtonpost.com/news/post-politics/wp/2016/07/22/on-eve-of-democratic-convention-wikileaks-releases-thousands-of-documents-about-clinton-the-campaign-and-internal-deliberations/).

PRINTED ON RECYCLED PAPER

WikiLeaks on Friday. It's an operation that several U.S. officials now suspect was a deliberate attempt to influence the presidential election in favor of Donald Trump, according to five individuals familiar with the investigation of the breach.[3]

Donald Trump has repeatedly praised Russian President Vladimir Putin, stating that "he's doing a great job,"[4] "I'd get along very well with Vladimir Putin,"[5] and "It is always a great honor to be so nicely complimented by a man so highly respected."[6] Donald Trump's business interests in Russia have also been widely reported.[7]

Donald Trump has proposed shocking policy positions that would greatly benefit Russia, including breaking from longstanding U.S. commitments to our NATO allies to combat Russian aggression[8] and weakening sanctions and recognizing Russia's annexation of Crimea.[9]

Of direct concern, however, are Donald Trump's comments encouraging Russian hacking and his top aides' previously undisclosed connections to Russian officials and interests.

On July 27, 2016—the third day of the Democratic convention—Donald Trump urged Russia to hack Secretary Hillary Clinton's emails.[10]

---

[3] *FBI Suspects Russia Hacked DNC; U.S. Officials Say it Was to Elect Donald Trump,* Daily Beast (July 25, 2016) (online at www.thedailybeast.com/articles/2016/07/25/fbi-suspects-russia-hacked-dnc-u-s-officials-say-it-was-to-elect-donald-trump.html).

[4] *Larry King Live,* CNN (Oct. 15, 2007) (online at www.cnn.com/TRANSCRIPTS/0710/15/lkl.01.html).

[5] *Donald Trump: "I'd Get Along Very Well With Vladimir Putin,"* CBS News (July 30, 2015) (online at www.cbsnews.com/news/donald-trump-id-get-along-very-well-with-vladimir-putin/).

[6] *Trump Says "Great Honor" to Get Compliments from "Highly Respected" Putin,* ABC News (Dec. 17, 2015) (online at http://abcnews.go.com/Politics/trump-great-honor-compliments-highly-respected-putin/story?id=35829618).

[7] *Inside Donald Trump's Financial Ties to Russia and His Unusual Flattery of Vladimir Putin,* Washington Post (June 17, 2016) (online at www.washingtonpost.com/politics/inside-trumps-financial-ties-to-russia-and-his-unusual-flattery-of-vladimir-putin/2016/06/17/dbdcaac8-31a6-11e6-8ff7-7b6c1998b7a0_story.html?postshare=1821472042965377&tid=ss_mail).

[8] *Trump Takes Heat from NATO Officials for Interview Comments,* Fox News (July 21, 2016) (online at www.foxnews.com/politics/2016/07/21/trump-takes-heat-from-nato-officials-for-interview-comments.html).

[9] *This Week with George Stephanopoulos,* ABC News (July 31, 2016) (online at http://abcnews.go.com/Politics/week-transcript-donald-trump-vice-president-joe-biden/story?id=41020870).

[10] *Trump Urges Russia to Hack Clinton's Email,* Politico (July 27, 2016) (online at www.politico.com/story/2016/07/trump-putin-no-relationship-226282).

Less than two weeks later, on August 8, 2016, Roger Stone, a Donald Trump confidante, revealed that he has communicated with WikiLeaks founder Julian Assange about the upcoming release of additional illegally-hacked Democratic documents. Mr. Stone made these statements during a Republican campaign event while answering a question about a potential "October surprise."[11]

It is unclear whether U.S. law enforcement authorities have interviewed Mr. Stone about his communications with Mr. Assange or about his knowledge of how WikiLeaks obtained the illegally-hacked documents.

In addition, on July 7, 2016, one of Donald Trump's foreign policy advisers, Carter Page, traveled to Moscow to give a speech that was harshly critical of the United States and its "hypocritical focus on ideas such as democratization, inequality, corruption and regime change."[12] Mr. Page had touted his extensive dealings with Russian energy giant Gazprom, claiming that he had been an adviser "on key transactions for Gazprom."[13] After Donald Trump named Mr. Page as his foreign policy adviser in March, Mr. Page explained that "his business has suffered directly from the U.S. economic sanctions imposed after Russia's escalating involvement in the Ukraine."[14]

Mr. Page appears to enjoy high-level access to Russian officials that are currently under sanctions imposed by the United States government. According to one press report:

> After the Obama administration added Rosneft Chairman Igor Sechin to its sanctions list in 2014, limiting Sechin's ability to travel to the United States or do business with U.S. firms, Page praised the former deputy prime minister, considered one of Putin's closest allies over the past 25 years. "Sechin has done more to advance U.S.-Russian relations than any individual in or out of government from either side of the Atlantic over the past decade," Page wrote.[15]

---

[11] *Trump Ally Claims He "Communicated With" WikiLeaks Founder,* Washington Examiner (Aug. 9, 2016) (online at www.washingtonexaminer.com/trump-ally-claims-he-communicated-with-wikileaks-founder/article/2598931).

[12] *Trump's Russia Adviser Criticizes U.S. for "Hypocritical Focus on Democratization,"* Washington Post (July 7, 2016) (online at www.washingtonpost.com/world/europe/trumps-russia-adviser-criticizes-us-for-hypocritical-focus-on-democratization/2016/07/07/804a3d60-4380-11e6-a76d-3550dba926ac_story.html).

[13] *Biography of Carter Page, CFA,* Global Energy Capital LLC (accessed Aug. 22, 2016) (online at www.globalenergycap.com/management/).

[14] *Trump's New Russia Adviser Has Deep Ties to Kremlin's Gazprom,* Bloomberg (Mar. 30, 2016) (online at www.bloomberg.com/politics/articles/2016-03-30/trump-russia-adviser-carter-page-interview).

[15] *Trump Adviser's Public Comments, Ties to Moscow Stir Unease in Both Parties,* Washington Post (Aug. 5, 2016) (online at www.washingtonpost.com/business/economy/trump-advisers-public-comments-ties-to-moscow-stir-unease-in-both-parties/2016/08/05/2e8722fa-5815-11e6-9aee-8075993d73a2_story.html).

It is unclear whether U.S. law enforcement authorities have interviewed Mr. Page about whether he met with Mr. Sechin or other individuals on the U.S. sanctions list during his trip to Moscow or on other occasions.

Another top adviser to Donald Trump, Lt. Gen. Michael Flynn, traveled to Moscow in December 2015 and joined Vladimir Putin at the head table during a dinner honoring the Kremlin-backed media network RT. During the event, General Flynn gave a speech that was highly critical of the United States, stating, "The United States can't sit there and say, 'Russia, you're bad.'"[16] The following week, President Putin praised Donald Trump as "an outstanding and talented personality."[17] General Flynn declined to answer media inquiries about whether he traveled to Moscow on Donald Trump's behalf.[18]

Most recently, Donald Trump's campaign chairman, Paul Manafort, resigned after failing to disclose his role in assisting a pro-Russian party in Ukraine. Mr. Manafort reportedly had "wooed investments from oligarchs linked to Putin and advised the now-toppled pro-Russian Ukrainian president Viktor Yanukovych."[19] According to one press account:

> Donald Trump's campaign chairman helped a pro-Russian governing party in Ukraine secretly route at least $2.2 million in payments to two prominent Washington lobbying firms in 2012, and did so in a way that effectively obscured the foreign political party's efforts to influence U.S. policy. ... Under federal law, U.S. lobbyists must declare publicly if they represent foreign leaders or their political parties and provide detailed reports about their actions to the Justice Department. A violation is a felony and can result in up to five years in prison and a fine of up to $250,000.[20]

Rick Gates, a top strategist in Donald Trump's campaign, reportedly worked with Mr. Manafort on this effort, "helping steer the advocacy work done by a pro-Yanukovych nonprofit," including "downplaying the necessity of a congressional resolution meant to pressure the

---

[16] *Trump Embraces Ex-Top Obama Intel Official,* Daily Beast (Mar. 9, 2016) (online at www.thedailybeast.com/articles/2016/03/09/donald-trump-embraces-top-obama-intel-official.html).

[17] *Putin Praises "Bright and Talented" Trump,* CNN (Dec. 17, 2015) (online at www.cnn.com/2015/12/17/politics/russia-putin-trump/).

[18] *Trump Embraces Ex-Top Obama Intel Official,* Daily Beast (Mar. 9, 2016) (online at www.thedailybeast.com/articles/2016/03/09/donald-trump-embraces-top-obama-intel-official.html).

[19] *Trump Adviser's Public Comments, Ties to Moscow Stir Unease in Both Parties,* Washington Post (Aug. 5, 2016) (online at www.washingtonpost.com/business/economy/trump-advisers-public-comments-ties-to-moscow-stir-unease-in-both-parties/2016/08/05/2e8722fa-5815-11e6-9aee-8075993d73a2_story.html).

[20] *Manafort Tied to Undisclosed Foreign Lobbying,* Associated Press (Aug. 17, 2016) (online at http://bigstory.ap.org/article/c01989a47ee5421593ba1b301ec07813/ap-sources-manafort-tied-undisclosed-foreign-lobbying).

Ukrainian leader to release an imprisoned political rival."[21] Although Mr. Manafort has resigned from his position, it appears that Mr. Gates continues to be a top adviser to Mr. Trump.

It is unclear whether U.S. law enforcement authorities have interviewed Mr. Manafort or Mr. Page about their failure to disclose this information, but several prominent Members of Mr. Trump's party have expressed grave concerns.

For example, Republican Adam Kinzinger of Illinois called for an investigation into Donald Trump's "chief adviser, what his association with the Russians are." More broadly, Rep. Kinzinger criticized "this affection in the campaign for Russia and Vladimir Putin," and he questioned how and why a reference to Russian offensive weapons was mysteriously removed from the Republican Party's platform, noting that "it just happened."[22]

Similarly, Eliot Cohen, who served as a counselor at the State Department under the George W. Bush Administration, warned: "Foreign governments sometimes express preferences about who should be elected; that's already problematic. But to do something in the nature of dirty tricks would be a very, very serious problem."[23]

Finally, House Speaker Paul Ryan's spokesman stated: "Russia is a global menace led by a devious thug. Putin should stay out of this election."[24]

We do not know if Donald Trump's public statements or the connections of his campaign officials to Russian interests directly or indirectly led to the cyber attacks against Democratic party organizations, but there is widespread agreement that the United States should take all steps possible to prevent Russia from interfering in our electoral process and prosecute to the full extent of the law anyone involved in such a scheme.

---

[21] *Id.*

[22] *GOP Congressman Warns Trump: Russia Not an Ally,* CNN (Aug. 6, 2016) (online at www.cnn.com/videos/tv/2016/08/15/gop-congressman-rep-adam-kinzinger-reacts-to-trumps-isis-plan-the-lead.cnn); *Rep. Kinzinger Calls for Investigation Into Manafort-Russian Ties,* Politico (Aug. 6, 2016) (online at www.politico.com/story/2016/08/gop-rep-calls-for-investigation-into-manafort-russian-ties-227090). *See also Donald Trump Campaign Chairman Paul Manafort Resigns,* CNN (Aug. 20, 2016) (online at www.cnn.com/2016/08/19/politics/donald-trump-campaign-chairman-paul-manafort-resigns/index.html) (citing Rep. Sean Duffy of Wisconsin, stating, "I want to know what money he got from a pro-Russian organization in the Ukraine.").

[23] *Trump Invites Russia to Meddle in the U.S. Presidential Race with Clinton's Emails,* Washington Post (July 27, 2016) (online at www.washingtonpost.com/politics/trump-invites-russia-to-meddle-in-the-us-presidential-race-with-clintons-emails/2016/07/27/a85d799e-5414-11e6-b7de-dfe509430c39_story.html?tid=a_inl).

[24] *Speaker Paul Ryan Calls on "Global Menace" Russia to "Stay Out of This Election;" The Call Came After Donald Trump Encouraged Russian Hackers to Target Hillary Clinton,* CNN (July 27, 2016) (online at http://time.com/4426783/paul-ryan-republicans-donald-trump-russia/).

Thank you for your consideration of this request.

Sincerely,

Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform

John Conyers, Jr.
Ranking Member
Committee on the Judiciary

Elliot L. Engel
Ranking Member
Committee on Foreign Affairs

Bennie G. Thompson
Ranking Member
Committee on Homeland Security

cc: The Honorable Jason Chaffetz
The Honorable Bob Goodlatte
The Honorable Edward R. Royce
The Honorable Michael T. McCaul

Mr. CONYERS. Thank you.

It is now the clear consensus of the intelligence community that the Russian Government was behind the hack of the Democratic National Committee and not, as some suggested, somebody sitting on their bed that weighs 400 pounds.

On Friday, we learned from one report that the United States 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 the possible lifting of economic sanctions if the Republican nominee becomes President.

The report cites to an unnamed "senior U.S. law enforcement official," which I presume means someone in your orbit, Mr. Director.

Without objection, I ask that this article, Mr. Chairman, be placed into the record as well.

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

[The information referred to follows:]

U.S. intel officials probe ties between Trump adviser and Kremlin

Michael Isikoff
Chief Investigative Correspondent
September 23, 2016

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 the possible lifting of economic sanctions if the Republican nominee becomes president, according to multiple sources who have been briefed on the issue.

The activities of Trump adviser Carter Page, who has extensive business interests in Russia, have been discussed with senior members of Congress during recent briefings about suspected efforts by Moscow to influence the presidential election, the sources said. After one of those briefings, Senate minority leader Harry Reid wrote FBI Director James Comey, citing reports of meetings between a Trump adviser (a reference to Page) and "high ranking sanctioned individuals" in Moscow over the summer as evidence of "significant and disturbing ties" between the Trump campaign and the Kremlin that needed to be investigated by the bureau.

Some of those briefed were "taken aback" when they learned about Page's contacts in Moscow, viewing them as a possible back channel to the Russians that could undercut U.S. foreign policy, said a congressional source familiar with the briefings but who asked for anonymity due to the sensitivity of the subject. The source added that U.S. officials in the briefings indicated that intelligence reports about the adviser's talks with senior Russian officials close to President Vladimir Putin were being "actively monitored and investigated."

A senior U.S. law enforcement official did not dispute that characterization when asked for comment by Yahoo News. "It's on our radar screen," said the official about Page's contacts with Russian officials. "It's being looked at."

Page is a former Merrill Lynch investment banker in Moscow who now runs a New York consulting firm, Global Energy Capital, located around the corner from Trump Tower, that specializes in oil and gas deals in Russia and other Central Asian countries. He declined repeated requests to comment for this story.

Trump first mentioned Page's name when asked to identify his "foreign policy team" during an interview with the Washington Post editorial team last March. Describing him then only as a "PhD," Trump named Page as among five advisers "that we are dealing with." But his precise

role in the campaign remains unclear; Trump spokeswoman Hope Hicks last month called him an "informal foreign adviser" who "does not speak for Mr. Trump or the campaign." Asked this week by Yahoo News, Trump campaign spokesman Jason Miller said Page "has no role" and added: "We are not aware of any of his activities, past or present." Miller did not respond when asked why Trump had previously described Page as one of his advisers.

The questions about Page come amid mounting concerns within the U.S. intelligence community about Russian cyberattacks on the Democratic National Committee and state election databases in Arizona and Illinois. In a rare public talk this week, former undersecretary of defense for intelligence Mike Vickers said that the Russian cyberattacks constituted meddling in the U.S. election and were "beyond the pale." Also, this week, two senior Democrats — Sen. Dianne Feinstein, ranking minority member on the Senate Intelligence Committee, and Rep. Adam Schiff, ranking minority member on the House Intelligence Committee — released a joint statement that went further then what U.S. officials had publicly said about the matter.

"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 said. "At the least, this effort is intended to sow doubt about the security of our election and may well be intended to influence the outcomes of the election." They added that "orders for the Russian intelligence agencies to conduct such actions could come only from very senior levels of the Russian government."

Page came to the attention of officials at the U.S. Embassy in Moscow several years ago when he showed up in the Russian capital during several business trips and made provocative public comments critical of U.S. policy and sympathetic to Putin. "He was pretty much a brazen apologist for anything Moscow did," said one U.S. official who served in Russia at the time.

He hasn't been shy about expressing those views in the U.S. as well. Last March, shorty after he was named by Trump as one of his advisers, Page told Bloomberg News he had been an adviser to, and investor in, Gazprom, the Russian state-owned gas company. He then blamed Obama administration sanctions — imposed as a response to the Russian annexation of Crimea — for driving down the company's stock. "So many people who I know and have worked with have been so adversely affected by the sanctions policy," Page said in the interview. "There's a lot of excitement in terms of the possibilities for creating a better situation."

Page showed up again in Moscow in early July, just two weeks before the Republican National Convention formally nominated Trump for president, and once again criticized U.S. policy. Speaking at a commencement address for the New Economic School, an institution funded in part by major Russian oligarchs close to Putin, Page asserted that "Washington and other West capitals" had impeded progress in Russia "through their often hypocritical focus on ideas such as democratization, inequality, corruption and regime change."

At the time, Page declined to say whether he was meeting with Russian officials during his trip, according to a Reuters report.

But U.S. officials have since received intelligence reports that during that same three-day trip, Page met with Igor Sechin, a longtime Putin associate and former Russian deputy prime minister who is now the executive chairman of Rosneft, Russian's leading oil company, a well-placed Western intelligence source tells Yahoo News. That meeting, if confirmed, is viewed as especially problematic by U.S. officials because the Treasury Department in August 2014 named Sechin to a list of Russian officials and businessmen sanctioned over Russia's "illegitimate and unlawful actions in the Ukraine." (The Treasury announcement described Sechin as "utterly loyal to Vladimir Putin — a key component to his current standing." At their alleged meeting, Sechin raised the issue of the lifting of sanctions with Page, the Western intelligence source said.

U.S. intelligence agencies have also received reports that Page met with another top Putin aide while in Moscow — Igor Diveykin. A former Russian security official, Diveykin now serves as deputy chief for internal policy and is believed by U.S. officials to have responsibility for intelligence collected by Russian agencies about the U.S. election, the Western intelligence source said.

Mr. CONYERS. Thank you.

Let me be clear. If true, this allegation represents a danger to our national security and a clear violation of Federal law, which expressly prohibits this type of back-channel negotiation.

And I am not alone in describing the nature of this threat. Speaker Ryan himself has said that "Russia is a global menace led by a devious thug. Putin should stay out of this election," end quotation.

But will our majority join us and press you on this problem today, Director Comey? Instead, I believe that the focus of this hearing will be more of the same: an attack on you and your team at the Department of Justice for declining to recommend criminal charges against Secretary Hillary Clinton.

In recent weeks, this line of attack has been remarkable only for its lack of substance. Your critics dwell in character assassination and procedural minutia, like the proper scope of immunity agreements and your decision to protect the identities of individuals wholly unrelated to the investigation. They want to investigate the investigation, Director Comey, and I consider that an unfortunate waste of this Committee's time.

With so many actual problems confronting this Nation and so many of those challenges within your jurisdiction and ours, you would think my colleagues would set their priorities differently. I hope that they do and they listen to our conversation today.

I thank the Chairman, and I yield back.

Mr. GOODLATTE. Thank you, Mr. Conyers.

And, without objection, all other Members' opening statements will be made a part of the record.

We welcome our distinguished witness. And if you would please rise, I will begin by swearing you in.

Do you solemnly swear that the testimony that you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you.

Let the record reflect that the witness answered in the affirmative.

FBI Director James Comey is a graduate of the College of William and Mary and the University of Chicago Law School. Following law school, Director Comey served as an assistant United States attorney for both the Southern District of New York and the Eastern District of Virginia. He returned to New York to become the U.S. attorney for the Southern District of New York. And, in 2003, he served as the Deputy Attorney General at the Department of Justice.

Director Comey, we look forward to your testimony. Your written statement will be entered into the record in its entirety, and we ask that you summarize your testimony in 5 minutes. You may begin. Welcome.

TESTIMONY OF THE HONORABLE JAMES B. COMEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. COMEY. Thank you, Mr. Chairman, Mr. Conyers, the Members of the Judiciary Committee. It is good to be back before you,

as the Chairman said, for the fourth time. I have six more to go, and I look forward to our conversations each time.

I know that this morning there will be questions about the email investigation, and I am happy to answer those to the absolute best of my ability. In July, when we closed this case, I promised unusual transparency, and I think we have delivered on that promise in, frankly, an unprecedented way. And I will do my absolute best to continue to be transparent in every way possible.

But what I thought I would do, because I know we will talk about that quite a bit, I want to just focus on some of the other things the FBI has been doing just in the last couple of weeks. And my objective is to make clear to you and to the American people the quality of the people who have chosen to do this with their lives, to do something that is not about money, it is not about the living, it is about the life that they make.

And I just picked four different examples of things we have been working on that illustrate the quality of the folks, the scope of the work, which is extraordinary, and the importance of partnerships, because it is true that the FBI does nothing alone.

So just to tick off four from four different parts of our organization, obviously, as the Chair and Mr. Conyers both mentioned, in the last couple weeks, our folks in the New York area have been working in an extraordinary way with their partners at Federal, State, and local organizations of all kinds to bring to justice very quickly the bomber in the New Jersey and New York attacks.

That work was done in a way, frankly, that would have been hard to imagine 15 years ago in a time of turf battles and worries about my jurisdiction, your jurisdiction. They showed you how it should be done, how it must be done. And I think we should all be very proud of them.

Second, within the last week, a hacker from Kosovo, who worked for the so-called Islamic State in hacking in and taking the identifies and personal information of American military employees and then giving it to the Islamic State so they could target these people, was sentenced to 20 years in jail for that hacking. His name is Ardit Ferizi.

Our great folks, together with lots of partners around the world, found this Kosovar in Malaysia, and our Malaysian partners arrested him, brought him back to Virginia, where he was just sentenced to 20 years for his hacking on behalf of the Islamic State. Terrific work by our cyber investigators.

And, obviously, as you know, we are doing an awful lot of work through our counterintelligence investigators to understand just what mischief is Russia up to in connection with our election. That is work that goes on all day every day, about which I am limited in terms of answering questions. But I wanted you to know that is a part of our work we don't talk about an awful lot but it is at the core of the FBI.

And the last one I want to mention is, 2 weeks ago, a 6-year-old girl was kidnapped off her front lawn in eastern North Carolina in a stranger kidnapping. And all of law enforcement in North Carolina surged on that case. We rolled our Child Abduction Rapid Deployment Team, which is a capability we have built around the country to help in just these kinds of situations. These are agents

and analysts who are expert at doing what has to be done in that golden 24 hours you have to try and save a child.

And so we rolled those resources, we worked with our partners at State and local levels in North Carolina, and overnight we found that little girl. We found that little girl chained by her neck to a tree in the woods, alive, thank God, and she was rescued.

The picture that they showed me that morning of that little girl with wide eyes and her long hair around her shoulders but still a thick chain around her neck connecting her to that tree is one I will never be able to get out of my own head, because it is both terrible and wonderful. It is terrible because of what happened to this little girl; it is wonderful because, together, we found her and saved her.

So I called the sheriff in North Carolina, I called our key team members who worked on that to thank them. And they told me that they were relieved and exhausted and that they are all hardened investigators but they stood that early morning in the command center and cried together because it almost never ends this way.

So I said to the sheriff and to our people, I wish we didn't live in a world where little girls were kidnapped off of their front lawns, where we had to do this kind of work, but, unfortunately, we live in that world. And because we do, I am so glad that those people and the rest of the people that work for the FBI are in that world, because we are safer, we are better because they have chosen to do this with their lives.

The best part of my job is the people I get to watch, to see their work, to admire their work, to support their work in any way that I can. They are doing extraordinary work for the American people across an incredible array of responsibilities. I know you know that, and we are very grateful for the support you give to the men and women of the FBI. And I look forward to our conversation about their work, Mr. Chairman.

Thank you.

[The prepared statement of Mr. Comey follows:]

Department of Justice

STATEMENT OF
JAMES B. COMEY
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

FOR A HEARING CONCERNING
OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION

PRESENTED
SEPTEMBER 28, 2016

Statement of
James B. Comey
Director
Federal Bureau of Investigation

Before the
Committee on the Judiciary
U.S. House of Representatives

For a Hearing Concerning
Oversight of the FBI

September 28, 2016

Good morning Chairman Goodlatte, Ranking Member Conyers, and members of the committee. Thank you for this opportunity to discuss the FBI's programs and priorities for the coming year. On behalf of the men and women of the FBI, let me begin by thanking you for your ongoing support of the Bureau. We pledge to be the best possible stewards of the authorities and the funding you have provided for us, and to use them to maximum effect to carry out our mission.

Today's FBI is a threat-focused, intelligence-driven organization. Each FBI employee understands that to defeat the key threats facing our nation, we must constantly strive to be more efficient and more effective. Just as our adversaries continue to evolve, so, too, must the FBI. We live in a time of acute and persistent terrorist and criminal threats to our national security, our economy, and our communities. These diverse threats underscore the complexity and breadth of the FBI's mission.

We remain focused on defending the United States against terrorism, foreign intelligence, and cyber threats; upholding and enforcing the criminal laws of the United States; protecting privacy, civil rights and civil liberties; and providing leadership and criminal justice services to federal, state, tribal, municipal, and international agencies and partners. Our continued ability to carry out this demanding mission reflects the support and oversight provided by this committee.

National Security

Counterterrorism

Preventing terrorist attacks remains the FBI's top priority. Threats of terrorism against the United States remains persistent and acute. The dangers posed by foreign fighters, including those recruited from the U.S., traveling to join the Islamic State of Iraq and the Levant (ISIL) and from homegrown violent extremists are extremely dynamic. The tragic events we witnessed last week in New York and New Jersey and last June in Orlando are a somber reminder that the challenges we face are not just foreign in nature – they also come from within our own borders. Our work is very difficult; we are looking for needles in a nationwide haystack, but we are also called upon to

figure out which pieces of hay might someday become needles. That is hard work and the particular challenge of identifying homegrown violent extremists.

Threats of terrorism remain our highest priority and create the most serious challenges for the FBI, the U.S. Intelligence Community, and our foreign, state, and local allies. ISIL is relentless and ruthless in its pursuits to terrorize individuals in Syria and Iraq, including Westerners. We continue to identify individuals who seek to join the ranks of foreign fighters traveling in support of ISIL, and also homegrown violent extremists who may aspire to attack the United States from within. In addition, we are confronting an explosion of terrorist propaganda and training materials available via the Internet and social media. As a result of online recruitment and indoctrination, foreign terrorist organizations are no longer dependent on finding ways to get terrorist operatives into the U.S. to recruit and carry out acts. Terrorists in ungoverned spaces—both physical and cyber—readily disseminate poisoned propaganda and training materials to attract easily influenced individuals around the world to their cause. They encourage these individuals to travel, but if they cannot travel, they motivate them to act at home. This is a significant change and transformation from the terrorist threat our nation faced a decade ago.

ISIL's widespread reach through the Internet and social media is alarming as the group has proven dangerously competent at employing such tools for its nefarious strategy. ISIL uses high-quality, traditional media platforms, as well as widespread social media campaigns to propagate its extremist ideology. Recently released propaganda has included various English language publications circulated via social media.

Social media also helps groups such as ISIL to spot and assess potential recruits. With the widespread horizontal distribution of social media, terrorists can identify vulnerable persons of all ages in the United States—spot, assess, recruit, and radicalize—either to travel or to conduct a homeland attack. The foreign terrorist now has direct access into the United States like never before.

Unlike other groups, ISIL has constructed a narrative that touches on all facets of life from career opportunities to family life to a sense of community. The message isn't tailored solely to those who are overtly expressing symptoms of radicalization. It is seen by many who click through the Internet every day, receive social media push notifications, and participate in social networks. Ultimately, many of these individuals are seeking a sense of belonging. Echoing other terrorist groups, ISIL has advocated for lone offender attacks in Western countries. Recent ISIL videos and propaganda specifically advocate for attacks against soldiers, law enforcement, and intelligence community personnel. Several incidents have occurred in the United States, Canada, and Europe that indicate this "call to arms" has resonated among ISIL supporters and sympathizers.

Investigating and prosecuting ISIL offenders is a core responsibility and priority of the Department of Justice and the FBI. The Department has worked hard to stay ahead of changing national security threats and changing technology. The benefits of our increasingly digital lives,

however, have been accompanied by new dangers, and we have been forced to consider how criminals and terrorists might use advances in technology to their advantage.
For instance, some of these conversations among ISIL supporters and sympathizers occur in publicly accessed social networking sites, but others take place via private messaging platforms. These encrypted direct messaging platforms are tremendously problematic when used by terrorist plotters. Similarly, we are seeing more and more cases where we believe significant evidence resides on a phone, a tablet, or a laptop evidence that may be the difference between an offender being convicted or acquitted. The more we as a society rely on electronic devices to communicate and store information, the more likely it is that information that was once found in filing cabinets, letters, and photo albums will now be stored only in electronic form. If we cannot access this evidence, it will have ongoing, significant effects on our ability to identify, stop, and prosecute these offenders.

We have always respected the fundamental right of people to engage in private communications, regardless of the medium or technology. Whether it is instant messages, texts, or old- fashioned letters, citizens have the right to communicate with one another in private without unauthorized government surveillance not simply because the Constitution demands it, but because the free flow of information is vital to a thriving democracy.

The FBI is using all lawful investigative techniques and methods to combat these terrorist threats to the United States, including both physical and electronic surveillance. Physical surveillance is a critical and essential tool in detecting, disrupting, and preventing acts of terrorism, as well as gathering intelligence on those who are capable of doing harm to the nation. Along with our domestic and foreign partners, we are collecting and analyzing intelligence about the ongoing threat posed by foreign terrorist organizations and homegrown violent extremists. We continue to encourage information sharing; in partnership with our many federal, state, local, and tribal agencies assigned to Joint Terrorism Task Forces around the country, we remain vigilant to ensure the safety of the American public.

Be assured, the FBI continues to pursue increased efficiencies and information sharing processes as well as pursue technological and other methods to help stay ahead of threats to the homeland. However, when changes in technology hinder law enforcement's ability to exercise investigative tools and follow critical leads, we may not be able to identify and stop terrorists who are using social media to recruit, plan, and execute an attack in our country. Ultimately, we must ensure both the fundamental right of people to engage in private communications as well as the protection of the public.

Going Dark

While some of the contacts between groups like ISIL and potential recruits occur in publicly accessible social networking sites, others take place via encrypted private messaging platforms. This real and growing gap, which the FBI refers to as "Going Dark," is an area of continuing focus for the FBI; we believe it must be addressed, since the resulting risks are grave both in both traditional criminal matters as well as in national security matters.

The United States government actively communicates with private companies to ensure they understand the public safety and national security risks that result from malicious actors' use of their encrypted products and services. Though the Administration has decided not to seek a legislative remedy at this time, we will continue the conversations we are having with private industry, State, local, and tribal law enforcement, our foreign partners, and the American people. The FBI thanks the committee members for their engagement on this crucial issue.

Intelligence

Integrating intelligence and operations is part of the broader intelligence transformation the FBI has undertaken in the last decade. We are making progress, but have more work to do. We have taken two steps to improve this integration. First, we have established an Intelligence Branch within the FBI headed by an Executive Assistant Director ("EAD"). The EAD looks across the entire enterprise and drives integration. Second, we now have Special Agents and new Intelligence Analysts at the FBI Academy engaged in practical training exercises and taking core courses together. As a result, they are better prepared to work well together in the field. Our goal every day is to get better at using, collecting and sharing intelligence to better understand and defeat our adversaries.

The FBI cannot be content to just work with what is directly in front of us. We must also be able to understand the threats we face at home and abroad and how those threats may be connected. Towards that end, the FBI gathers intelligence, consistent with our authorities, to help us understand and prioritize identified threats and to determine where there are gaps in what we know about these threats. We then seek to fill those gaps and learn as much as we can about the threats we are addressing and others on the threat landscape. We do this for national security and criminal threats, on both a national and local field office level. We then compare the national and local perspectives to organize threats into priority for each of the FBI's 56 field offices. By categorizing threats in this way, we strive to place the greatest focus on the gravest threats we face. This gives us a better assessment of what the dangers are, what's being done about them, and where we should prioritize our resources.

Counterintelligence

We still confront traditional espionage—spies posing as diplomats or ordinary citizens. But espionage also has evolved. Spies today are often students, researchers, or businesspeople operating front companies. And they seek not only state secrets, but trade secrets, intellectual property, and insider information from the federal government, U.S. corporations, and American universities. Foreign intelligence entities continue to grow more creative and more sophisticated in their methods to steal innovative technology, critical research and development data, and intellectual property. Their efforts seek to erode America's leading edge in business, and pose a significant threat to our national security.

We remain focused on the growing scope of the insider threat—that is, when trusted employees and contractors use their legitimate access to information to steal secrets for the benefit of

another company or country. This threat has been exacerbated in recent years as businesses have become more global and increasingly exposed to foreign intelligence organizations.

To combat this threat, the FBI's Counterintelligence Division has undertaken several initiatives. We directed the development, deployment, and operation of the Hybrid Threat Center (HTC) to support Department of Commerce Entity List investigations. The HTC is the first of its kind in the FBI; it has been well-received in the U.S. Intelligence Community, multiple FBI divisions, and the private sector.

The Counterintelligence and Cyber Divisions have also partnered to create the Cyber-Counterintelligence Coordination Section. This goal of this section is to effectively identify, pursue, and defeat hostile intelligence services that use cyber means to penetrate or disrupt U.S. government entities or economic interests by increasing collaboration, coordination, and interaction between the divisions. Finally, the Counterintelligence Division and the Office of Public Affairs collaborated to conduct a joint media campaign regarding the threat of economic espionage. As a result of this collaboration, the FBI publicly released a threat awareness video called *The Company Man: Protecting America's Secrets*. This video is available on the FBI's public website and has been shown more than 1,300 times across the United States by the Counterintelligence Division's Strategic Partnership Coordinators to raise awareness and generate referrals from the private sector. The video was also uploaded to YouTube in July 2015 and has received over 97,000 views since then.

Cyber

We face sophisticated cyber threats from state-sponsored hackers, hackers for hire, organized cyber syndicates, and terrorists. On a daily basis, cyber actors seek our state and trade secrets, our technology, and our ideas—things of incredible value to all of us and of great importance to the conduct of our government business and our national security. These threats seek to strike our critical infrastructure and to harm our economy.

The pervasiveness of the cyber threat is such that the FBI and other intelligence, military, homeland security, and law enforcement agencies across the government view cyber security and cyber-attacks as a top priority. Within the FBI, we are targeting the most dangerous malicious cyber activity: high-level intrusions by state-sponsored hackers and global cyber syndicates, and the most prolific botnets. We need to be able to move from reacting to such attacks after the fact to operationally preventing such attacks. That is a significant challenge, but one we embrace. As the committee is well aware, the frequency and impact of cyber-attacks on our nation's private sector and government networks have increased dramatically in the past decade and are expected to continue to grow.

We continue to see an increase in the scale and scope of reporting on malicious cyber activity that can be measured by the amount of corporate data stolen or deleted, personally identifiable information compromised, or remediation costs incurred by U.S. victims. For example, as the committee is aware, the Office of Personnel Management (OPM) discovered last year that a number of its systems were compromised. These systems included those that contain information

related to the background investigations of current, former, and prospective federal government employees and contractors, as well as other individuals for whom a federal background investigation was conducted. The FBI is continuing to investigate this matter with our interagency partners to investigate this matter.

Another growing threat to businesses and individuals alike is Ransomware. Last year alone there was a reported loss of more than $24 million. The FBI works closely with the private sector so that companies may make informed decisions in response to malware attacks. Companies can prevent and mitigate malware infection by utilizing appropriate back-up and malware detection and prevention systems, and training employees to be skeptical of emails, attachments, and websites they don't recognize. The FBI does not condone payment of ransom, as such a payment does not guarantee a victim will regain access to their data, will not be targeted again, and may inadvertently encourage continued criminal activity.

The FBI is engaged in a myriad of efforts to combat cyber threats, from efforts focused on threat identification and sharing inside and outside of government, to our internal emphasis on developing and retaining new talent and changing the way we operate to evolve with the cyber threat. We take all potential threats to public and private sector systems seriously and will continue to investigate and hold accountable those who pose a threat in cyberspace.

Criminal

We face many criminal threats, from complex white-collar fraud in the financial, health care, and housing sectors to transnational and regional organized criminal enterprises to violent crime and public corruption. Criminal organizations—domestic and international—and individual criminal activity represent a significant threat to our security and safety in communities across the nation.

Public Corruption

Public corruption is the FBI's top criminal priority. The threat—which involves the corruption of local, state, and federally elected, appointed, or contracted officials—strikes at the heart of government, eroding public confidence and undermining the strength of our democracy. It affects how well U.S. borders are secured and neighborhoods are protected, how verdicts are handed down in court, and how well public infrastructure such as schools and roads are built. The FBI is uniquely situated to address this issue, with our ability to conduct undercover operations, perform electronic surveillance, and run complex cases. However, partnerships are critical and we work closely with federal, state, local, and tribal authorities in pursuing these cases.

One key focus is border corruption. The federal government protects 7,000 miles of U.S. land border and 95,000 miles of shoreline. Every day, more than a million visitors enter the country through one of the 327 official Ports of Entry along the Mexican and Canadian borders, as well as through seaports and international airports. Any corruption at the border enables a wide range of illegal activities along these borders, potentially placing the entire nation at risk by letting drugs, guns, money, and weapons of mass destruction slip into the country, along with criminals,

terrorists, and spies. FBI-led Border Corruption Task Forces are the cornerstone of our efforts to root out this kind of corruption. Located in nearly two dozen cities along our borders, these task forces generally consist of representatives from the FBI; the Department of Homeland Security Office of Inspector General; Customs and Border Protection Internal Affairs; Transportation Security Administration; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Immigration and Customs Enforcement-Office of Professional Responsibility; and state and local law enforcement. Another focus concerns election crime. Although individual states have primary responsibility for conducting fair and impartial elections, the FBI becomes involved when paramount federal interests are affected or electoral abuse occurs.

Civil Rights

The FBI remains dedicated to protecting the constitutional freedoms of all Americans. This includes aggressively investigating and working to prevent hate crime, "color of law" abuses by public officials, human trafficking and involuntary servitude, and freedom of access to clinic entrances violations—the four top priorities of our civil rights program. We also support the work and cases of our local and state partners as needed.

We need to do a better job of tracking and reporting hate crime and "color of law" violations to fully understand what is happening in our communities and how to stop it. We cannot address issues about use of force and officer-involved shootings or why violent crime is up in some cities if we don't know the circumstances. Some jurisdictions fail to report hate crime statistics, while others claim there are no hate crimes in their community—a fact that would be welcome if true. We must continue to impress upon our state and local counterparts in every jurisdiction the need to track and report hate crimes.. And we need the information they report to be accurate, to be timely and to be accessible to everybody or it doesn't do much good. On the part of the FBI, we are pushing for a more modern system of collecting data on officer-involved incidents and violent crime at all levels. It's a large undertaking; it will take a few years to ensure that all of the databases functional, but we are going to get there.

Health Care Fraud

We have witnessed an increase in health care fraud in recent years, including Medicare/Medicaid fraud, pharmaceutical fraud, and illegal medical billing practices. Health care spending currently makes up about 18 percent of our nation's total economy. These large sums present an attractive target for criminals. Health care fraud is not a victimless crime. Every person who pays for health care benefits, every business that pays higher insurance costs to cover their employees, and every taxpayer who funds Medicare is a victim. Schemes can also cause actual patient harm, including subjecting patients to unnecessary treatment or providing substandard services and supplies. As health care spending continues to rise, the FBI will use every tool we have to ensure our health care dollars are used appropriately and not to line the pockets of criminals.

The FBI currently has 2,783 pending health care fraud investigations. Over 70 percent of these investigations involve government sponsored health care programs to include Medicare, Medicaid, and TriCare, as well as other U.S. government funded programs. As part of our collaboration efforts, the FBI maintains investigative and intelligence sharing partnerships with government agencies such as other Department of Justice components, Department of Health and Human Services, the Food and Drug Administration, the Drug Enforcement Administration, State Medicaid Fraud Control Units, and other state, local, and tribal agencies. On the private side, the FBI conducts significant information sharing and coordination efforts with private insurance partners, such as the National Health Care Anti-Fraud Association, the National Insurance Crime Bureau, and private insurance investigative units. The FBI is also actively involved in the Health Care Fraud Prevention Partnership, an effort to exchange facts and information between the public and private sectors in order to reduce the prevalence of health care fraud.

Violent Crime

Violent crimes and illegal gang activities exact a high toll on individuals and communities. Today's gangs are sophisticated and well organized; many use violence to control neighborhoods and boost their illegal money-making activities, which include robbery, drug and gun trafficking, fraud, extortion, and prostitution rings. Gangs do not limit their illegal activities to single jurisdictions or communities. Because of its authority, the FBI is able to work across jurisdictional lines, which is vital to the fight against violent crime in big cities and small towns across the nation. Every day, FBI special agents work in partnership with state, local, and tribal law enforcement on joint task forces and individual investigations.

FBI joint task forces—Violent Crime Safe Streets, Violent Gang Safe Streets, and Safe Trails Task Forces—focus on identifying and targeting major groups operating as criminal enterprises. Much of the Bureau's criminal intelligence is derived from our state, local, and tribal law enforcement partners, who know their communities inside and out. Joint task forces benefit from FBI surveillance assets and our sources track these gangs to identify emerging trends. Through these multi-subject and multi-jurisdictional investigations, the FBI concentrates its efforts on high-level groups engaged in patterns of racketeering. This investigative model enables us to target senior gang leadership and to develop enterprise-based prosecutions.

Despite these efforts, there is something deeply disturbing happening all across America. The latest Uniform Crime Reporting statistics gathered from the *Preliminary Semiannual Uniform Crime Report, January-June, 2015,* show that the number of violent crimes in the nation increased by 1.7 percent during the first six months of 2015 as compared with figures reported for the same time in 2014, and this year we are also seeing an uptick of homicides in some cities. The police chiefs in these cities report that the increase is almost entirely among young men of color, at crime scenes in neighborhoods where multiple guns are recovered. There are a number of theories about what could be causing this disturbing increase in murders in our nation's cities

and the FBI is working with our federal, state, and local partners to uncover the root causes of violence and tackle it at its infancy.

Transnational Organized Crime

More than a decade ago, the image of organized crime was of hierarchical organizations, or families, that exerted influence over criminal activities in neighborhoods, cities, or states, but organized crime has changed dramatically. Today, international criminal enterprises run multi-national, multi-billion dollar schemes from start to finish. These criminal enterprises are flat, fluid networks with global reach. While still engaged in many of the "traditional" organized crime activities of loan-sharking, extortion, and murder, new criminal enterprises are targeting stock market fraud and manipulation, cyber-facilitated bank fraud and embezzlement, identity theft, trafficking of women and children, and other illegal activities. Preventing and combating transnational organized crime demands a concentrated effort by the FBI and federal, state, local, tribal, and international partners. The Bureau continues to share intelligence about criminal groups with our partners and to combine resources and expertise to gain a full understanding of each group.

Crimes Against Children

The FBI remains vigilant in its efforts to eradicate predators from our communities and to keep our children safe. Ready response teams are stationed across the country to quickly respond to abductions. Investigators bring to this issue the full array of forensic tools such as DNA, trace evidence, impression evidence, and digital forensics. Through improved communications, law enforcement also has the ability to quickly share information with partners throughout the world, and these outreach programs play an integral role in prevention.

The FBI also has several programs in place to educate both parents and children about the dangers posed by predators and to recover missing and endangered children should they be taken. Through our Child Abduction Rapid Deployment Teams, Innocence Lost National Initiative, Innocent Images National Initiative, annual Operation Cross Country, Office for Victim Assistance, 71 Child Exploitation Task Forces, and numerous community outreach programs, the FBI and its partners are working to keep our children safe from harm.

Operation Cross Country, a nationwide law enforcement action focusing on underage victims of prostitution, completed its ninth iteration during the first full week of October. Over 300 operational teams from over 500 agencies across 135 cities and 53 FBI Field Offices were instrumental in recovering child victims of all races and arresting pimps and customers. Ninety victim specialists, in coordination with local law enforcement victim advocates and non-governmental organizations, provided services to child and adult victims.

Indian Country

There are 567 federally recognized tribes in the United States, with the FBI and the Bureau of Indian Affairs having concurrent jurisdiction for felony-level crimes on over 200 reservations.

According to the 2010 Census, there are nearly five million people living on over 56 million acres of Indian reservations and other tribal lands. Criminal jurisdiction in these areas of our country is a complex maze of tribal, state, federal, or concurrent jurisdiction.

The FBI's Indian Country program currently has 124 special agents in 34 FBI field offices primarily working Indian Country crime matters. The number of agents, the vast territory, the egregious nature of crime being investigated, and the high frequency of the violent crime handled by these agents makes their responsibility exceedingly arduous. The FBI has 15 Safe Trails Task Forces that investigate violent crime, drug offenses, and gangs in Indian Country, and we continue to address the emerging threat from fraud and other white-collar crimes committed against tribal gaming facilities.

Sexual assault and child sexual assault are two of the FBI's investigative priorities in Indian Country. Statistics indicate that American Indians and Alaska Natives suffer violent crime at greater rates than other Americans. Approximately 75 percent of all FBI Indian Country matters involve death investigations, physical and/or sexual assault of a child, or aggravated assaults. At any given time, approximately 30 percent of the FBI's Indian Country investigations are based on allegations of sexual abuse of a child.

The FBI continues to work with Tribes through the Tribal Law and Order Act of 2010 to help Tribal governments better address the unique public safety challenges and disproportionately high rates of violence and victimization in many tribal communities. The act encourages the hiring of additional law enforcement officers for Native American lands, enhances tribal authority to prosecute and punish criminals, and provides the Bureau of Indian Affairs and tribal police officers with greater access to law enforcement databases.

FBI Laboratory

The FBI Laboratory is one of the largest and most comprehensive forensic laboratories in the world. Operating out of a state-of-the-art facility in Quantico, Virginia, laboratory personnel travel the world on assignment, using science and technology to protect the nation and support law enforcement, intelligence, military, and forensic science partners. The Lab's many services include providing expert testimony, mapping crime scenes, and conducting forensic exams of physical and hazardous evidence. Lab personnel possess expertise in many areas of forensics supporting law enforcement and intelligence purposes, including explosives, trace evidence, documents, chemistry, cryptography, DNA, facial reconstruction, fingerprints, firearms, and WMD.

One example of the Lab's key services and programs is the Combined DNA Index System (CODIS), which relies on computer technology to create a highly effective tool for linking crimes. It enables federal, state, and local forensic labs to exchange and compare DNA profiles electronically, thereby connecting violent crimes and known offenders. Using the National DNA Index System of CODIS, the National Missing Persons DNA Database helps identify missing and unidentified individuals.

Another example of the laboratory's work is the Terrorist Explosives Device Analytical Center (TEDAC).. TEDAC was formally established in 2004 to serve as the single interagency organization to receive, fully analyze, and exploit all priority terrorist improvised explosive devices (IEDs). TEDAC coordinates the efforts of the entire government, including law enforcement, intelligence, and military entities, to gather and share intelligence about IEDs. These efforts help disarm and disrupt IEDs, link them to their makers, and prevent future attacks. Although originally focused on devices from Iraq and Afghanistan, TEDAC now receives and analyzes devices from all over the world.

The National Institute of Justice (NIJ) and the FBI have formed a partnership to address one of the most difficult and complex issues facing our nation's criminal justice system: unsubmitted sexual assault kits (SAKs). The FBI is the testing laboratory for the SAKs that law enforcement agencies and public forensic laboratories nationwide submit for DNA analysis. The NIJ coordinates the submission of kits to the FBI, and is responsible for the collection and analysis of the SAK data. The goal of the project is to better understand the issues concerning the handling of SAKs for both law enforcement and forensic laboratories and to suggest ways to improve the collection and processing of quality DNA evidence.

Additionally, the Laboratory Division maintains a capability to provide forensic support for significant shooting investigations. The Laboratory Shooting Reconstruction Team provides support to FBI field offices by bringing together expertise from various Laboratory components to provide enhanced technical support to document complex shooting crime scenes. Services are scene and situation dependent and may include mapping of the shooting scene in two or three dimensions, scene documentation through photography, including aerial and oblique imagery, 360 degree photography and videography, trajectory reconstruction, and the analysis of gunshot residue and shot patterns. Significant investigations supported by this team in recent years include the shootings in Chattanooga, the Charleston church shooting, the shootings at the Census Bureau and NSA, the shooting death of a Pennsylvania State Trooper, the Metcalf Power Plant shooting in San Francisco, and the Boston Bombing/Watertown Boat scene.

Information Technology

The Information and Technology Branch provides information technology to the FBI enterprise in an environment that is consistent with intelligence and law enforcement capabilities, and ensures reliability and accessibility by members at every location at any moment in time. Through its many projects and initiatives, it is expanding its information technology (IT) product offerings to better serve the operational needs of the agents and analysts and raising the level of services provided throughout the enterprise and with its counterparts in the law enforcement arena and Intelligence Community.

FBI special agents and analysts need the best technological tools available to be responsive to the advanced and evolving threats that face our nation. Enterprise information technology must be designed so that it provides information to operational employees rather than forcing employees to conform to the tools available. IT equipment must be reliable and accessible, as close to where

the work is performed as possible. By doing so, the FBI will decrease the time between information collection and dissemination.

Special agents and intelligence analysts are most effective when their individual investigative and intelligence work and collected information is connected to the efforts of thousands of other agents and analysts. We have developed software that makes that possible by connecting cases to intelligence, threats, sources, and evidence with our enterprise case and threat management systems. Similarly, we have provided our agents and analysts with advanced data discovery, analytics, exploitation, and visualization capabilities through tools integration and software development. In addition, we have enterprise business applications that address administrative, legal compliance, internal training standards, investigative and intelligence needs, and information sharing services. These tools allow for better data sharing with our law enforcement partners and allow FBI agents and analysts to share FBI intelligence products with our Intelligence Community partners around the world.

Conclusion

Finally, the strength of any organization is its people. The threats we face as a nation have never been greater or more diverse and the expectations placed on the Bureau have never been higher. Our fellow citizens look to us to protect the United States from all of those threats and the men and women of the Bureau continue to meet and exceed those expectations, every day. I want to thank them for their dedication and their service.

Chairman Goodlatte, Ranking Member Conyers, and members of the committee, thank you again for this opportunity to discuss the FBI's programs and priorities. Mr. Chairman, we are grateful for the leadership that you and this committee have provided to the FBI. We would not be in the position we are today without your support. Your support of our workforce, our technology, and our infrastructure make a difference every day at FBI offices in the United States and around the world, and we thank you for that support. I look forward to answering any questions you may have.

Mr. GOODLATTE. Thank you, Director Comey.

We will now begin questioning under the 5-minute rule, and I will begin my recognizing myself.

You testified that the FBI did not investigate the veracity of Secretary Clinton's testimony to the Select Benghazi Committee under oath. We referred the matter to the United States attorney for the District of Columbia.

Is the FBI now investigating the veracity of Secretary Clinton's testimony to the Select Benghazi Committee?

Mr. COMEY. Thank you, Mr. Chairman.

The Department has the referral—I think there were two separate referrals—has the referrals. Now it is pending, and so I am not going to comment on a pending matter at this point. But the matter has been received by the Department of Justice. They have the letters from the Committee.

Mr. GOODLATTE. And you cannot tell us whether or not you are indeed investigating?

Mr. COMEY. I can't.

Mr. GOODLATTE. When do you expect that you will be able to tell us more about this pending matter before the FBI?

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

Mr. GOODLATTE. Paul Combetta with Platte River Networks posted to Reddit asking how to "strip out a VIP's (VERY VIP) email address from a bunch of archived email." He went on, "The issue is that these emails involve the private email address of someone you'd recognize, and we're trying to replace it with a placeholder address as to not expose it."

This clearly demonstrates actions taken to destroy evidence by those operating Secretary Clinton's private server and by her staff. Certainly, Combetta did not take it upon himself to destroy evidence but had been instructed to do so by Secretary Clinton or her staff.

So my first question to you is, was the FBI aware of this Reddit post prior to offering Mr. Combetta immunity on May 3, 2016?

Mr. COMEY. I am not sure. I know that our team looked at it. I don't know whether they knew about it before then or not.

Mr. GOODLATTE. Isn't this information evidence of obstruction of justice and a violation of Mr. Combetta's immunity deal?

Mr. COMEY. Not necessarily, no.

Mr. GOODLATTE. Why not?

Mr. COMEY. It depends on what his intention was, why he wanted to do it. And I think our team concluded that what he was trying to do was, when they produced emails, not have the actual address but have some name or placeholder instead of the actual dotcom address in the "from" line.

Mr. GOODLATTE. Last week, the American people learned that Cheryl Mills, Secretary Clinton's longtime confidant and former State Department chief of staff, and Heather Samuelson, counsel to Secretary Clinton in the State Department, were granted immunity for production of their laptops. Why were they not targets of the FBI's criminal investigation?

Mr. COMEY. Well, a target is someone on whom you have sufficient evidence to indict. A subject is someone whose conduct at some point during the investigation falls within the scope of the in-

vestigation. So, certainly, with respect to Ms. Mills, at least initially, because she was an email correspondent, she was a subject of the investigation.

Mr. GOODLATTE. Did the FBI find classified information on either of their computers?

Mr. COMEY. I think there were some emails still on the computer that were recovered that were classified, is my recollection.

Mr. GOODLATTE. Isn't that a crime?

Mr. COMEY. Is what a crime, sir?

Mr. GOODLATTE. Having classified information on computers that are outside of the server system of the Department of State unsecured.

Mr. COMEY. No. It is certainly something—without knowing more, you couldn't conclude whether it was a crime. You would have to know what were the circumstances, what was the intention around that. But it is certainly something—it is the reason we conducted a yearlong investigation to understand where emails had gone on an unclassified system that contained classified information.

Mr. GOODLATTE. And what did you determine with regard to the emails found on her computer?

Mr. COMEY. I hope I am getting this right, and my troops will correct me if I am wrong, but they were duplicates of emails that had been produced, because the emails had been used to sort before a production.

Mr. GOODLATTE. Now, both Cheryl Mills and Heather Samuelson were granted immunity for production of these computers, these laptops. Why were they then allowed to sit in on the interview with Secretary Clinton?

Mr. COMEY. Right. The Department of Justice reached a letter agreement with the two lawyers to give them what is called act-of-production immunity, meaning nothing that is found on the laptop they turn over will be used against them directly, which is a fairly normal tool in investigations.

They were—Ms. Mills, in particular, was a member of Secretary Clinton's legal team. And so Secretary Clinton decides which of her lawyers come to voluntary interviews with the FBI.

Mr. GOODLATTE. Is it usual to allow a witness or potential witness in a subsequent prosecution, had one been undertaken, to be present in the room when the FBI interviews another witness and potential target of an investigation?

Mr. COMEY. The FBI has no ability to exclude or include any lawyer that a subject being interviewed chooses to have there.

Mr. GOODLATTE. Even if the lawyer is a witness in the case? Can you cite any other instance in which a witness to a criminal investigation, who has already been interviewed by the FBI, has been allowed to accompany and serve as legal counsel to the target of that investigation?

Mr. COMEY. I can't from personal experience. It wouldn't surprise me if it happened.

The FBI has no ability to decide who comes to an interview in a voluntary interview context. If it was a judicial proceeding, a judge could police who could be there. And, obviously, lawyers are governed by canons of ethics to decide what matters they can be

involved in. But it doesn't fall to us to say: You can be in, you can't be in.

Mr. GOODLATTE. But wouldn't you agree that it is a conflict of interest for them to serve as attorneys for Secretary Clinton in this matter, having been interviewed by the FBI as witnesses?

Mr. COMEY. That is a question a lawyer has to answer for him- or herself.

Mr. GOODLATTE. You are a lawyer, Director Comey. What is your opinion of that?

Mr. COMEY. Oh, I don't want to offer an opinion on that, but that is something a lawyer has to decide for themselves, I assume, with counsel and consulting our canons of ethics, what matters you can be involved in and what you can't.

But, again, the Bureau's role in conducting a voluntary interview is to interview the subject. Who they bring is up to them.

Mr. GOODLATTE. How can you trust the veracity of Secretary Clinton's answers, knowing that witnesses previously interviewed by the FBI were allowed to participate in the interview?

Mr. COMEY. We assess the answers based on what is said and all the other evidence we have gathered.

Mr. GOODLATTE. In——

Mr. COMEY. It doesn't matter——

Mr. GOODLATTE [continuing]. Consultation with her "attorneys," who are also witnesses to what was previously done earlier and may, in fact, have, themselves, violated the law, for which they requested and were granted immunity.

Mr. COMEY. Again, the answer is—excuse me—the answer is the same. We make the assessment based on what the witness says and the other evidence we have gathered in the case. Who is sitting there, to me, is not particularly germane.

Mr. GOODLATTE. Thank you. My time has expired.

The Chair recognizes the gentleman from Michigan, Mr. Conyers, for his questions.

Mr. CONYERS. Thank you.

Thank you so much.

Director James Comey, twice this past week, the city of Charlotte, North Carolina, has been shaken by the shooting deaths of Black men. It is only one city out of many in this country looking for answers about the use of force by police. We on this Committee are looking for answers too.

You are a vocal advocate for better collection of information about violent encounters between police and civilian. Has the FBI's ability to collect this information improved in the year since we have last discussed it? And why are these statistics so important to our current discussion on the use of force by police?

Mr. COMEY. Thank you, Mr. Conyers.

We are having passionate, important conversations in this country about police use of force in connection with encounters with civilians, especially with African-Americans.

Mr. CONYERS. Yes.

Mr. COMEY. All of those conversations are uninformed today. They are all driven by anecdote. Because, as a country, we simply don't have the information to know: Do we have an epidemic of violence directed by law enforcement against Black folks? Do we have

an epidemic involving brown folks? White folks? We just don't know. And in the absence of that data, we are driven entirely by anecdote, and that is a very bad place to be.

I don't know whether there is an epidemic of violence. My instincts tell me there isn't, but I don't know. I can't tell you whether shootings involving people of any different color are up or down or sideways, and nor can anybody else in this country. And so, to discuss the most important things that are going on in this country, we need information. And the government should collect it. I can't think of something that is more inherently governmental than the need to use deadly force in an encounter during law enforcement work.

Mr. CONYERS. Yeah.

Mr. COMEY. And so what has changed in the last year, which is really good news, is that everybody in leadership in law enforcement in the United States has agreed with this, and they have agreed the FBI will build and maintain a database where we collect important information about all such encounters involving the use of deadly force. That will allow us to know what is going on in this country so we can have a thoughtful conversation and resist being ruled by individual anecdotes.

That is why it matters so much.

We are making progress. We will have this done—I would like to have it done in the next year. Certainly in the next 2 years this database will be up and running, because everybody gets why it matters so much.

Mr. CONYERS. Thank you.

On August 30, I wrote to you regarding Donald Trump's extensive connections to the Russian Government. The letter cites to a number of troubling reports, some that suggest mere conflicts of interest, others that might suggest evidence of a crime.

Last Friday, we read a new report suggesting that Mr. Trump's foreign policy adviser has been meeting with high-ranking, sanctioned officials in Moscow to discuss lifting economic sanctions if Mr. Donald Trump becomes President. The same report quotes, "a senior United States law enforcement official," who says that this relationship is being, "actively monitored and investigated."

Is the FBI investigating the activities of Mr. Trump or any adviser to the Trump campaign with respect to any line of communication between the campaign and the Russian Government?

Mr. COMEY. I can't say, sir. As I said in response to a different question from the Chairman, we don't confirm or deny investigations.

Mr. CONYERS. Well, more generally, then, is it lawful for a private citizen to enter into official government negotiations with a foreign nation?

Mr. COMEY. I don't think it is appropriate for me to answer that hypothetical.

Mr. CONYERS. Uh-huh. Well, in my view, our research shows that it is not. The Logan Act, 18 U.S.C., section 953, prohibits this conduct, in my view.

Does Mr. Trump currently receive intelligence briefings from the FBI?

Mr. COMEY. Both candidates and their running mates are offered on a regular basis briefings from the entire intelligence community. Some portion of the first briefing included an FBI segment, so yes.

Mr. CONYERS. Does his staff attend those meetings as well?

Mr. COMEY. No, just the candidate and the Vice Presidential candidate.

Mr. CONYERS. Uh-huh.

And, finally, if a member of either——

Mr. COMEY. Okay, no, I am wrong. I am sorry. I have to correct what I said.

Each was allowed to bring two people. And, as I recall, Mr. Trump did bring two individuals with clearances to the briefing. Secretary Clinton did not.

I am sorry. I misstated that.

Mr. CONYERS. All right.

Finally, if a member of either campaign were engaged in secret, back-channel communications with a foreign adversary, could that line of communication pose a threat to national security?

Mr. COMEY. Mr. Conyers, I don't think it is appropriate, given that I am not commenting on whether we have an investigation, to answer hypotheticals that might make it look like I am commenting on whether we have an investigation. So I would prefer not to answer that, sir.

Mr. CONYERS. Well, thank you for being here today.

And I thank the Chairman and yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, recognizes the gentleman from Wisconsin, Mr. Sensenbrenner, for 5 minutes.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Director Comey, welcome.

Who authorized granting Cheryl Mills immunity?

Mr. COMEY. I am sorry?

Mr. SENSENBRENNER. Who authorized granting Cheryl Mills immunity?

Mr. COMEY. It was a decision made by the Department of Justice. I don't know at what level inside. In our investigations, any kind of immunity comes from the prosecutors, not the investigators.

Mr. SENSENBRENNER. Okay. Did she request immunity?

Mr. COMEY. I don't know for sure what the negotiations involved. I believe her lawyer asked for act-of-production immunity with respect to the production of her laptop. That is my understanding. But, again, the FBI wasn't part of those conversations.

Mr. SENSENBRENNER. Now, it has been a matter of public record that Secretary Clinton brought nine people into the room where two FBI agents were questioning her. Is that normal practice?

Mr. COMEY. I don't know if there is a normal practice. I have done interviews with a big crowd and some with just the subject. It is unusual to have that large a number, but it is not unprecedented, in my experience.

Mr. SENSENBRENNER. Now, Cheryl Mills, you know, also stated that she was an attorney. I am very concerned that when a fact witness represents a client who might be the target of an investigation there is a conflict of interest.

And, you know, rather than letting Ms. Mills make a determination, would the FBI be willing to refer the matter of a fact witness, Ms. Mills in this case, representing a target, Secretary Clinton in this case, to the appropriate bar association for investigation?

Mr. COMEY. That is not a role for the FBI. Even though I happen to be a lawyer, we are not lawyers; we are investigators.

Mr. SENSENBRENNER. Okay.

Mr. COMEY. So that is a question for the legal part of the Department of Justice.

Mr. SENSENBRENNER. Okay.

Why did Ms. Mills request immunity? Was she hiding something or was she afraid that something would incriminate her that was on her laptop?

Mr. COMEY. I don't know. I am sure that is a conversation she and her lawyer had and then her lawyer had with lawyers at the Department. I just don't know.

Mr. SENSENBRENNER. Uh-huh. Well, you know, there was an op-ed by Professor Jonathan Turley that appeared in the media that said that there are a lot of good cases scuttled by granting immunity. And there was lots of immunity that was granted here.

Doesn't it concern you, as an investigator, that your chiefs in the Justice Department decided to become an immunity-producing machine for many people who would have been very key witnesses should there have been a prosecution?

Mr. COMEY. I don't think of it that way. It doesn't strike me there was a lot of immunity issued in this case. I know it is a complicated subject, but there is all different kinds of immunity. There are probably three different kinds that featured in this case. Fairly typical in a complex, white-collar case, especially, as you try and work your way up toward your subject. So my overall reaction is this looks like ordinary investigative process to me.

Mr. SENSENBRENNER. Well, the target was not an ordinary target. I think we all know that. And since you announced that there would be no prosecution of Secretary Clinton in July, there have been several very material issues that are troubling, and would this not require a reopening of the investigation to solve those issues?

Mr. COMEY. I haven't seen anything that would come near to that kind of situation.

Mr. SENSENBRENNER. Oh——

Mr. COMEY. I know there are lots of questions, lots of controversy. I am very proud of the way this was done.

Mr. SENSENBRENNER. Well, you know, come on now. With all, you know, due respect, since you made this announcement, there have been many more issues that came out that were not on the table prior to your announcement that the investigation against Secretary Clinton had been dropped.

And, you know, I think the American public is entitled to answers on this, particularly since we have to know, you know, the extent of the classified information which ended up being in the private email server.

You know, all of us on this Committee have got security clearances of some kind or another, you know, and I am kind of worried that, you know, if I got some classified information and went back

to my office and used an unsecured server to send it to somebody who may also have had classified information, I would be in big trouble. And I should be in big trouble if I did something like that.

There seems to be different strokes for different folks on this. And that is what Americans are concerned about, particularly when we are looking to elect someone to the highest office of the land and the leader of the free world.

I don't think your answers are satisfactory at all, Mr. Comey. I do have a great deal of respect for you, but I think that there is a heavy hand coming from someplace else.

And, with that, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, recognizes the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

First, let me express my admiration and thanks to the FBI for the professional manner and excellent work they did in the bombings that occurred in New York about a block out of my district to apprehend the suspect within, what, 48 hours. And through everything, it was a very good indication of teamwork and of professionalism, and I congratulate you on that.

Secondly, let me say that I think that the mud that is being thrown from the other side of this table here continually, only because of the ongoing Presidential election, in the case in which the FBI decided there was nothing to prosecute, it is over—we all know nobody would even be talking about it if one weren't—if Hillary Clinton weren't a Presidential candidate. This is pure political maneuvering.

But let me talk about a case that may pose a current national security threat to the United States and ask you a few questions about that.

In his earlier remarks, Mr. Conyers referenced an August 30 letter from the Ranking Members of a number of House Committees. That letter asked whether the FBI was investigating troubling connections between Trump campaign officials and Russian interests and whether they contributed to the illegal hacking of the Democratic National Committee and the Democratic National Campaign Committee.

You are familiar with that letter, I take it.

Mr. COMEY. Yes, I am familiar with the letter.

Mr. NADLER. I would like to ask you a few questions.

The letter said this: "On August 8, 2016, Roger Stone, a Donald Trump confidant, revealed that he has communicated with WikiLeaks founder Julian Assange about the upcoming release of additional illegally hacked Democratic documents. Mr. Stone made these statements during a Republican campaign event while answering a question about a potential October surprise."

Obviously, if someone is stating publicly that he is in direct communication with the organization that obtained these illegally hacked documents, I assume the FBI would want to talk to that person.

Has the FBI interviewed Roger Stone about his communications with Julian Assange or his knowledge of how WikiLeaks got these illegally obtained documents?

Mr. COMEY. I can't comment on that.

Mr. NADLER. Mr. Stone stated that he has knowledge about upcoming leaks of additional illegally hacked documents. Has the FBI asked him about those communications?

Mr. COMEY. I also can't comment on that.

Mr. NADLER. Because it is an ongoing investigation?

Mr. COMEY. I don't want to confirm whether there is or is not an investigation. That is why—that is the way I answered Mr. Conyers' questions as well.

Mr. NADLER. Director Comey, the FBI acknowledged in private—in public statements and testimony that it—acknowledged that it was investigating Secretary Clinton's use of a private email server, and that was while the investigation was still ongoing. Now you can't comment on whether there is an investigation.

Is there a different standard for Secretary Clinton and Donald Trump? If not, what is the consistent standard?

Mr. COMEY. No. Our standard is we do not confirm or deny the existence of investigations. There is an exception for that: when there is a need for the public to be reassured; when it is obvious it is apparent, given our activities, public activities, that the investigation is ongoing. But our overwhelming rule is we do not comment except in certain exceptional circumstances.

Mr. NADLER. Aren't there exceptional circumstances when close officials to a candidate of a major political party for the United States says publicly that he is in communication with foreign officials and anticipates further illegal activity?

Mr. COMEY. I don't think so.

Mr. NADLER. Mr. Trump's campaign chairman, Paul Manafort, resigned after failing to disclose his role in assisting a pro-Russian party in Ukraine. The Associated Press reported, "Donald Trump's campaign chairman helped a pro-Russian party in Ukraine secretly route $2.2 million in payments to two prominent Washington lobbying firms in 2012, and did so in a way that effectively obscured the foreign political party's efforts to influence U.S. policy."

Has the FBI interviewed Mr. Manafort about his failure to disclose his work for this foreign government, as Federal law requires?

Mr. COMEY. I have to give you the same answer, Mr. Nadler.

Mr. NADLER. Has the FBI interviewed Rick Gates, who reportedly still works for the Trump campaign, about his involvement in this scheme?

Mr. COMEY. Same answer, sir.

Mr. NADLER. Same answer.

Director Comey, after you investigated Secretary Clinton, you made a decision to explain publicly who you interviewed and why. You also disclosed documents, including notes from this interview—from those interviews.

Why shouldn't the American people have the same level of information about your investigation of those associated with Mr. Trump?

Mr. COMEY. Well, I am not confirming that we are investigating people associated with Mr. Trump.

In the matter of the email investigation, it was our judgment—my judgment and the rest of the FBI's judgment that those were exceptional circumstances where the public needed transparency.

Mr. NADLER. Okay.

My final question is the following. You investigated Secretary Clinton's emails and so forth, everything we have been talking about. You concluded, I believe quite properly, there was nothing to prosecute. And you have announced, in my opinion quite properly, that you had investigated it and there was nothing there—or there was nothing to prosecute. That was proper.

But having announced—when a prosecutorial agency announces that "we have investigated so-and-so and we have decided to prosecute because" or "we have investigated so-and-so and we have decided not to prosecute because," why is it appropriate for that prosecutorial agency to go further and say, "Even though we decided not to prosecute, we still think this person did this, that, or the other thing and it was proper or improper"? Why is it proper for a prosecutorial agency to characterize your opinion of the propriety of the actions of someone who you have announced that you have decided did nothing criminal and shouldn't be prosecuted?

Mr. COMEY. That is a very hard decision. That is why it is the exception to the rule. You do risk damaging someone who isn't convicted.

The judgment I made in this case is, given the unusual—in fact, I hope unprecedented—nature of this investigation, that it was appropriate to offer that transparency. Not an easy call. I really wrestled with it, but I think, on balance, it was the right call.

Mr. NADLER. Let me just say before my time expires that I think—and I am just talking for myself—that that was highly inappropriate; that, having determined that there was nothing to prosecute and having announced that quite properly, for a prosecuting agency, the Department of Justice, to comment with comments that will be looked upon as authoritative that what she did was right or wrong or good or bad is not the appropriate role of a prosecuting agency and risks, not in this case perhaps, but risks—and I talk really now because of the future.

I don't want to see that happen again with regard to anybody, because it puts anybody who did not commit a crime, who you or the Justice Department or whoever has determined did not commit a crime or there is no evidence sufficient to prosecute, puts them at the mercy of the opinion of an individual or individuals within the prosecuting agency. And that is just not right under our system.

I yield back.

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

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

Mr. SMITH. Thank you, Mr. Chairman.

Director Comey, thank you for those examples of the FBI's good work in your opening statement. I think we all appreciate what the FBI has done.

My first question is this: Would you reopen the Clinton investigation if you discovered new information that was both relevant and substantial?

Mr. COMEY. It is hard for me to answer in the abstract. We would certainly look at any new and substantial information.

Mr. SMITH. Yeah. Let's impersonalize it—in general, if you discovered new information that was substantial and relevant, you would reopen an investigation, would you not?

Mr. COMEY. Again, even in general, I don't think we can answer that in the abstract. What we can say is, if people—any investigation, if people have new and substantial information, we would like to see it so we can make an evaluation.

Mr. SMITH. Okay. Let me give you some examples and mention several new developments that I think have occurred and ask you if you have become aware of them.

The first example is what the Chairman mentioned a while ago. An employee at a company that managed former Secretary Clinton's private email server said, "I need to strip out a VIP's (VERY VIP) email address from a bunch of archived emails. Basically, they don't want the VIP's email address exposed to anyone."

I assume you are aware of that.

Mr. COMEY. I am aware of that.

Mr. SMITH. Okay.

The same employee called a new retention policy designed to delete emails after 60 days a, "Hillary cover-up operation." And you saw that, did you not?

Mr. COMEY. Say the last—I am sorry, Mr. Smith, I couldn't hear the last——

Mr. SMITH. The same employee called the new retention policy designed to delete emails after 60 days a "Hillary cover-up operation." You saw that?

Mr. COMEY. I don't know that particular language.

Mr. SMITH. Okay. We will get you the source, but you can take my word for it that that is what he said.

Mr. COMEY. I will.

Mr. SMITH. Another example: A former Clinton Foundation employee, who also managed the Clinton server, destroyed devices used by former Secretary Clinton by smashing them with a hammer. You are aware of that?

Mr. COMEY. Yes.

Mr. SMITH. Okay.

Two employees of the company that managed former Secretary Clinton's server recently pled the Fifth Amendment to Congress to avoid self-incrimination. And you are aware of that?

Mr. COMEY. Yes.

Mr. SMITH. Okay.

And then, lastly, 15,000 more work-related emails were discovered, though there had been an attempt to wrongly delete them. And you are aware of that?

Mr. COMEY. I think we discovered them.

Mr. SMITH. Right.

To me, Director Comey, what I cited are not the actions of innocent people. There is a distinct possibility that Mrs. Clinton or her staff directed others to destroy evidence in a government investigation, which, of course, is against the law. So I would urge you to reopen your investigation.

Do you want to comment on that?

Mr. COMEY. I don't.

Mr. SMITH. Okay. I know you can't tell us whether you have or have not, but I believe I have given evidence of new information that is relevant and substantial that would justify reopening the investigation.

My next question is this: I know you granted immunity to a number of individuals, but if you had new information that is relevant and substantial, you would be able to investigate them further, wouldn't you?

Mr. COMEY. Not to quibble, the FBI doesn't grant immunity to anybody. The Department of Justice is able to grant very different kinds of immunity. If new and substantial evidence develops either that a witness lied under a grant of use immunity or under any kind of immunity, of course the Department of Justice can pursue it.

Mr. SMITH. Okay.

Mr. COMEY. Nobody gets lifetime immunity.

Mr. SMITH. Right. Okay. Thank you, Director Comey.

Last question is this: As Chairman of the Science Committee, I issued the FBI a subpoena on September 19, 2016. The due date for a response was 2 days ago, September 26. Bureau staff has still not provided the requested information and documents.

Yesterday, we pointed out to them that the Science Committee has jurisdiction over the National Institute of Standards and Technology, which sets standards for the Federal Information Security Modernization Act of 2014.

I trust you intend to comply with the subpoena.

Mr. COMEY. I intend to continue the conversations we have been having about the subpoena.

Mr. SMITH. Yeah.

Mr. COMEY. As you know, we have made a lot of documents available to at least six Committees, and the question of whether we should make them additional—available to another Committee is something that we are struggling with but talking to your folks about.

Mr. SMITH. Okay. To me, there is no struggle. If we have clear jurisdiction, which we can demonstrate, it, I think, obligates you to comply with the subpoena.

Mr. COMEY. Yes, sir. We are not trying to be disrespectful. We are just not sure we see the jurisdictional issue the way that your folks do. But we are continuing to talk about it.

Mr. SMITH. Okay. Thank you, Director Comey.

Mr. ISSA. Would the gentleman yield?

Mr. SMITH. I will yield to the gentleman from California.

Mr. ISSA. Thank you.

The Chairman of the full Committee had asked something earlier, and I just want to point out and ask that it be placed in the record—according to the Maryland Code of Ethics 19301.11, it specifically prohibits a former or current government officer or employee from acting as a counsel to someone that they represented in government. And I would like that to be placed in the record.

In light of the fact that the Maryland Bar has——

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

[The information referred to follows:]

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Mr. ISSA. In light of the fact the Maryland Bar has this prohibition, would that have changed your view of allowing her in and saying you had no authority?

Mr. COMEY. I am not qualified nor am I going to answer questions about legal ethics in this forum. The FBI has no basis to exclude somebody from an interview who the subject of the interview says is on their legal team.

Mr. SMITH. Okay. Thank you, Director Comey.

Thank you, Mr. Chairman. I yield back.

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

Ms. LOFGREN. Thank you, Mr. Chairman.

And thank you, Director Comey, for once again appearing before this Committee, as you appear before so many Committees here in the House. Sometimes I wonder how you get any work done at all, that you are called up here so frequently.

You know, there has been a lot of focus on the private email that Secretary Clinton used, just as her predecessor, Colin Powell, used. So far as I am aware from the public comments, there is no forensic evidence that there was a breach of that server, although theoretically you could intrude and not leave evidence.

But there has been very little focus on the breach at the State Department email system. Now, it has been reported in the press that this breach of the State Department email system was one of the largest ever of a Federal system and was accomplished by, according to the press, either China or Russia.

I am wondering if you are able to give us any insight into whether it was, in fact, the Russians who hacked into the State Department email system or whether that is still under investigation.

Mr. COMEY. Not in this open forum, I can't.

Ms. LOFGREN. All right. I am hoping that we can get some insight in an appropriate classified setting on that.

Now, we have watched with some concern—and I know you are also concerned—about the Russian intrusion into our election system. It has been reported to us that the Russians hacked into the Democratic National Committee database. They also hacked into the Democratic Congressional Campaign Committee. And it seems that they are making an effort to influence the outcome of this election. We have been warned that the information stolen might not just be released but also be altered and forged and then released, in an effort to impact the election here in the United States.

Yesterday, there were press reports—and I don't know if they are accurate, and I am interested if you are able to tell us—that the Russians have also hacked the telephones of Democratic staffers and that there was a request for Democratic staffers to bring their cell phones into the FBI to have them mirrored.

Can you tell us anything about that?

Mr. COMEY. I can't at this point. What I can say in response to the first part of your question, any hacking is something we take very seriously. Any hacking in connection with this Nation's election system is something we take extraordinarily seriously, the whole of government. So it is something the FBI is spending a lot of time on right now to try and understand. So what are they up to and what does it involve and what is the scope of it to equip the

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

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

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

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

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.

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.

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-

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.

***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

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

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:]

Wednesday September 28, 2016
The Buffalo News.com (/)

Opinion

FBI Director James Comey told reporters that he would personally interview Hillary Clinton "in coming days." That was six weeks ago. (New York Times file photo)

Handling of Clinton probe tarnishes FBI

BY: Douglas Turner (mailto:dturner@buffnews.com)

Published: May 16, 2016, 06:30 AM
Updated: May 16, 2016, 09:08 AM

WASHINGTON – The American people, with forgettable exceptions, have great faith in the FBI and its leadership.

We believe in the integrity of its top brass, its processes and most certainly in 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 its investigation into the private email server used by Hillary Rodham Clinton when she was secretary of state, and related FBI investigations into her staff.

It is taking too long. And the subjects of the investigation, including Clinton, are the beneficiaries of more than due diligence.

One critic is a former FBI agent and former Erie County district attorney – Edward C. Cosgrove. He and other former agents form an informal, close-knit club.

"Most former FBI agents cannot understand why the FBI investigation of former Secretary of State Hillary Clinton has not been concluded," Cosgrove said.

The prominent practicing attorney and Georgetown law graduate wonders why the bureau's probe "has not been turned over to the attorney general [Loretta Lynch] for her prosecutive judgment."

Cosgrove was recommended in 1977 by a bipartisan group of congressmen for the director's job.

Federal law equips FBI agents with the power to get ugly jobs done quickly. When the bureau comes calling, any false statement made to an agent, either in person or in writing, subjects that person to the potential charge of a felony. No lawyer need be present. Bureau rule FR: 302 requires that the interviewing agent file a written report within five days.

This email probe is different. The Washington Post reported this week that a longtime Clinton aide, Cheryl Mills, briefly walked out of an FBI interview when her lawyer said she was being asked questions that were off-limits. Mills' interview was also off the record.

There is no obligation on the part of the FBI to allow any question to be off-limits, or testimony to be off the record.

This probe is 10 months old. Time.com reported in mid-July that "federal officials" then asked for a probe of Clinton's emails.

Still, Clinton has not been interviewed by the FBI.

FBI Director James Comey has been pressed by reporters as to when Clinton will be interviewed. He responded that he, Comey, would personally interview her "in coming days." That was six weeks ago.

Last week, Comey suggested the same thing in a pad-and-pen session with reporters. There is nothing in federal rules that prohibits more than one interview.

In this same briefing, Comey said there is no hard deadline to completing these investigations. But it is idle to suggest that there isn't a hard deadline concerning Clinton.

One occurs in nine weeks. That is the Democratic National Convention in Philadelphia, where Clinton expects to be nominated for the presidency. Is anyone suggesting that Comey or Lynch would bring any charges against Clinton after she becomes the nominee?

No one is seriously suggesting Clinton did anything criminal by creating a personal email system. Careless, yes. But hardly disqualifying.

But this slow roll is helping neither her, nor Comey, nor Lynch.

The delays are only feeding the rumor mill, and empowering her enemies.

Carl Bernstein, Watergate author, said one reason Sen. Bernie Sanders, D-Vt., stays in the race is the possibility the FBI could leak something damaging.

Somebody in the Clinton camp, as well as the government, should move promptly and decisively to end this back-and-forth lest the smudge on the FBI's shield becomes a smear.

email: dturner@buffnews.com

Douglas Turner

Copyright 1999 - 2016 - The Buffalo News copyright-protected material.

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

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

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——

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 CARE 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

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.

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:]

Press Release

Civil Rights Leaders Express Outrage over FBI Student Profiling Program

For Release:
Thursday, August 11, 2016

Contact:
Richard A. Fowler
202/393-6355; Cell: 202/412-7745
rfowler@aft.org

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

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.

####

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.

NEWS CENTER

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

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

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?

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

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

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?

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——

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

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.

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.

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

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.

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

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-

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?

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

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.

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

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

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

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.

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?

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.

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.

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-

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

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?

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:]

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 1 2 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.

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

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,

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.

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.

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.

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

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.

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—

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.

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

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.

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

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

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

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.

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.

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-

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

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

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.

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.

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

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.]

APPENDIX

Material Submitted for the Hearing Record

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
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
RAUL R. LABRADOR, Idaho
BLAKE FARENTHOLD, Texas
DOUG COLLINS, Georgia
RON DeSANTIS, Florida
MIMI WALTERS, California
KEN BUCK, Colorado
JOHN RATCLIFFE, Texas
DAVE TROTT, Michigan
MIKE BISHOP, Michigan

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MEMBER

JERROLD NADLER, New York
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
JUDY CHU, California
TED DEUTCH, Florida
LUIS V. GUTIERREZ, Illinois
KAREN BASS, California
CEDRIC L. RICHMOND, Louisiana
SUZAN K. DelBENE, Washington
HAKEEM S. JEFFRIES, New York
DAVID CICILLINE, Rhode Island
SCOTT PETERS, California

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.

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?

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"?

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?

○