

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Thursday, July 19, 2018 2:05 AM
To: Flores, Sarah Isgur (OPA); O'Callaghan, Edward C. (ODAG); Bolitho, Zachary (ODAG); Gauhar, Tashina (ODAG)
Cc: Raman, Sujit (ODAG)
Subject: 2018.07.18.Aspen.Draft
Attachments: 2018.07.18.Aspen.Draft.docx; ATT00001.txt

Latest draft. We will try to finalize at the USAO by 10:00 your time.

Raman, Sujit (ODAG)

From: Raman, Sujit (ODAG)
Sent: Thursday, July 19, 2018 12:21 PM
To: Rosenstein, Rod (ODAG)
Cc: O'Callaghan, Edward C. (ODAG); Bolitho, Zachary (ODAG); Gauhar, Tashina (ODAG); Demers, John C. (NSD); Hickey, Adam (NSD); Wiegmann, Brad (NSD); Flores, Sarah Isgur (OPA)
Subject: Latest version
Attachments: 2018.07.19.Aspen.Draft.1158 AM.docx

Please see attached. This is what I'll be printing out and placing in DAG's binder.

Any final edits, please send to me in the text of an email and identify the specific page #, etc.

Please do not release this outside of DOJ until DAG has an opportunity to give the signal.

Thanks,

Sujit

Raman, Sujit (ODAG)

From: Raman, Sujit (ODAG)
Sent: Thursday, July 19, 2018 2:38 PM
To: Rosenstein, Rod (ODAG); Flores, Sarah Isgur (OPA)
Cc: O'Callaghan, Edward C. (ODAG); Bolitho, Zachary (ODAG); Gauhar, Tashina (ODAG)
Subject: FINAL DAG Aspen speech — cleared
Attachments: 2018.07.19.Aspen.Draft.1233 AM.docx; ATT00001.htm

Sarah — attached is final/cleared version. Good to go! Thanks.

Begin forwarded message:

From: (b)(6) per EOUSA (USACO)" (b) (6) >
Date: July 19, 2018 at 12:34:28 PM MDT
To: "Raman, Sujit (ODAG)" (b) (6) >
Subject: 2018.07.19.Aspen.Draft.1233 AM.docx

**Prepared Remarks of Deputy Attorney General Rod J. Rosenstein
Aspen Security Forum
Aspen, Colorado
Thursday, July 19, 2018**

It is a privilege to join you this afternoon at one of the world's premier security conferences.

We meet at a fraught moment. For too long, along with other nations, we enjoyed the extraordinary benefits of modern technology without adequately preparing for its considerable risks. Director of National Intelligence Dan Coats elevated the alarm last week, when he stated that "the digital infrastructure that serves this country is literally under attack." That is one of the rare instances when the word literally is used literally.

Our adversaries are developing cyber tools not only to steal our secrets and mislead our citizens, but also to disable our infrastructure by gaining control of computer networks.

Every day, malicious cyber actors infiltrate computers and accounts of individual citizens, businesses, the military, and all levels of government. Director Coats revealed that our adversaries

“target[] government and businesses in the energy, nuclear, water, aviation and critical manufacturing sectors.” They cause billions of dollars in losses, preposition cyber tools they could use for future attacks, and try to degrade our political system. So combating cybercrime and cyber-enabled threats to national security is a top priority of the Department of Justice.

Attorney General Jeff Sessions established a Cyber-Digital Task Force in February to consider two questions: What are we doing now to address cyber threats? And how can we do better?

Today, the Department of Justice is releasing a report that responds to the first question, providing a detailed assessment of the cyber threats confronting America and the Department’s efforts to combat them.

The Task Force report addresses a wide range of issues, including how to define the multi-faceted challenges of cyber-enabled crime; develop strategies to detect, deter and disrupt threats; inform victims and the public about dangers; and maintain a skilled workforce.

The report describes six categories of cyber threats, and explains how the Department of Justice is working to combat them.

One serious type of threat involves direct damage to computer systems, such as Distributed Denial of Service attacks and ransomware schemes.

Another category is data theft, which includes stealing personally identifiable information and intellectual property.

The third category encompasses cyber-enabled fraud schemes.

A fourth category includes threats to personal privacy, such as sextortion and other forms of blackmail and harassment.

Attacks on critical infrastructure constitute the fifth category. They include infiltrating energy systems, transportation systems, and telecommunications networks.

Each of those complex and evolving threats is serious, and the report details the important work that the Department of Justice is doing to protect America from them.

I plan to focus today on a sixth category of cyber-enabled threats: malign foreign influence operations, described in chapter one of the task force report.

The term “malign foreign influence operations” refers to actions undertaken by a foreign government, often covertly, to influence people’s opinions and advance the foreign nation’s strategic objectives. The goals frequently include creating and exacerbating social divisions and undermining confidence in democratic institutions.

Influence operations are a form of information warfare. Covert propaganda and disinformation are among the primary weapons.

The Russian effort to influence the 2016 presidential election is just one tree in a growing forest. Focusing merely on a single election misses the point. As Director Coats made clear, “these

actions are persistent, they are pervasive, and they are meant to undermine America's democracy on a daily basis, regardless of whether it is election time or not.”

Russian intelligence officers did not stumble onto the ideas of hacking American computers and posting misleading messages because they had a free afternoon. It is what they do every day.

This is not a new phenomenon. Throughout the twentieth century, the Soviet Union used malign influence operations against the United States and many other countries. In 1963, for example, the KGB paid an American to distribute a book claiming that the FBI and the CIA assassinated President Kennedy.

In 1980, the KGB fabricated and distributed a fake document claiming that there was a National Security Council strategy to prevent black political activists from working with African leaders.

During the Reagan Administration, the KGB spread fake stories that the Pentagon developed the AIDS virus as part of a biological weapons research program.

As Jonathan Swift wrote in 1710, “Falsehood flies, and the Truth comes limping after it.”

The Reagan Administration confronted the problem head on. It established an interagency committee called “the Active Measures Working Group” to counter Soviet disinformation. The group exposed Soviet forgeries and other propaganda.

Modern technology vastly expands the speed and effectiveness of disinformation campaigns. The Internet and social media platforms allow foreign agents to spread misleading political messages while masquerading as Americans.

Homeland Security Secretary Kirstjen Nielsen explained last weekend that our adversaries “us[e] social media, sympathetic spokespeople and other fronts to sow discord and divisiveness amongst the American people.”

Elections provide an attractive opportunity for foreign influence campaigns to undermine our political processes. According to the intelligence community assessment, foreign

interference in the 2016 election “demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations.”

The Department’s Cyber-Digital Task Force report contributes to our understanding by identifying five different types of malign foreign influence operations that target our political processes.

First, malicious cyber actors can target election infrastructure by trying to hack voter registration databases and vote-tallying systems. In 2016, foreign cyber intruders targeted election-related networks in as many as 21 states. There is no evidence that any foreign government ever succeeded in changing votes, but the risk is real. Moreover, even the possibility that manipulation may occur can cause citizens to question the integrity of elections.

Second, cyber operations can target political organizations, campaigns, and public officials. Foreign actors can steal private information through hacking, then publish it online to damage a

candidate, campaign, or political party. They can even alter that stolen information to promote their desired narrative.

Russia's intelligence services conducted cyber operations against both major U.S. political parties in 2016, and the recent indictment of Russian intelligence officers alleges a systematic effort to leak stolen campaign information.

The third category of malign influence operations affecting elections involves offers to assist political campaigns or public officials by agents who conceal their connection to a foreign government. Such operations may entail financial and logistical support to unwitting Americans.

Fourth, adversaries covertly use disinformation and other propaganda to influence American public opinion. Foreign trolls spread false stories online about candidates and issues, amplify divisive political messages to make them appear more pervasive and credible, and try to pit groups against each other. They may

also try to affect voter behavior by triggering protests or depressing voter turnout.

Finally, foreign governments use overt influence efforts, such as government-controlled media outlets and paid lobbyists. Those tactics may be employed lawfully if the foreign agents comply with registration requirements. But people should be aware when lobbyists or media outlets are working for a foreign government so they can evaluate the source's credibility. Particularly when respected figures argue in favor of foreign interests, it may matter to know that they are taking guidance from a foreign nation.

The election-interference charges filed in February demonstrate how easily human "trolls" distribute propaganda and disinformation. A Russian man recently admitted to a reporter that he worked with the trolls, in a separate department creating fake news for his own country. He "felt like a character in the book '1984' by George Orwell – a place where you have to write that white is black and black is white.... [Y]ou were in some kind of factory that

turned lying ... into an industrial assembly line. The volumes were colossal – there were huge numbers of people, 300 to 400, and they were all writing absolute untruths.”

When the man took a test for a promotion to the department working to fool Americans, he explained, “The main thing was showing that you are able to ... represent yourself as an American.”

The former troll believes that Russian audiences pay no attention to fake internet comments. But he has a different opinion about Americans. He thinks that we can be deceived, because Americans “aren’t used to this kind of trickery.”

That remark is sort of a compliment. In repressive regimes, people always assume that the government controls media outlets. We live in a country that allows free speech, so people are accustomed to taking it seriously when other citizens express their opinions. But not everyone realizes that information posted on the Internet may not even come from citizens.

Moreover, Internet comments may not even come from human beings. Automated bots magnify the impact of propaganda. Using software to mimic actions by human users, bots can circulate messages automatically, creating the appearance that thousands of people are reading and forwarding information. Together, bots and networks of paid trolls operating multiple accounts allow foreign agents to quickly spread disinformation and create the false impression that it is widely accepted.

The United States is not alone in confronting malign foreign influence. Russia reportedly conducted a hack-and-release campaign against President Macron during last year's French elections, and instituted similar operations against political candidates in other European democracies. Other foreign nations also engage in malign influence activities.

So what can we do to defend our values in the face of foreign efforts to influence elections, weaken the social fabric, and turn Americans against each other? Like terrorism and other national

security threats, the malign foreign influence threat requires a unified, strategic approach across all government agencies. The Departments of Justice, Homeland Security, State, Defense, Treasury, Intelligence agencies, and others play important roles.

Other sectors of society also need to do their part. State and local governments must secure their election infrastructure. Technology companies need to prevent misuse of their platforms. Public officials, campaigns, and other potential victims need to study the threats and protect themselves and their networks. And citizens need to understand the playing field.

The Department of Justice investigates and prosecutes malign foreign influence activity that violates federal criminal law. Some critics argue against prosecuting people who live in foreign nations that are unlikely to extradite their citizens. That is a shortsighted view.

For one thing, the defendants may someday face trial, if there is a change in their government or if they visit any nation that

cooperates with America in enforcing the rule of law. Modern forms of travel and communication readily allow criminals to cross national boundaries. Do not underestimate the long arm of American law – or the persistence of American law enforcement. People who thought they were safely under the protection of foreign governments when they committed crimes against America sometimes later find themselves in federal prisons.

Second, public indictments achieve specific deterrence by impeding the defendants from traveling to rule-of-law nations and raising the risk they will be held accountable for future cybercrime. Wanted criminals are less attractive co-conspirators.

Third, demonstrating our ability to detect and publicly charge hackers will deter some others from engaging in similar conduct.

Fourth, federal indictments are taken seriously by the public and the international community, where respect for our criminal justice system – including an understanding of the presumption of innocence and the standard of proof beyond a reasonable doubt –

means that our willingness to present evidence to a grand jury and ultimately at trial elicits a high degree of confidence in our allegations.

Fifth, victims deserve vindication, particularly when they are harmed by criminal acts that would be prosecuted if the perpetrator were located in the United States.

Sixth, federal criminal investigations support other penalties for malign foreign influence operations. For example, the Department of the Treasury can impose financial sanctions on defendants based on evidence exposed in indictments. Voters in foreign democracies, and influential citizens in autocratic regimes, can consider the allegations in making their own decisions about national leadership and foreign alliances.

The Department of the Treasury imposed sanctions on the individuals and entities identified in the February election-interference indictment, along with others engaged in malign activities. Nineteen individuals and five entities are subject to

sanctions that freeze assets under American jurisdiction. Even if they are never brought to court, they will face consequences.

The sanctions forbid those individuals and entities from engaging in transactions with Americans and using the American financial system. The Administration followed up with similar financial sanctions for a broader range of malign activities against seven oligarchs, 12 companies, 17 Russian government officials, and two other entities.

Prosecutions are one useful tool to help deter modern criminals who remain beyond our shores. The same approach applies outside the context of crimes committed to influence elections. That is why our government regularly files charges against criminals who hide overseas, such as Iranian government hackers who broke into computer networks of a dam; Iranian hackers who infiltrated American universities, businesses and government agencies for the Islamic Revolutionary Guard Corps; an Iranian hacker who infiltrated and extorted a television network;

Chinese government hackers who committed economic espionage; and Russian intelligence officers who stole data from an email service provider.

Intelligence assessments and criminal indictments are based on evidence. They do not reflect mere guesses. Intelligence assessments include analytical judgments based on classified information that cannot be disclosed because the evidence is from sources — people who will be unable to help in the future if they are identified and might be harmed in retaliation for helping America — and methods — techniques that would be worthless if our adversaries knew how we obtained the evidence. Indictments are based on credible evidence that the government must be prepared to introduce in court if necessary.

Some people may believe they can operate anonymously on the Internet, but cybercrime generally creates electronic trails that lead to the perpetrators.

Gathering intelligence about adversaries who threaten our way of life is a noble task. Outside the Department of Justice headquarters stands a statue of Nathan Hale. Hale was executed immediately, without a trial, after he was caught gathering intelligence for America during the Revolutionary War. His final words are recorded as follows: “I am so satisfied with the cause in which I have engaged, that my only regret is that I have but one life to offer in its service.”

The days when foreign criminals could cause harm inside America from remote locations without fear of consequences are past. If hostile governments choose to give sanctuary to perpetrators of malicious cybercrimes after we identify them, those governments will need to take responsibility for the crimes, and individual perpetrators will need to consider the personal cost.

But criminal prosecutions and financial sanctions are not a complete solution. We need to take other steps to prevent malicious behavior.

To protect elections, the first priority is to harden our infrastructure. State governments run American elections and are responsible for maintaining cybersecurity, but they need federal help. The Department of Homeland Security takes the lead in helping to protect voting infrastructure, and the FBI leads federal investigations of intrusions.

The FBI works closely with DHS to inform election administrators about threats. DHS and the FBI provide briefings to election officials from all fifty states about our foreign adversaries' intentions and capabilities.

We also seek to protect political organizations, campaigns, candidates, and public officials. The FBI alerts potential victims about malicious cyber activities and helps them respond to intrusions. It shares detailed information about threats and vulnerabilities.

To combat covert foreign influence on public policy, we enforce federal laws that require foreign agents to register with the

U.S. government. Those laws prohibit foreign nationals from tricking unwitting Americans while concealing that they are following orders from foreign government handlers. The Department of Justice is stepping up enforcement of the Foreign Agents Registration Act and related laws, and providing defensive counterintelligence briefings to local, state, and federal leaders and candidates.

Public attribution of foreign influence operations can help to counter and mitigate the harm caused by foreign government-sponsored disinformation. When people are aware of the true sponsor, they can make better-informed decisions.

We also help technology companies to counter covert foreign influence efforts. The FBI works with partners in the Intelligence Community to identify foreign agents as they establish their digital infrastructure and develop their online presence. The FBI helps technology companies disrupt foreign influence operations, by identifying foreign agents' activities so companies may consider the

voluntary removal of accounts and content that violate terms of service and deceive customers.

Technology companies bear primary responsibility for securing their products, platforms, and services from misuse. Many are now taking greater responsibility for self-policing, including by removing fake accounts. We encourage them to make it a priority to combat efforts to use their facilities for illegal schemes.

Even as we enhance our efforts to combat existing forms of malign influence, the danger continues to grow. Advancing technology may enable adversaries to create propaganda in new and unforeseen ways. Our government must continue to identify and counter them.

Exposing schemes to the public is an important way to neutralize them. The American people have a right to know if foreign governments are targeting them with propaganda.

In some cases, our ability to expose foreign influence operations may be limited by our obligation to protect intelligence sources and methods, and defend the integrity of investigations.

Moreover, we should not publicly attribute activity to a source unless we possess high confidence that foreign agents are responsible. We also do not want to unduly amplify an adversary's messages, or impose additional harm on victims.

In all cases, partisan political considerations must play no role in our efforts. We cannot seek to benefit or harm any lawful group, individual or organization. Our government does not take any official position on what people should believe or how they should vote, but it can and should protect them from fraud and deception perpetrated by foreign agents.

Unfettered speech about political issues lies at the heart of our Constitution. It is not the government's job to determine whether political opinions are right or wrong.

But that does not leave the government powerless to address the national security danger when a foreign government engages in covert information warfare. The First Amendment does not preclude us from publicly identifying and countering foreign government-sponsored propaganda.

It is not always easy to balance the many competing concerns in deciding whether, when, and how the government should disclose information about deceptive foreign activities relevant to elections. The challenge calls for the application of neutral principles.

The Cyber-Digital Task Force Report identifies factors the Department of Justice should consider in determining whether to disclose foreign influence operations. The policy reflects an effort to articulate neutral principles so that when the issue the government confronted in 2016 arises again – as it surely will – there will be a framework to address it.

Meanwhile, the FBI's operational Foreign Influence Task Force coordinates investigations of foreign influence campaigns. That task force integrates the FBI's cyber, counterintelligence, counterterrorism, and criminal law enforcement resources to ensure that we understand threats and respond appropriately. The FBI task force works with other federal agencies, state and local authorities, international partners, and the private sector.

Before I conclude, I want to emphasize that covert propaganda disseminated by foreign adversaries is fundamentally different from domestic partisan wrangling. As Senator Margaret Chase Smith proclaimed in her 1950 declaration of conscience, we must address foreign national security threats "patriotically as Americans," and not "politically as Republicans and Democrats."

President Reagan's Under Secretary of State, Lawrence Eagleburger, wrote about Soviet active measures in 1983. He said that "it is as unwise to ignore the threat as it is to become obsessed with the myth of a super Soviet conspiracy manipulating our

essential political processes.” He maintained that free societies must expose disinformation on a “persistent and continuing” basis.

Over the past year, Congress passed three statutes encouraging the Executive Branch to investigate, expose, and counter malign foreign influence operations. Publicly exposing such activities has long been a feature of U.S. law. The Foreign Agents Registration Act, which Congress enacted in 1938 to deter Nazi propagandists, mandates that the American public know when foreign governments seek to influence them.

Knowledge is power. In 1910, Theodore Roosevelt delivered a timeless speech about the duties of citizenship. It is best known for the remark that “it is not the critic who counts.” But Roosevelt’s most insightful observation is that the success or failure of a republic depends on the character of the average citizen. It is up to individual citizens to consider the source and evaluate the credibility of information when they decide what to believe.

Heated debates and passionate disagreements about public policy and political leadership are essential to democracy. We resolve those disagreements at the ballot box, and then we keep moving forward to future elections that reflect the will of citizens. Foreign governments should not be secret participants, covertly spreading propaganda and fanning the flames of division.

The government plays a central role in combating malign foreign influence and other cyber threats. The Attorney General's Cyber-Digital Task Force report demonstrates that the Department of Justice is doing its part to faithfully execute our oath to preserve, protect, and defend America.

I regret that my time today is insufficient to describe the report in greater detail. It is available on the Department of Justice website. I hope you read it and find it a useful contribution to public discussion about one of the most momentous issues of our time.

In brief, the report explains that we must continually adapt criminal justice and intelligence tools to combat hackers and other cybercriminals. Traditional criminal justice is most often

characterized by police chasing criminals and eyewitnesses pointing out perpetrators in courtrooms. Cybercrime requires additional tools and techniques.

We limit cybercrime damage by seizing or disabling servers, domain names, and other infrastructure that criminals use to facilitate attacks. We shut down the dark markets where criminals buy and sell stolen information. We restore control of compromised computers. We share information gathered during our investigations to help potential victims protect themselves. We seek restitution for victims. We pursue attribution and accountability for perpetrators. And we expose governments that defraud and deceive our citizens.

The Task Force report is just one aspect of our efforts. It is a detailed snapshot of how the Department of Justice assesses and addresses current cyber threats. The work continues, and not just within our Department.

Our government is doing more now than ever to combat malign foreign influence and other cyber threats. Trump

Administration agency appointees and White House officials work with career professionals every day to prevent cybercrime and protect elections.

Our adversaries will never relent in their efforts to undermine America, so we must remain eternally vigilant in the defense of liberty, and the pursuit of justice. And we must approach each new threat united in our commitment to the principle reflected in the motto adopted at the founding of our Republic: e pluribus unum.

Thank you.

From: USDOJ-Office of Public Affairs
Sent: Thursday, July 19, 2018 6:41 PM
To: Rosenstein, Rod (ODAG)
Subject: ATTORNEY GENERAL SESSIONS ANNOUNCES PUBLICATION OF CYBER-DIGITAL TASK FORCE REPORT

The United States Department of Justice



FOR IMMEDIATE RELEASE
THURSDAY, JULY 19, 2018

ATTORNEY GENERAL SESSIONS ANNOUNCES PUBLICATION OF CYBER-DIGITAL TASK FORCE REPORT

WASHINGTON Attorney General Jeff Sessions announced today the public release of a report produced by the Attorney General's Cyber Digital Task Force. The report provides a comprehensive assessment of the cyber enabled threats confronting the Nation, and catalogs the ways in which the Department of Justice combats those threats. Deputy Attorney General Rod Rosenstein formally issued the report in [remarks](#) delivered today at the Aspen Security Forum in Aspen, Colorado.

Attorney General Sessions established the Cyber Digital Task Force within the Department in February 2018 and directed the Task Force to answer two basic questions: how is the Department responding to global cyber threats? And how can federal law enforcement accomplish its mission in this area more effectively? Today's report answers the first question. It canvasses a wide spectrum of cyber threats; defines the multi faceted challenges posed by cyber enabled crime; describes the Department's work in detecting, deterring, and disrupting threats; explains how the Department collaborates with other government departments and with the private sector to respond to cyber incidents; and explores how the Department trains and maintains a skilled workforce.

"The Internet has given us amazing new tools that help us work, communicate, and participate in our economy, but these tools can be and frequently are exploited by criminals, terrorists, and enemy governments," Attorney General Sessions said. "At the Department of Justice, we take these threats seriously. That is why I am grateful to the members of the Cyber Digital Task Force for providing me with this thorough, first of its kind report, which comprehensively details the scope of the problem and provides initial recommendations on the most effective ways that the Department can confront cyber threats and keep the American people safe."

The report begins by focusing on one of the most pressing cyber enabled threats confronting the Nation: the threat posed by malign foreign influence operations. Chapter 1 explains what foreign influence operations are and describes how foreign adversaries have used these operations to target our Nation's democratic processes, including our elections. It concludes by describing the Department's efforts to protect the 2018 midterm elections and announces a new Department policy that governs the disclosure of foreign influence operations.

Chapters 2 and 3 discuss other significant cyber threats, particularly those relating to sophisticated cybercrime schemes, and describes how the Department is deploying its capabilities to combat them. Chapter 4 focuses on the role of the Federal Bureau of Investigation (FBI) in responding to cyber incidents. Chapter 5 describes the Department's efforts to recruit and train qualified personnel on cyber matters. Chapter 6 concludes the report by identifying certain priority policy matters and charting a path for the Task Force's future work.

The Task Force is chaired by Associate Deputy Attorney General Sujit Raman. Task Force members include John P. Cronan, now the Principal Deputy Assistant Attorney General in the Criminal Division who until recently served as Acting Assistant Attorney General; John C. Demers, Assistant Attorney General for the National Security Division; Beth A. Williams, Assistant Attorney General for the

Office of Legal Policy; John M. Gore, Acting Assistant Attorney General for Civil Rights Division; Andrew E. Lelling, United States Attorney for the District of Massachusetts; Peter A. Winn, the Department's Acting Chief Privacy and Civil Liberties Officer; and two senior executives at the FBI. Components from across the Department contributed to the drafting of the Task Force report. The initial report of the Attorney General's Cyber Digital Task Force can be downloaded at <https://justice.gov/cyberreport>, along with a fact sheet [here](#).

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Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202 514 2007.

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From: USDOJ-Office of Public Affairs
Sent: Thursday, July 19, 2018 6:44 PM
To: Rosenstein, Rod (ODAG)
Subject: DEPUTY ATTORNEY GENERAL ROD J. ROSENSTEIN DELIVERS REMARKS AT THE ASPEN SECURITY FORUM

The United States Department of Justice



FOR IMMEDIATE RELEASE
THURSDAY, JULY 19, 2018

Note: The report can be found at <https://justice.gov/cyberreport>

**DEPUTY ATTORNEY GENERAL ROD J. ROSENSTEIN
DELIVERS REMARKS AT THE ASPEN SECURITY FORUM**

Aspen, CO

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Remarks as prepared for delivery

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First, malicious cyber actors can target election infrastructure by trying to hack voter registration databases and vote-tallying systems. In 2016, foreign cyber intruders targeted election-related networks in as many as 21 states. There is no evidence that any foreign government ever succeeded in changing votes, but the risk is real. Moreover, even the possibility that manipulation may occur can cause citizens to question the integrity of elections.

Second, cyber operations can target political organizations, campaigns, and public officials. Foreign actors can steal private information through hacking, then publish it online to damage a candidate, campaign, or political party. They can even alter that stolen information to promote their desired narrative.

Russia’s intelligence services conducted cyber operations against both major U.S. political parties in 2016, and the recent indictment of Russian intelligence officers alleges a systematic effort to leak stolen campaign information.

The third category of malign influence operations affecting elections involves offers to assist political campaigns or public officials by agents who conceal their connection to a foreign government. Such operations may entail financial and logistical support to unwitting Americans.

Fourth, adversaries covertly use disinformation and other propaganda to influence American public opinion. Foreign trolls spread false stories online about candidates and issues, amplify divisive political messages to make them appear more pervasive and credible, and try to pit groups against each other. They may also try to affect voter behavior by triggering protests or depressing voter turnout.

Finally, foreign governments use overt influence efforts, such as government-controlled media outlets and paid lobbyists. Those tactics may be employed lawfully if the foreign agents comply with registration requirements. But people should be aware when lobbyists or media outlets are working for a foreign government so they can evaluate the source's credibility. Particularly when respected figures argue in favor of foreign interests, it may matter to know that they are taking guidance from a foreign nation.

The election-interference charges filed in February demonstrate how easily human "trolls" distribute propaganda and disinformation. A Russian man recently admitted to a reporter that he worked with the trolls, in a separate department creating fake news for his own country. He "felt like a character in the book '1984' by George Orwell—a place where you have to write that white is black and black is white.... [Y]ou were in some kind of factory that turned lying ... into an industrial assembly line. The volumes were colossal—there were huge numbers of people, 300 to 400, and they were all writing absolute untruths."

When the man took a test for a promotion to the department working to fool Americans, he explained, "The main thing was showing that you are able to ... represent yourself as an American."

The former troll believes that Russian audiences pay no attention to fake internet comments. But he has a different opinion about Americans. He thinks that we can be deceived, because Americans "aren't used to this kind of trickery."

That remark is sort of a compliment. In repressive regimes, people always assume that the government controls media outlets. We live in a country that allows free speech, so people are accustomed to taking it seriously when other citizens express their opinions. But not everyone realizes that information posted on the Internet may not even come from citizens.

Moreover, Internet comments may not even come from human beings. Automated bots magnify the impact of propaganda. Using software to mimic actions by human users, bots can circulate messages automatically, creating the appearance that thousands of people are reading and forwarding information.

Together, bots and networks of paid trolls operating multiple accounts allow foreign agents to quickly spread disinformation and create the false impression that it is widely accepted.

The United States is not alone in confronting malign foreign influence. Russia reportedly conducted a hack-and-release campaign against President Macron during last year's French elections, and instituted similar operations against political candidates in other European democracies. Other foreign nations also engage in malign influence activities.

So what can we do to defend our values in the face of foreign efforts to influence elections, weaken the social fabric, and turn Americans against each other? Like terrorism and other national security threats, the malign foreign influence threat requires a unified, strategic approach across all government agencies. The Departments of Justice, Homeland Security, State, Defense, Treasury, Intelligence agencies, and others play important roles.

Other sectors of society also need to do their part. State and local governments must secure their election infrastructure. Technology companies need to prevent misuse of their platforms. Public officials, campaigns, and other potential victims need to study the threats and protect themselves and their networks. And citizens need to understand the playing field.

The Department of Justice investigates and prosecutes malign foreign influence activity that violates federal criminal law. Some critics argue against prosecuting people who live in foreign nations that are unlikely to extradite their citizens. That is a shortsighted view.

For one thing, the defendants may someday face trial, if there is a change in their government or if they visit any nation that cooperates with America in enforcing the rule of law. Modern forms of travel and communication readily allow criminals to cross national boundaries. Do not underestimate the long arm of American law or the persistence of American law enforcement. People who thought they were safely under the protection of foreign governments when they committed crimes against America sometimes later find themselves in federal prisons.

Second, public indictments achieve specific deterrence by impeding the defendants from traveling to rule-of-law nations and raising the risk they will be held accountable for future cybercrime. Wanted criminals are less attractive co-conspirators.

Third, demonstrating our ability to detect and publicly charge hackers will deter

some others from engaging in similar conduct.

Fourth, federal indictments are taken seriously by the public and the international community, where respect for our criminal justice system including an understanding of the presumption of innocence and the standard of proof beyond a reasonable doubt means that our willingness to present evidence to a grand jury and ultimately at trial elicits a high degree of confidence in our allegations.

Fifth, victims deserve vindication, particularly when they are harmed by criminal acts that would be prosecuted if the perpetrator were located in the United States.

Sixth, federal criminal investigations support other penalties for malign foreign influence operations. For example, the Department of the Treasury can impose financial sanctions on defendants based on evidence exposed in indictments. Voters in foreign democracies, and influential citizens in autocratic regimes, can consider the allegations in making their own decisions about national leadership and foreign alliances.

The Department of the Treasury imposed sanctions on the individuals and entities identified in the February election-interference indictment, along with others engaged in malign activities. Nineteen individuals and five entities are subject to sanctions that freeze assets under American jurisdiction. Even if they are never brought to court, they will face consequences.

The sanctions forbid those individuals and entities from engaging in transactions with Americans and using the American financial system. The Administration followed up with similar financial sanctions for a broader range of malign activities against seven oligarchs, 12 companies, 17 Russian government officials, and two other entities.

Prosecutions are one useful tool to help deter modern criminals who remain beyond our shores. The same approach applies outside the context of crimes committed to influence elections. That is why our government regularly files charges against criminals who hide overseas, such as Iranian government hackers who broke into computer networks of a dam; Iranian hackers who infiltrated American universities, businesses and government agencies for the Islamic Revolutionary Guard Corps; an Iranian hacker who infiltrated and extorted a television network; Chinese government hackers who committed economic espionage; and Russian intelligence officers who stole data from an email service provider.

Intelligence assessments and criminal indictments are based on evidence. They do not reflect mere guesses. Intelligence assessments include analytical judgments based on classified information that cannot be disclosed because the evidence is from sources — people who will be unable to help in the future if they are identified and might be harmed in retaliation for helping America — and methods — techniques that would be worthless if our adversaries knew how we obtained the evidence. Indictments are based on credible evidence that the government must be prepared to introduce in court if necessary.

Some people may believe they can operate anonymously on the Internet, but cybercrime generally creates electronic trails that lead to the perpetrators.

Gathering intelligence about adversaries who threaten our way of life is a noble task. Outside the Department of Justice headquarters stands a statue of Nathan Hale. Hale was executed immediately, without a trial, after he was caught gathering intelligence for America during the Revolutionary War. His final words are recorded as follows: “I am so satisfied with the cause in which I have engaged, that my only regret is that I have but one life to offer in its service.”

The days when foreign criminals could cause harm inside America from remote locations without fear of consequences are past. If hostile governments choose to give sanctuary to perpetrators of malicious cybercrimes after we identify them, those governments will need to take responsibility for the crimes, and individual perpetrators will need to consider the personal cost.

But criminal prosecutions and financial sanctions are not a complete solution. We need to take other steps to prevent malicious behavior.

To protect elections, the first priority is to harden our infrastructure. State governments run American elections and are responsible for maintaining cybersecurity, but they need federal help. The Department of Homeland Security takes the lead in helping to protect voting infrastructure, and the FBI leads federal investigations of intrusions.

The FBI works closely with DHS to inform election administrators about threats. DHS and the FBI provide briefings to election officials from all fifty states about our foreign adversaries’ intentions and capabilities.

We also seek to protect political organizations, campaigns, candidates, and public officials. The FBI alerts potential victims about malicious cyber activities and helps them respond to intrusions. It shares detailed information about threats and vulnerabilities.

To combat covert foreign influence on public policy, we enforce federal laws that require foreign agents to register with the U.S. government. Those laws prohibit foreign nationals from tricking unwitting Americans while concealing that they are following orders from foreign government handlers. The Department of Justice is stepping up enforcement of the Foreign Agents Registration Act and related laws, and providing defensive counterintelligence briefings to local, state, and federal leaders and candidates.

Public attribution of foreign influence operations can help to counter and mitigate the harm caused by foreign government-sponsored disinformation. When people are aware of the true sponsor, they can make better-informed decisions.

We also help technology companies to counter covert foreign influence efforts. The FBI works with partners in the Intelligence Community to identify foreign agents as they establish their digital infrastructure and develop their online presence. The FBI helps technology companies disrupt foreign influence operations, by identifying foreign agents' activities so companies may consider the voluntary removal of accounts and content that violate terms of service and deceive customers.

Technology companies bear primary responsibility for securing their products, platforms, and services from misuse. Many are now taking greater responsibility for self-policing, including by removing fake accounts. We encourage them to make it a priority to combat efforts to use their facilities for illegal schemes.

Even as we enhance our efforts to combat existing forms of malign influence, the danger continues to grow. Advancing technology may enable adversaries to create propaganda in new and unforeseen ways. Our government must continue to identify and counter them.

Exposing schemes to the public is an important way to neutralize them. The American people have a right to know if foreign governments are targeting them with propaganda.

In some cases, our ability to expose foreign influence operations may be limited by our obligation to protect intelligence sources and methods, and defend the integrity of investigations.

Moreover, we should not publicly attribute activity to a source unless we possess high confidence that foreign agents are responsible. We also do not want to unduly amplify an adversary's messages, or impose additional harm on victims.

In all cases, partisan political considerations must play no role in our efforts. We cannot seek to benefit or harm any lawful group, individual or organization. Our government does not take any official position on what people should believe or how they should vote, but it can and should protect them from fraud and deception perpetrated by foreign agents.

Unfettered speech about political issues lies at the heart of our Constitution. It is not the government's job to determine whether political opinions are right or wrong.

But that does not leave the government powerless to address the national security danger when a foreign government engages in covert information warfare. The First Amendment does not preclude us from publicly identifying and countering foreign government-sponsored propaganda.

It is not always easy to balance the many competing concerns in deciding whether, when, and how the government should disclose information about deceptive foreign activities relevant to elections. The challenge calls for the application of neutral principles.

The Cyber-Digital Task Force Report identifies factors the Department of Justice should consider in determining whether to disclose foreign influence operations. The policy reflects an effort to articulate neutral principles so that when the issue the government confronted in 2016 arises again as it surely will there will be a framework to address it.

Meanwhile, the FBI's operational Foreign Influence Task Force coordinates investigations of foreign influence campaigns. That task force integrates the FBI's cyber, counterintelligence, counterterrorism, and criminal law enforcement resources to ensure that we understand threats and respond appropriately. The FBI task force works with other federal agencies, state and local authorities, international partners, and the private sector.

Before I conclude, I want to emphasize that covert propaganda disseminated by foreign adversaries is fundamentally different from domestic partisan wrangling. As Senator Margaret Chase Smith proclaimed in her 1950 declaration of conscience, we must address foreign national security threats "patriotically as Americans," and not "politically as Republicans and Democrats."

President Reagan's Under Secretary of State, Lawrence Eagleburger, wrote about Soviet active measures in 1983. He said that "it is as unwise to ignore the threat as it is to become obsessed with the myth of a super Soviet conspiracy manipulating our essential political processes." He maintained that free societies

must expose disinformation on a “persistent and continuing” basis.

Over the past year, Congress passed three statutes encouraging the Executive Branch to investigate, expose, and counter malign foreign influence operations. Publicly exposing such activities has long been a feature of U.S. law. The Foreign Agents Registration Act, which Congress enacted in 1938 to deter Nazi propagandists, mandates that the American public know when foreign governments seek to influence them.

Knowledge is power. In 1910, Theodore Roosevelt delivered a timeless speech about the duties of citizenship. It is best known for the remark that “it is not the critic who counts.” But Roosevelt’s most insightful observation is that the success or failure of a republic depends on the character of the average citizen. It is up to individual citizens to consider the source and evaluate the credibility of information when they decide what to believe.

Heated debates and passionate disagreements about public policy and political leadership are essential to democracy. We resolve those disagreements at the ballot box, and then we keep moving forward to future elections that reflect the will of citizens. Foreign governments should not be secret participants, covertly spreading propaganda and fanning the flames of division.

The government plays a central role in combating malign foreign influence and other cyber threats. The Attorney General’s Cyber-Digital Task Force report demonstrates that the Department of Justice is doing its part to faithfully execute our oath to preserve, protect, and defend America.

I regret that my time today is insufficient to describe the report in greater detail. It is available on the Department of Justice website. I hope you read it and find it a useful contribution to public discussion about one of the most momentous issues of our time.

In brief, the report explains that we must continually adapt criminal justice and intelligence tools to combat hackers and other cybercriminals. Traditional criminal justice is most often characterized by police chasing criminals and eyewitnesses pointing out perpetrators in courtrooms. Cybercrime requires additional tools and techniques.

We limit cybercrime damage by seizing or disabling servers, domain names, and other infrastructure that criminals use to facilitate attacks. We shut down the dark markets where criminals buy and sell stolen information. We restore control of compromised computers. We share information gathered during our investigations to help potential victims protect themselves. We seek restitution

for victims. We pursue attribution and accountability for perpetrators. And we expose governments that defraud and deceive our citizens.

The Task Force report is just one aspect of our efforts. It is a detailed snapshot of how the Department of Justice assesses and addresses current cyber threats. The work continues, and not just within our Department.

Our government is doing more now than ever to combat malign foreign influence and other cyber threats. Trump Administration agency appointees and White House officials work with career professionals every day to prevent cybercrime and protect elections.

Our adversaries will never relent in their efforts to undermine America, so we must remain eternally vigilant in the defense of liberty, and the pursuit of justice. And we must approach each new threat united in our commitment to the principle reflected in the motto adopted at the founding of our Republic: e pluribus unum.

Thank you.

#

DAG

18 - 955

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202-514-2007.

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From: PAO (SMO)
Sent: Friday, July 20, 2018 2:27 PM
To: PAO (SMO)
Subject: DOJ Daily Communications Report 7/20/18

U.S. Department of Justice

WASHINGTON

July 20, 2018

FROM: Office of Public Affairs
SUBJECT: DOJ Daily Communications Report

Top Stories

Justice Department details new efforts to combat foreign influence cyberattacks

“The Justice Department on Thursday released the findings of a cyber task force created in February by Attorney General Jeff Sessions, saying it will now implement a policy that will let the public know when a foreign government is attempting to influence American politics. ‘Influence operations are a form of information warfare,’ Deputy Attorney General Rod Rosenstein said in prepared remarks at Aspen Security Forum in Colorado on Thursday. ‘Exposing schemes to the public is an important way to neutralize them. The American people have a right to know if foreign governments are targeting them with propaganda.’...” ([Washington Examiner](#))

'The American People Have a Right to Know.' Justice Department Lays Out Plan to Fight Election Meddling

“The top law enforcement official overseeing the probe of Russian meddling in the 2016 election is defending the prosecution of foreign agents who may never see the inside of a U.S. courtroom. Speaking Thursday at the Aspen Security Forum in Colorado, Deputy Attorney General Rod Rosenstein also said the Justice Department will notify the U.S. public when it identifies efforts by foreign government to target U.S. politics. Rosenstein unveiled a report identifying the major cyber threats that the U.S. faces. ‘Exposing schemes to the public is an important way to neutralize them,’ he said. ‘The American people have a right to know if foreign governments are targeting them with propaganda.’...” ([TIME](#))

Rosenstein reveals how the Justice Department is fighting attacks on US elections

“Deputy Attorney General Rod Rosenstein released a 144-page report Thursday evening detailing actions he said the Department of Justice has taken to combat security issues related to U.S. elections, ‘foreign influence campaigns’ waged on social media and the full scope of other cybercrimes. The DOJ’s Cyber-Digital Task Force report seems designed to serve as a weighty reference guide to any questions of what U.S. law enforcement is doing to combat a proliferation of cyberthreats. The report goes well beyond election threats, detailing nearly every major legal action, incident and prominent cyberarrest in which the Justice Department has been involved in the past four years...” ([CNBC](#))

Justice Department plans to alert public to foreign operations targeting U.S. democracy

“The Justice Department plans to alert the public to foreign operations targeting U.S. democracy under a new policy designed to counter hacking and disinformation campaigns such as the one Russia undertook in 2016 to disrupt the presidential election. The government will inform American companies, private organizations and individuals that they are being covertly attacked by foreign actors attempting to affect elections or the political process. ‘Exposing schemes to the public is an important way to neutralize them,’ said Deputy Attorney General Rod J. Rosenstein, who announced the policy at the Aspen Security Forum in Colorado...” ([The Washington Post](#))

Top Issues and Accomplishments

Attorney General Sessions Announces Publication Of Cyber-Digital Task Force Report

Attorney General Jeff Sessions announced today the public release of a report produced by the Attorney General’s Cyber-Digital Task Force. The report provides a comprehensive assessment of the cyber-enabled threats confronting the Nation, and catalogs the ways in which the Department of Justice combats those threats. Deputy Attorney General Rod Rosenstein formally issued the report in remarks delivered today at the Aspen Security Forum in Aspen, Colorado. Attorney General Sessions established the Cyber-Digital Task Force within the Department in February 2018 and directed the Task Force to answer two basic questions: how is the Department responding to global cyber threats? And how can federal law enforcement accomplish its mission in this area more effectively? Today’s report answers the first question. It canvasses a wide spectrum of cyber threats; defines the multi-faceted challenges posed by cyber-enabled crime; describes the Department’s work in detecting, deterring, and disrupting threats; explains how the Department collaborates with other government departments and with the private sector to respond to cyber incidents; and explores how the Department trains and maintains a skilled workforce.

Deputy Attorney General Rod J. Rosenstein Delivers Remarks At The Aspen Security Forum

“...Attorney General Jeff Sessions established a Cyber-Digital Task Force in February to consider two questions: What are we doing now to address cyber threats? And how can we do better? Today, the Department of Justice is releasing a report that responds to the first question, providing a detailed assessment of the cyber threats confronting America and the Department’s efforts to combat them. The Task Force report addresses a wide range of issues, including how to define the multi-faceted challenges of cyber-enabled crime; develop strategies to detect, deter and disrupt threats; inform victims and the public about dangers; and maintain a skilled workforce. The report describes six categories of cyber threats, and explains how the Department of Justice is working to combat them. One serious type of threat involves direct damage to computer systems, such as Distributed Denial of Service attacks and ransomware schemes. Another category is data theft, which includes stealing personally identifiable information and intellectual property. The third category encompasses cyber-enabled fraud schemes. A fourth category includes threats to personal privacy, such as sextortion and other forms of blackmail and harassment. Attacks on critical infrastructure constitute the fifth category. They include infiltrating energy systems, transportation systems, and telecommunications networks. Each of those complex and evolving threats is serious, and the report details the important work that the Department of Justice is doing to protect America from them. I plan to focus today on a sixth category of cyber-enabled threats: malign foreign influence operations, described in chapter one of the task force report...”

The Bureau Of Justice Assistance Awards \$1 Million To Support Law Enforcement Response To Santa Fe, Texas, Shooting

The Bureau of Justice Assistance (BJA) today awarded \$1 million to the Texas Office of the Governor, Criminal Justice Division, to pay overtime expenses for law enforcement officers who responded to the scene of the deadly shootings on May 18 at Santa Fe High School in Santa Fe, Texas. The State of Texas, the City of Santa Fe, and Galveston County incurred several million dollars in costs in responding to the incident. State and local officials continue to incur expenses and the grant will defray some of the costs.

Tomorrow's Events

There are no scheduled public events.

###

From: Bolitho, Zachary (ODAG)
Sent: Thursday, July 26, 2018 9:26 PM
To: Rosenstein, Rod (ODAG)
Subject: Fwd: Microsoft - Readout of Call

FYSA.

Begin forwarded message:

From: "Raman, Sujit (ODAG)" (b) (6) >
Date: July 26, 2018 at 8:17:47 PM EDT
To: "O'Callaghan, Edward C. (ODAG)" (b) (6) >, "Bolitho, Zachary (ODAG)" (b) (6) >
Cc: "Gauhar, Tashina (ODAG)" (b) (6) >
Subject: Fwd: Microsoft - Readout of Call

FYI. Sen Mccaskill has just announced the Russians tried to hack her campaign last year. Hers was one of the three campaign hacks that Microsoft revealed at Aspen, without giving us (or FBI) a heads up.

<https://www.google.com/amp/thehill.com/policy/cybersecurity/399095-russians-tried-to-hack-mccaskills-2018-campaign-report%3famp>

Per below, MSFT, unlike its peers, apparently has a policy that it doesn't disclose hacks to the government (it tells the victims . (b) (5)

Begin forwarded message:

From: "Hickey, Adam (NSD)" (b) (6) >
Date: July 25, 2018 at 12:31:54 PM EDT
To: (b)(6), (b)(7)(C), (b)(7)(E) per FBI, (b)(6) per NSD (NSD)" (b) (6) >
Cc: (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(6) per NSD (NSD)" (b) (6) > (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI, "Sinton, Robert S. (DO) (FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(6), (b)(7)(C), (b)(7)(E) per FBI, "Raman, Sujit (ODAG)" (b) (6) >, "Gauhar, Tashina (ODAG)" (b) (6) >, "Wiegmann, Brad (NSD)" (b) (6) >, "Hardee, Christopher (NSD)" (b) (6) >, (b)(6) per NSD (NSD)" (b) (6) >
Subject: RE: Microsoft - Readout of Call

Thanks (b)(6) per NSD, an (b)(6), (b)(7)(C) per FBI. Adding folks from ODAG and L&P for awareness (see highlighted paragraph). FITF, I think we (DOJ and FBI) should (b)(5); (b)(5), (b)(6), (b)(7)(C) per FBI (b)(6), (b)(7)(C) per FBI suggests (b)(5); (b)(5), (b)(6), (b)(7)(C) per FBI

(b)(5) per NSD
[Redacted]

[Redacted]

(b)(5) per NSD
[Redacted]
(b)(5) per FBI; (b)(5) per NSD
[Redacted]

(b)(5) per FBI; (b)(5) per NSD
[Redacted]

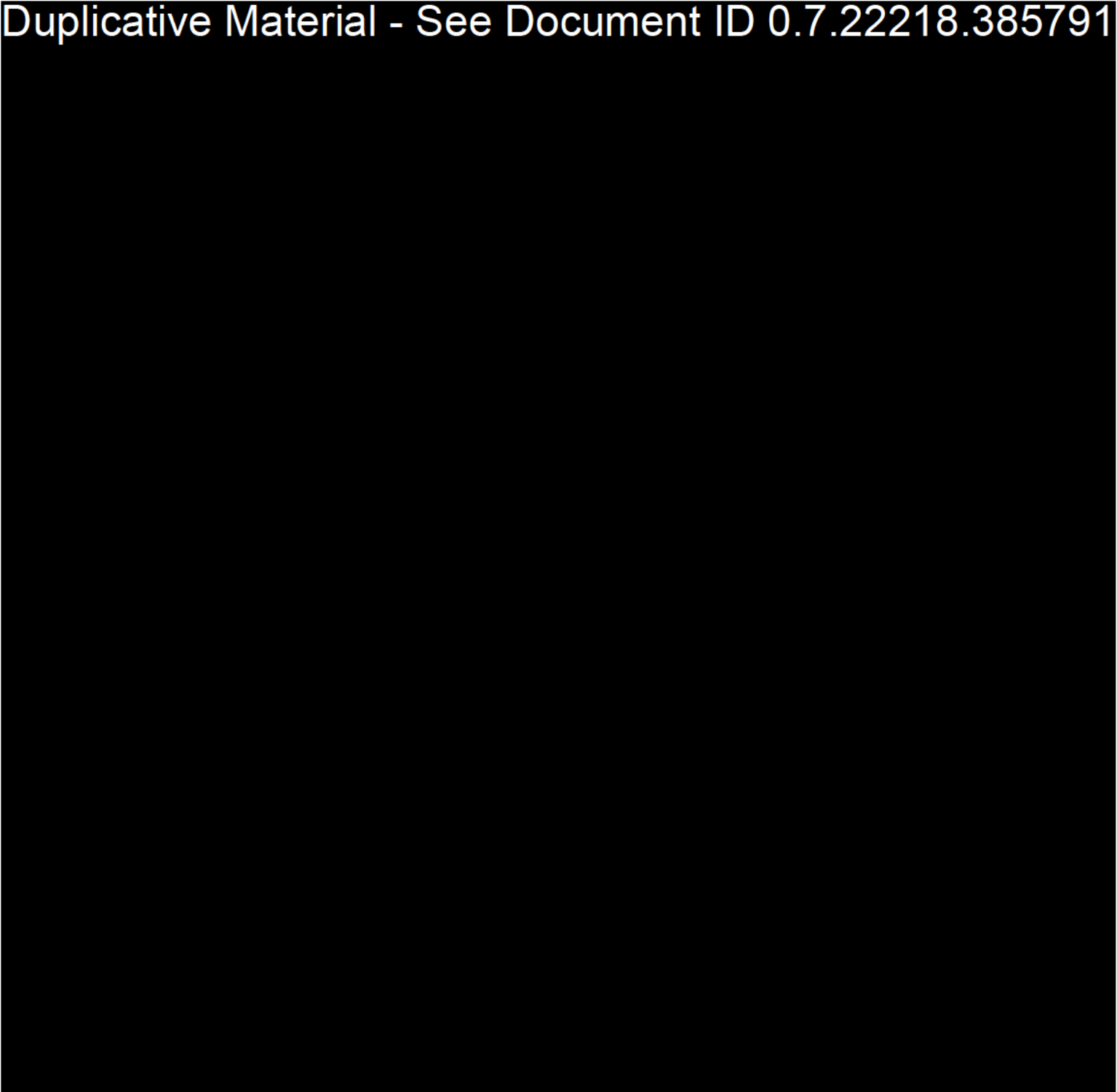
(b)(5) per NSD
[Redacted]

(b)(6) per NSD
Deputy Chief (Cyber)
Counterintelligence and Export Control Section (CES)
U.S. Department of Justice | National Security Division
(b) (6)

From: Rosenstein, Rod (ODAG)
Sent: Friday, July 27, 2018 12:23 AM
To: Hybart, Camden (JMD)
Subject: Fwd: Microsoft - Readout of Call

Begin forwarded message:

Duplicative Material - See Document ID 0.7.22218.385791



From: Rosenstein, Rod (ODAG)
Sent: Sunday, July 29, 2018 5:45 PM
To: Rosenstein, Rod (ODAG)
Subject: FW: Draft response to Grassley 5/17 letter
Attachments: Draft.Response.Grassley.2018.05.17.docx

From: Rosenstein, Rod (ODAG)
Sent: Tuesday, May 29, 2018 4:26 PM
To: Schools, Scott (ODAG) (b) (6) >; Boyd, Stephen E. (OLA) (b) (6) >; Lasseter, David F. (OLA) (b) (6) >
Cc: O'Callaghan, Edward C. (ODAG) (b) (6) >; Bolitho, Zachary (ODAG) (b) (6) >
Subject: RE: Draft response to Grassley 5/17 letter

Revised draft. This will require a few days of review by OLC. It is worth discussing whether this is the right time to

(b) (5)

From: Rosenstein, Rod (ODAG)
Sent: Monday, May 21, 2018 1:54 AM
To: Schools, Scott (ODAG) (b) (6) >; Boyd, Stephen E. (OLA) (b) (6) >; Lasseter, David F. (OLA) (b) (6) >
Cc: O'Callaghan, Edward C. (ODAG) (b) (6) >
Subject: Draft response to Grassley 5/17 letter

This one is no rush, and perhaps should (b) (5). This seems like a good opportunity to provide details about special counsels, and to (b) (5)

(b) (5) It also gives me a chance to highlight that (b) (5)

From: Bolitho, Zachary (ODAG)
Sent: Tuesday, July 31, 2018 1:41 PM
To: Rosenstein, Rod (ODAG)
Cc: Ellis, Corey F. (ODAG); O'Callaghan, Edward C. (ODAG)
Subject: ABA Q&A Talking Points
Attachments: Draft Q&A.docx

Sir,

Attached are four questions that will be posed to you following your speech at the ABA. You will see that Matt Baughman and others have also prepared talking points for each of the questions.

Please let us know of any questions or concerns.

Thanks,
Zac

From: Rosenstein, Rod (ODAG)
Sent: Wednesday, August 8, 2018 9:24 PM
To: Raman, Sujit (ODAG)
Subject: Re: The Cybersecurity 202: Trump team isn't doing enough to deter Russian cyberattacks, according to our panel of security experts - The Washington Post

Thanks.

On Aug 8, 2018, at 8:49 PM, Raman, Sujit (ODAG) (b) (6) > wrote:

"" A handful of respondents said they believed the administration was doing enough to deter cyberattacks from Russia.

One pointed in particular to a [recent report](#) released by Deputy Attorney General Rod J. Rosenstein that outlined a new Justice Department policy to alert the public to malign foreign influence operations targeting U.S. democracy. The report also lays out the department's efforts to fight cybercrime. "This is about optics as much as anything else," the expert said. "Do not take my word for it, read Rod Rosenstein's report. If you can do better, stand up." ""

https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2018/08/08/the-cybersecurity-202-trump-team-isn-t-doing-enough-to-deter-russian-cyberattacks-according-to-our-panel-of-security-experts/5b69c3631b326b0207955f94/?utm_term=.031699075957

The Cybersecurity 202: Trump team isn't doing enough to deter Russian cyberattacks, according to our panel of security experts

By [Derek Hawkins](#) August 8 at 7:54 AM

THE KEY

https://img.washingtonpost.com/wp-apps/imrs.php?src=http%3A%2F%2Fwww.washingtonpost.com%2Fw%2F2010-2019%2FWashingtonPost%2F2018%2F08%2F08%2FNational-Politics%2FImages%2FTrump_47452-9c63f.jpg&w=908

President Trump at Trump National Golf Club in Bedminster, N.J., on Aug. 7. (Carolyn Kaster/AP)

The Trump administration isn't doing enough to deter Russian cyberattacks, according to an overwhelming 94 percent of cybersecurity experts surveyed by the Cybersecurity 202.

https://img.washingtonpost.com/wp-apps/imrs.php?src=https%3A%2F%2Fpalomaimages.washingtonpost.com%2Fprod%2Ftrump-cyber-graph_tstmp_1533687168.jpg&w=908

The White House insists that it's mounting a robust response to digital offensives against election systems and other critical infrastructure. **We asked The Network, a panel of more than 100 cybersecurity leaders from government, academia and the private sector, to share their opinions in our ongoing, informal survey.** ([You can see the full list of experts here.](#) Some were granted anonymity in exchange for their participation.)

Our survey revealed broad doubts among experts about the country's deterrence strategy, after President Trump chose not to back the U.S. intelligence community's conclusions that Moscow directed the cyberattacks aimed at disrupting the 2016 presidential election at a July press conference with Russian President Vladimir Putin.

"Deterrence depends on a credible promise to take stern action. The Helsinki summit makes it impossible for the world to believe that this president will take stern action against Putin," said Peter Swire, former chief counselor for privacy at the Office of Management and Budget and a member of President Barack Obama's Review Group on Intelligence and Communications Technology.

And it's not just Helsinki: Even though Trump later [tried to walk back those comments](#) to say he believed the election interference took place, he also insisted it "could be other people also" besides Russia. **"When the President casts doubt on whether Russia is responsible, that undercuts any responsive actions the administration may take — such as sanctions — and sends the message that Russian malign activity in cyberspace is okay — not deterring them but encouraging them to do it again since there are no costs if doing so,"** said Christopher Painter, the State Department's former top cyber-diplomat.

Another expert who spoke on condition of anonymity put it bluntly: **"The president must set the tone."**

Some experts pointed to steps the Trump administration is taking to counter Russian aggression in cyberspace. Officials have [imposed sanctions](#) on Kremlin-linked individuals and businesses (though they did so under a mandate from Congress). The Justice Department has indicted [Russian government hackers](#) and [Internet trolls](#) for their roles in the Kremlin's 2016 election interference. The Department of Homeland Security is leading a [nationwide push](#) to help states improve election security ahead of the November midterms. And the National

Security Agency and U.S. Cyber Command have [teamed up](#) to combat Russian election interference.

But many still said those efforts aren't strong enough to prevent future attacks. **“Russia appears to feel no compunction about continuing to penetrate our critical infrastructure whenever and wherever possible,”** said Ashley Deeks, who serves on the State Department’s Advisory Committee on International Law. **“This suggests that sanctions and criminal indictments are not having a strong deterrent effect.”**

“Deterrence means stopping someone from doing what they would otherwise do by threatening a retaliation that is both credible and potent,” said Steve Weber, director of the Center for Long Term Cybersecurity at the University of California at Berkeley. **“I can’t find, within the Trump administration's policies and actions, signals of a clear deterrent that meets either of those thresholds.** If the administration believes differently, then their deterrence policy is clearly failing.”

Part of the problem is that there’s no clear leader in the White House heading up the government’s response to Russian cyberattacks, some experts said. The two logical choices [recently left](#): Tom Bossert, Trump’s homeland security adviser and cybersecurity czar, was forced out in April amid turnover on the National Security Council, and White House cybersecurity coordinator Rob Joyce departed soon after.

“While the White House is allowing individual agencies to do some good work to bolster our cyberdefense against additional Russian hacking, no senior official in the Trump administration has been empowered (and held accountable) to drive this effort, and no clear outcomes or metrics for measuring success have been articulated,” said Michele Flournoy, who served as undersecretary of defense for policy during the Obama administration.

“We need a White House cyber-coordinator,” said Chris Wysopal, chief technology officer at the cybersecurity firm CA Veracode. “Cybersecurity is a multicountry and private-public sector challenge. It requires someone in the White House to coordinate over the State Dept., Commerce Dept., DHS, and the intelligence agencies.”

Mark Weatherford, a former deputy undersecretary for cybersecurity at the Department of Homeland Security, agreed there was a leadership vacuum in the administration. **“It isn’t clear they are doing anything and even less clear who is in charge and supposed to be doing something,”** he said. **“The lack of urgency on an issue so important to our democracy is astonishing.”**

Flournoy noted that the president had recently [convened a meeting](#) with top national security and intelligence officials to discuss the administration’s efforts to safeguard the 2018 elections. **But the high-profile engagement was “for show — so the White House could say the president had a meeting on the subject,”** she said. “No new actions, urgency or resources resulted from it. Nor has the White House imposed serious costs on Russia for its meddling to date, which undermines its ability to deter future meddling.”

Others said the administration needs to outline a concrete, comprehensive strategy for responding to cyberattacks. “Sanctions are not enough. Naming and shaming does not provide any deterrence. And having only one person advise the president on all cyber-issues has been ineffective for years,” said Geoff Hancock, a principal at Advanced Cybersecurity

Group adjunct professor at George Washington Center for Cyber and Homeland Security. “We need to have a strong cyber-doctrine and deterrence plan and an offensive strategy.”

Such a strategy “must be a whole-of-government project, involving diplomacy, political activity and military force,” added Sam Visner, director of the National Cybersecurity Federally Funded Research and Development Center.

Better deterrence should also include better cyberdefense and more training for government pros, said Steve Grobman, McAfee's chief technology officer. "A combination of deploying defensive technology to defend the broad range of systems that are attractive targets along with training cyber-security professionals at all levels of government to respond effectively needs more attention."

There's also a public education component, he added. "The administration also needs to more aggressively help educate the public on how information warfare campaigns work and inoculate the public from being influenced by propaganda that can result from cyberattacks. Specifically, **more education is needed to educate the public that released breached data should never be trusted as it can be intertwined with fabricated information for the purpose of creating a false narrative.**"

The Obama administration shares blame for the country's failure to stave off digital attacks, said Nuala O'Connor, president and CEO of the Center for Democracy and Technology. **“Our government — under multiple administrations — has been slow to recognize the very real threats posed to critical infrastructure, to private-sector companies, and to our political discourse, leaving the responsibility of securing our digital borders to the hard-working CIOs, CISOs, and security teams of U.S. companies, large and small,”** she said. “Our government has also been far too slow in securing some of our basic institutions and functions of democracy from cyber attack, perhaps most notably, our election systems.”

But the Trump administration shouldn't keep trying to [pin the country's failures in cyberspace on its predecessor](#), another expert said: “There’s no action taken that they can point to that would make the Russians think twice about their active measures campaigns. **Their most commonly used talking point is ‘Obama did nothing.’ When you’re spending your time arguing someone else didn’t do enough, you’re just trying to guide the conversation away from your own lack of effective action.**”

A handful of respondents said they believed the administration was doing enough to deter cyberattacks from Russia.

One pointed in particular to a [recent report](#) released by Deputy Attorney General Rod J. Rosenstein that outlined a new Justice Department policy to alert the public to malign foreign influence operations targeting U.S. democracy. The report also lays out the department's efforts to fight cybercrime. **“This is about optics as much as anything else,”** the expert said. **“Do not take my word for it, read Rod Rosenstein's report. If you can do better, stand up.”**

PINGED, PATCHED, PWNED

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2019%2FWires%2FImages%2F2018-05-10%2FReuters%2F2018-05-10T135809Z_922962998_RC192C772900_RTRMADP_3_USA-INTERNET.jpg&w=908

(Yuri Gripas/Reuters)

PINGED: “The Federal Communications Commission misled the public when it claimed last year that a cyberattack was hindering Americans' ability to make their views known about net neutrality, according to an internal investigator's report released Tuesday,” [The Washington Post's Brian Fung reported](#). “The report finds that **the FCC — relying on information provided by its then-chief information officer — ‘misrepresented facts and provided misleading responses to Congressional inquiries related to this incident.’** The report also said that despite describing the event as a cyberattack, the FCC failed to follow the established cybersecurity policies that are routine in the aftermath of such an event.”

A May 8, 2017, press release attributed the disruption of the commission's systems to cyberattacks after HBO host John Oliver aired a segment on net neutrality on his show late on May 7. But the FCC inspector general's [report](#) contradicts this account. “**Investigators were unable to find evidence backing up an FCC press release, published under the name of David Bray, the chief information officer, asserting that ‘the FCC was subject to multiple distributed denial-of-service attacks’ overnight between May 7 and May 8, 2017,**” according to my colleague. “Although Bray said the FCC's electronic comment system remained functional throughout the incident, his statement also blamed unidentified outside actors for clogging the system and making it harder for ‘legitimate commenters’ to participate in the agency's decision-making process.”

<https://img.washingtonpost.com/wp-apps/imrs.php?src=http%3A%2F%2Fwww.washingtonpost.com%2Fw%2F2010-2019%2FWashingtonPost%2F2018%2F04%2F11%2FNational-Politics%2FImages%2Fzuckerberg010.jpg&w=908>

Facebook chief executive Mark Zuckerberg arrives for a Senate committee hearing in April. (Michael Robinson Chavez/The Washington Post)

PATCHED: The Knight First Amendment Institute at Columbia University is asking Facebook to modify its terms of services in order to create a “safe harbor” for journalists and researchers who carry out investigations in the public interest on the social network, [my colleague Ellen Nakashima reported](#) on Tuesday. The institute sent the [letter](#) Monday to Facebook chief executive Mark Zuckerberg on [behalf](#) of several journalists and researchers who work or used to work for the New York Times, PBS NewsHour, Gizmodo Media Group, Princeton University and the University of Michigan School of Information.

“Automated collection allows journalists and researchers to generate statistical insights into patterns and information flows on Facebook's platform, said Ramya Krishnan, legal fellow at the Knight institute,” Ellen wrote. “Sometimes journalists and researchers have attempted to set up temporary research accounts, using a variety of names and biographical attributes, to enable them to assess how the platform responds to different profiles, she said.” But Facebook's rules bar those practices, according to the Knight institute. **“We have spoken to a number of journalists and researchers who have modified their investigations to avoid violating Facebook's terms of service, even though doing so made their work less valuable to the public,”** the institute said in the letter. “In some cases, the fear of liability led them to abandon projects altogether.”

<https://img.washingtonpost.com/wp-apps/imrs.php?src=http%3A%2F%2Fwww.washingtonpost.com%2Fw%2F2010-2019%2FWashingtonPost%2F2017%2F07%2F11%2FNational-Politics%2FImages%2Fhill29.jpg&w=908>

Sens. Chris Van Hollen (D-Md.), left, and Benjamin L. Cardin (D-Md.). (Katherine Frey/The Washington Post)

PWNED: Sens. Chris Van Hollen (D-Md.) and Benjamin L. Cardin (D-Md.) want an investigation into an investment by a Russian-backed fund in a company hosting Maryland's election management system. “ByteGrid hosts Maryland’s voter registration system, candidacy and election management system, online ballot delivery system, and unofficial election night results website,” Van Hollen and Cardin wrote Tuesday in a [letter](#) to Treasury Secretary Steven Mnuchin. “Access to these systems could provide a foreign person with ties to a foreign government with information that could be used for intelligence or other purposes adverse to U.S. interests.”

The senators asked for the Committee on Foreign Investment in the United States, a panel chaired by Mnuchin that is tasked with reviewing whether transactions that may give control of American businesses to foreigners could threaten national security, to examine a transaction between ByteGrid LLC and AltPoint Capital Partners. **“In 2015, ByteGrid LLC was financed by AltPoint Capital Partners, whose fund manager is a Russian and its largest investor is a Russian oligarch named Vladimir Potanin,”** [my colleague Ovetta Wiggins reported](#) last month. Van Hollen and Cardin said the relationship between the two companies “must be carefully scrutinized, and if the administration determines that it poses a threat to national security, appropriate remedies must be pursued.” For instance, the CFIUS could require AltPoint Capital Partners to divest from ByteGrid LLC, the senators wrote.

PUBLIC KEY

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The FBI headquarters in Washington on Feb. 2. (T.J. Kirkpatrick/Bloomberg)

— **The FBI’s Internet Crime Complaint Center said scammers increasingly mention personal information about the people they try to extort online or by postal mail in order to make their threats seem more real and frighten their victims.** For instance, extortionists may send an email that includes a user name or password of the victim “to add a higher degree of intimidation to the scam,” according to a [notice](#) released by the center on Tuesday.

Scammers may say they installed malware on an adult-video website that they claim the victim visited, and they could also threaten to reveal embarrassing stories about the recipient. **Another feature of extortion schemes is a demand that a ransom be paid in bitcoin and usually within 48 hours.** “The FBI does not condone the payment of extortion demands as the funds will facilitate continued criminal activity, including potential organized crime activity and associated violent crimes,” the notice said.

— **“Research funded by the Department of Homeland Security has found a ‘slew’ of vulnerabilities in mobile devices offered by the four major U.S. cell phone carriers, including loopholes that may allow a hacker to gain access to a user’s data, emails, text messages without the owner’s knowledge,” [Fifth Domain’s Justin Lynch reported](#) Tuesday. “The flaws allow a user ‘to escalate privileges and take over the device,’ Vincent Sritapan, a program manager at the Department of Homeland Security’s Science and Technology Directorate told Fifth Domain during the Black Hat conference in Las Vegas.”**

— **More cybersecurity news from the public sector:**

[The Future Airman is a Hacker](#)

Air Force recruiters will prize computer skills more highly, while the service will encourage airmen to experiment with their own solutions

[New US slap against China: Tighter curbs on tech investment](#)

Already threatened by escalating U.S. taxes on its goods, China is about to find it much harder to invest in U.S. companies or to buy American technology in such cutting-edge areas as robotics, artificial intelligence and virtual reality.

PRIVATE KEY

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An aerial view of the Pentagon on April 23, 2015, in Washington. (Saul Loeb/AFP/Getty Images)

“Software giant Oracle is challenging the Pentagon’s decision to choose just one company for a not-yet-awarded \$10 billion cloud computing contract, according to a bid protest document reviewed by The Washington Post, firing off a salvo in what is shaping up to be a heated competition among tech giants for one of the biggest government software contracts in years,” [my colleague Aaron Gregg reported](#) on Tuesday. “Oracle took the unusual step of bringing its protest long before contractors have even submitted bids, alleging that the procurement of what is called the Joint Enterprise Defense Infrastructure (JEDI) has been problematic from the outset.”

— **More cybersecurity news from the private sector:**

SECURITY FAILS

THE NEW WILD WEST

https://img.washingtonpost.com/wp-apps/imrs.php?src=http%3A%2F%2Fwww.washingtonpost.com%2Fw%2F2010-2019%2FWashingtonPost%2F2018%2F08%2F06%2FNational-Security%2FImages%2F329910879_0-7.jpg&w=908

Iranian flags in Tehran on Aug. 4. (Ali Mohammadi/Bloomberg)

— **“Iranian hackers are developing software attacks that render computer systems inoperable until a digital ransom is paid, a new report says, a threat that comes as the**

U.S. moves to reimpose tough economic sanctions on the country,” [The Wall Street Journal’s Robert McMillan reported](#) on Tuesday. “Over the past two years, researchers at Accenture PLC’s iDefense cybersecurity-intelligence group have tracked five new types of so-called ransomware they say were built by hackers in Iran. The ransomware appears to be an attempt to secure payments in digital currencies such as bitcoin, Jim Guinn, head of Accenture’s industrial cybersecurity business, said in an interview.”

— **More cybersecurity news from abroad:**

FOR THE N00BS

ZERO DAYBOOK

Today

- [Black Hat USA](#) security conference through tomorrow in Las Vegas.

Coming soon

- [DEF CON](#) security conference tomorrow through Aug. 12 in Las Vegas.

EASTER EGGS

Troy Balderson holds narrow lead and declares victory in Ohio special election:

Who is Rashida Tlaib?

Rick Gates admits extramarital affair in court:

From: Ellis, Corey F. (ODAG)
Sent: Thursday, August 16, 2018 8:18 AM
To: Gamble, Nathaniel (ODAG)
Cc: Rosenstein, Rod (ODAG); O'Callaghan, Edward C. (ODAG)
Subject: FW: Talking Points for Microsoft CEO meeting
Attachments: DAG Briefer for Microsoft CEO Mtg.docx

Nate,

Please add a hard copy of the attached for the DAG's binder for this afternoon.

Thank you.

Corey

From: Raman, Sujit (ODAG)
Sent: Thursday, August 16, 2018 2:28 AM
To: Ellis, Corey F. (ODAG) (b) (6) >
Cc: O'Callaghan, Edward C. (ODAG) (b) (6) >; Gauhar, Tashina (ODAG) (b) (6) >; Hickey, Adam (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Klimavicz, Joseph (JMD) (b) (6) >; Rogers, Melinda (JMD) (b) (6) >
Subject: Talking Points for Microsoft CEO meeting

Corey,

With thanks to NSD/CRM/OCIO, please see attached for a draft set of talkers for the DAG's meeting with Microsoft's CEO on Monday, Aug 20. We are scheduled to discuss this draft with DAG tomorrow (Thurs) at 3:30 pm. I will join by phone. Everyone else will be there in person.

Please let me know with any questions.

Many thanks,

Sujit

From: Ellis, Corey F. (ODAG)
Sent: Wednesday, September 19, 2018 3:23 PM
To: Rosenstein, Rod (ODAG)
Cc: O'Callaghan, Edward C. (ODAG); Peterson, Andrew (ODAG); Suero, Maya A. (ODAG)
Subject: Friday 9 21 2018 Noon Elections tabletop exercise
Attachments: 9-21-18 Elections Tabletop Exercise.DAG opening remarks (002).docx; Agenda for Election Tabletop Discussion.docx; DOJ Policy on Disclosure of Foreign Influence Operations.pdf; Hypos for Election TTX (final).docx

DAG: Per Sujit, as of now, the elections tabletop exercise scheduled for Friday at noon is still on. (There is a possibility it will be postponed if DHS isn't able to send a high-level representative.) DAG is scheduled to give brief opening remarks to welcome the assembled reps from across the interagency, including DHS, ODNI, FBI, State, NSD, and CRM.

Attached please find: (1) the agenda for the meeting; (2) the hypos the group will be discussing; and (3) a copy of the new DOJ disclosure policy, which has been distributed to the attendees in advance; and (4) draft introductory remarks for you.

Please let me know if you need any additional materials.

Thank you.

CFE

DEPARTMENT OF JUSTICE POLICY ON DISCLOSURE OF FOREIGN INFLUENCE OPERATIONS

Foreign influence operations include covert actions by foreign governments intended to sow divisions in our society, undermine confidence in our democratic institutions, and otherwise affect political sentiment and public discourse to achieve strategic geopolitical objectives. Such operations are often empowered by modern technology that facilitates malicious cyber activity and covert or anonymous communications with U.S. audiences on a mass scale from abroad.

Our Nation's democratic processes and institutions are strong and must remain resilient in the face of this threat. It is the policy of the Department of Justice to investigate, disrupt, and prosecute the perpetrators of illegal foreign influence activities where feasible. It is also the Department's policy to alert the victims and unwitting targets of foreign influence activities, when appropriate and consistent with the Department's policies and practices, and with our national security interests.

It may not be possible or prudent to disclose foreign influence operations in certain contexts because of investigative or operational considerations, or other constraints. In some circumstances, however, public exposure and attribution of foreign influence operations can be an important means of countering the threat and rendering those operations less effective.

Information the Department of Justice collects concerning foreign influence operations may be disclosed as follows:

- To support arrests and charges for federal crimes arising out of foreign influence operations, such as hacking or malicious cyber activity, identity theft, and fraud.
- To alert victims of federal crimes arising out of foreign influence operations, consistent with Department guidelines on victim notification and assistance.¹⁸
- To alert unwitting recipients of foreign government-sponsored covert support, as necessary to assist in countering the threat.
- To alert technology companies or other private sector entities to foreign influence operations where their services are used to disseminate covert foreign government propaganda or disinformation, or to provide other covert support to political organizations or groups.

**DEPARTMENT OF JUSTICE POLICY ON DISCLOSURE
OF FOREIGN INFLUENCE OPERATIONS, *Continued***

- To alert relevant Congressional committees to significant intelligence activities, consistent with statutory reporting requirements and Executive Branch policies.
- To alert the public or other affected individuals, where the federal or national interests in doing so outweigh any countervailing considerations.¹⁹

In performing these functions, the Department will be mindful of the following principles and policies:

- Partisan political considerations must play no role in efforts to alert victims, other affected individuals, or the American public to foreign influence operations against the United States. Such efforts must not be for the purpose of conferring any advantage or disadvantage on any political or social group or any individual or organization.
- In considering whether and how to disclose foreign influence operations, or the details thereof, the Department will seek to protect intelligence sources and methods, investigations, and other U.S. government operations.
- Foreign influence operations will be publicly identified as such only when the Department can attribute those activities to a foreign government with high confidence. Disinformation or other support or influence by unknown or domestic sources not acting on behalf of a foreign government is beyond the scope of this policy.
- Where a criminal or national security investigation during an election cycle is at issue, the Department must also be careful to adhere to longstanding policies regarding the timing of charges or taking overt investigative steps.²⁰

The Department (including the FBI) will not necessarily be the appropriate entity to disclose information publicly concerning a foreign influence operation. Where a Department component is considering whether to alert the general public to a specific foreign influence operation, consultation with the National Security Division is required. Nothing in this policy is intended to impair information sharing undertaken by Department components for investigative or intelligence purposes.

Rosenstein, Rod (ODAG)

From: Rosenstein, Rod (ODAG)
Sent: Friday, September 21, 2018 2:46 PM
To: Eisenberg, Harvey (USAMD)
Subject: RE: Ellen Nakashima

I don't mean about me. I mean given your cases. Let Marcy take the calls.

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

From: Eisenberg, Harvey (USAMD) (b) (6) >
Sent: Friday, September 21, 2018 2:27 PM
To: Rosenstein, Rod (ODAG) (b) (6) >
Subject: Re: Ellen Nakashima

I'm aware. Besides letting you know, I am lettin (b) (6) per EOUSA an (b) (6) per EOUSA know. My best to you and the family.
Harvey

Harvey Eisenberg
Assistant U.S. Attorney
Chief, National Security Section
District of Maryland

Coordinator, Anti-Terrorism Advisory Council of Marylan (b) (6) ((b) (6) (m)

Sent from my iPhone

> On Sep 21, 2018, at 2:24 PM, Rosenstein, Rod (ODAG) (b) (6) > wrote:

>

> Thanks! Hopefully we are being successful and the reporters are having difficulty finding anybody to comment about things. Please be careful to report any contacts with national security reporters, particularly given the sensitive cases now in MD.

>

> -----Original Message-----

> **From:** Eisenberg, Harvey (USAMD) (b) (6) >
> **Sent:** Friday, September 21, 2018 2:21 PM
> **To:** Rosenstein, Rod (ODAG) (b) (6) >
> **Subject:** Ellen Nakashima

>

> Hi Rod,

(b)(5) per EOUSA

(b) (6) Just wanted to give you a heads up tha (b)(5) per EOUSA . All my best always, Harvey

>

>

- >
- > Sent from my iPhone
- >
- >

From: Marcus, Ruth (b) (6) >
Sent: Monday, September 24, 2018 10:54 AM
To: Rosenstein, Rod (ODAG)
Subject: Ok, I have to ask if you want to write my cel (b) (6) in case

Sent from my iPhone

From: Horwitz, Sari (b) (6) >
Sent: Monday, September 24, 2018 12:10 PM
To: Rosenstein, Rod (ODAG)
Subject: Please call me.

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

From: USDOJ-Office of Public Affairs <USDOJ-OfficeofPublicAffairs@public.govdelivery.com>
Sent: Friday, October 19, 2018 2:59 PM
To: Rosenstein, Rod (ODAG)
Subject: RUSSIAN NATIONAL CHARGED WITH INTERFERING IN U.S. POLITICAL SYSTEM

A criminal complaint was unsealed in Alexandria, Virginia, today charging a Russian national for her alleged role in a Russian conspiracy
http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTlwMTgxMDE5Ljk2NDkzOTMxJm1lc3NhZ2VpZD1NREltUFJELUJVTC0yMDE4MTAxOS45NjQ5MzkzMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3MzkxODM1JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&100&&https://www.justice.gov/?utm_medium=email&utm_source=govdelivery

FRIDAY, OCTOBER 19, 2018

Note: A corrected link to the criminal complaint can be found [here](#).

RUSSIAN NATIONAL CHARGED WITH INTERFERING IN U.S. POLITICAL SYSTEM

WASHINGTON – A criminal complaint was unsealed in Alexandria, Virginia, today charging a Russian national for her alleged role in a Russian conspiracy to interfere in the U.S. political system, including the 2018 midterm election. Assistant Attorney General for National Security John C. Demers, U.S. Attorney G. Zachary Terwilliger of the Eastern District of Virginia, and FBI Director Christopher Wray made the announcement after the charges were unsealed.

“Today’s charges allege that Russian national Elena Alekseevna Khusyaynova conspired with others who were part of a Russian influence campaign to interfere with U.S. democracy,” said Assistant Attorney General Demers. “Our nation is built upon a hard-fought and unwavering commitment to democracy. Americans disagree in good faith on all manner of issues, and we will protect their right to do so. Unlawful foreign interference with these debates debases their democratic integrity, and we will make every effort to disrupt it and hold those involved accountable.”

“The strategic goal of this alleged conspiracy, which continues to this day, is to sow discord in the U.S. political system and to undermine faith in our democratic institutions,” said U.S. Attorney Terwilliger. “This case demonstrates that federal law enforcement authorities will work aggressively to investigate and prosecute the perpetrators of unlawful foreign influence activities, and that we will not stand by idly while foreign actors obstruct the lawful functions of our government. I want to thank the agents and prosecutors for their determined work on this case.”

“This case serves as a stark reminder to all Americans: Our foreign adversaries continue their efforts to interfere in our democracy by creating social and political division, spreading distrust in our political system, and advocating for the support or defeat of particular political candidates,” said Director Wray. “We take all threats to our democracy very seriously, and we’re committed to working with our partners to identify and stop these unlawful influence operations. Together, we must remain diligent and determined to protect our democratic institutions and maintain trust in our electoral process.”

According to allegations in the criminal complaint, Elena Alekseevna Khusyaynova, 44, of St. Petersburg, Russia, served as the chief accountant of “Project Lakhta,” a Russian umbrella effort funded by Russian oligarch Yevgeniy Viktorovich Prigozhin and two companies he controls, Concord Management and Consulting LLC, and Concord Catering. Project Lakhta includes multiple components, some involving domestic audiences within the Russian Federation and others targeting foreign audiences in the United States, members of the European Union, and Ukraine, among others.

Khusyaynova allegedly managed the financing of Project Lakhta operations, including foreign influence activities directed at the United States. The financial documents she controlled include detailed expenses for activities in the United States, such as expenditures for activists, advertisements on social media platforms, registration of domain names, the purchase of proxy servers, and “promoting news postings on social networks.” Between January 2016 and June 2018, Project Lakhta’s proposed operating budget totaled more than \$35 million, although only a portion of these funds were directed at the United States. Between January and June 2018 alone, Project Lakhta’s proposed operating budget totaled more than \$10 million.

The alleged conspiracy, in which Khusyaynova is alleged to have played a central financial management role, sought to conduct what it called internally “information warfare against the United States.” This effort was not only designed to spread distrust towards candidates for U.S. political office and the U.S. political system in general, but also to defraud the United States by impeding the lawful functions of government agencies in administering relevant federal requirements. The conspirators allegedly took extraordinary steps to make it appear that they were ordinary American political activists. This included the use of virtual private networks and other means to disguise their activities and to obfuscate their Russian origin. They used social media platforms to create thousands of social media and email accounts that appeared to be operated by U.S. persons, and used them to create and amplify divisive social and political content targeting U.S. audiences. These accounts also were used to advocate for the election or electoral defeat of particular candidates in the 2016 and 2018 U.S. elections. Some social media accounts posted tens of thousands of messages, and had tens of thousands of followers.

The conspiracy allegedly used social media and other internet platforms to address a wide variety of topics, including immigration, gun control and the Second Amendment, the Confederate flag, race relations, LGBT issues, the Women’s March, and the NFL national anthem debate. Members of the conspiracy took advantage of specific events in the United States to anchor their themes, including the shootings of church members in Charleston, South Carolina, and concert attendees in Las Vegas; the Charlottesville “Unite the Right” rally and associated violence; police shootings of African-American men; as well as the personnel and policy decisions of the current U.S. presidential administration.

The conspirators’ alleged activities did not exclusively adopt one ideological view; they wrote on topics from varied and sometimes opposing perspectives. Members of the conspiracy were directed, among other things, to create “political intensity through supporting radical groups” and to “aggravate the conflict between minorities and the rest of the population.” The actors also developed playbooks and

strategic messaging documents that offered guidance on how to target particular social groups, including the timing of messages, the types of news outlets to use, and how to frame divisive messages.

The criminal complaint does not include any allegation that Khusyaynova or the broader conspiracy had any effect on the outcome of an election. The complaint also does not allege that any American knowingly participated in the Project Lakhta operation.

The investigative team received exceptional cooperation from private sector companies, such as Facebook and Twitter.

Assistant U.S. Attorney Jay V. Prabhu and Special Assistant U.S. Attorney Alex Iftimie are prosecuting the case, with assistance of Trial Attorneys Matthew Y. Chang and Patrick T. Murphy of the National Security Division's Counterintelligence and Export Control Section.

A copy of this press release is located on the website of the U.S. Attorney's Office for the Eastern District of Virginia. Related court documents and information is located on the website of the District Court for the Eastern District of Virginia or on PACER by searching for Case No. 1:18-mj-464.

A criminal complaint contains allegations that a defendant has committed a crime. Every defendant is presumed to be innocent until proven guilty beyond a reasonable doubt in a court of law.

#



18-1369

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202-514-2007.

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From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, October 22, 2018 4:04 PM
To: Rosenstein, Rod (ODAG); Weinsheimer, Bradley (ODAG); Boyd, Stephen E. (OLA);
Lasseter, David F. (OLA); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG)
Subject: Revised preamble
Attachments: RJR Interview statement ver.4.docx

DAG,

For your consideration after your speech today, attached please find a revised draft preamble of remarks for Wednesday. We have incorporated most of your thought from Friday's run through and have tried to include some flexibility to allow for some response to questions that could evince a relevant chronology of events opportunity. We have run these by OLC and their edits and comments have been incorporated and considered. Thanks to all for their contributions. Good luck with your speech.

Edward C. O'Callaghan

Principal Associate Deputy Attorney General
United States Department of Justice

(o (b) (6))

(c (b) (6))

From: Rosenstein, Rod (ODAG)
Sent: Tuesday, October 23, 2018 8:59 AM
To: Raman, Sujit (ODAG)
Subject: Re: U.S. Begins First Cyberoperation Against Russia Aimed at Protecting Elections

Thanks.

On Oct 23, 2018, at 8:54 AM, Raman, Sujit (ODAG) (b) (6) > wrote:

Begin forwarded message:

From: "Kelly, Jordan R. EOP/NSC" (b) (6) >
Date: October 23, 2018 at 8:50:02 AM EDT
To: (b)(6), (b)(7)(C), (b)(7)(E) per FBI
(b) (6) "Raman, Sujit (ODAG)" (b) (6) >, (b)(6) per NSD (NSD)" (b) (6) >
Subject: U.S. Begins First Cyberoperation Against Russia Aimed at Protecting Elections

<https://www.nytimes.com/2018/10/23/us/politics/russian-hacking-usa-cyber-command.html>

WASHINGTON The United States Cyber Command is targeting individual Russian operatives to try to deter them from spreading disinformation to interfere in elections, telling them that American operatives have identified them and are tracking their work, according to officials briefed on the operation.

The campaign, which includes missions undertaken in recent days, is the first known overseas cyberoperation to protect American elections, including the November midterms.

The operations come as the Justice Department outlined on Friday a campaign of "information warfare" by Russians aimed at influencing the midterm elections, highlighting the broad threat the American government sees from Moscow's influence campaign.

Defense officials would not say how many individuals they were targeting, and they would not describe the methods that Cyber Command has used to send the direct messages to the operatives behind the influence campaigns. It is not clear if the information was delivered in an email, a chat or some other electronic intervention.

Senior defense officials said they were not directly threatening the operatives. Still, former officials said anyone singled out would know, based on the United States government's actions against other Russian operatives, that they could be indicted or targeted with sanctions. Even the unstated threat of sanctions could help deter some Russians from participating in covert disinformation campaigns, said Andrea Kendall-Taylor, a former intelligence official now with the Center for a New American Security. "This would be a way to generate leverage that can change behavior," she said. The Cyber Command operations appear relatively measured, especially in comparison with the increasingly elaborate and sophisticated efforts by Russia to use disinformation to sow dissent in the United States.

But the American campaign undertaken in response to Russia's information offensive is limited in large part to keep Moscow from escalating in response by taking down the power grid or conducting some other reprisal that could trigger a bigger clash between great powers. Compared with traditional armed conflict, the rules of cyberwarfare are not well defined.

Cyber Command was founded in 2009 to defend military networks but has also developed offensive capabilities. The command shares a headquarters and leadership with the National Security Agency, which collects electronic and signals intelligence. A joint Cyber Command-N.S.A. team has been working on the effort to identify and deter foreign influence campaigns.

American officials also said the campaign is one aspect of a broader effort, which includes purges by social media companies of fake accounts that spread propaganda, to fight Russian intrusion in democratic elections. Cyber Command has also sent teams to Europe to shore up the defenses of American allies and partners so they can combat Russian intrusions on their own government networks, according to defense officials.

American intelligence officials have concluded that Russia is unlikely to try to hack into voting machines or directly manipulate voting results this year. On Friday, the director of national intelligence said that state and local governments have reported attempted intrusions into their networks, but that foreign governments have not penetrated voting systems.

But Russian efforts to sway public opinion by spreading false information have continued, and officials said those efforts are becoming more refined, targeting specific groups of Americans. Almost all of the Russian disinformation efforts, according to current and former officials, are aimed at sowing dissent, polarizing the political parties and setting the stage for the 2020 presidential election.

The defense officials would not identify their targets. But other officials said some of the targets were involved in previous Russian efforts to spread disinformation in the United States and Europe, including the 2016 presidential election. The new American campaign, according to these officials, is aimed at both oligarch-funded hacking groups and Russian intelligence operatives who are part of Moscow's disinformation campaign. It is not clear whether Cyber Command's effort is also aimed at halting Russian operatives charged with hacking political entities.

Others said the American government must be ready to go further — cutting off the Russians' ability to spread propaganda.

"It is very important to identify the source and essentially be able to neutralize that source," said Laura Rosenberger, the director of the Alliance for Securing Democracy and a former Obama administration official. "These are networks that operate. The more we can identify the key nodes in those networks and remove them by taking them offline is really how we will get at this problem in a systemic way and not play Whac-a-Mole."

Gen. Paul M. Nakasone, the head of Cyber Command and the National Security Agency, hinted at the new cyberoperations this month as he noted that American adversaries are "looking to really take us on below that level of armed conflict" by sowing distrust in society and "attempt to disrupt our elections."

"This is what great power competition looks like today, and it's what we will look at as we look to the future," he said during a panel discussion in Washington.

Cyber Command has a relatively short history of overseas operations against adversaries, but it did conduct missions aimed at curtailing the ability of the Islamic

State to spread propaganda and recruit online. Those operations, which included efforts to freeze computers, yielded mixed results.

Assessing the effectiveness of American cyberoperations at this point is difficult. The director of national intelligence, Dan Coats, is expected to complete a review after the November midterm elections.

But some American officials said they believed the initial operations had at least partly diminished the effectiveness of Moscow's election manipulation effort.

Similarly, British officials also said they had seen less activity by Russian propagandists than expected after their identification of the Russian intelligence agents behind the poisoning in the spring of a former Russian spy and the Dutch authorities' detailing this month of a failed Russian cyberattack on the Organization for the Prohibition of Chemical Weapons.

Outside experts believe that a major reason Russian social media trolls are less effective is aggressive work by technology companies. Twitter and Facebook purges of Russian-created or -controlled accounts have reduced the effectiveness of Moscow's propaganda, said Ben Nimmo, an expert on Russia's online misinformation efforts at the Atlantic Council's Digital Forensic Research Lab.

Some American officials have said they were frustrated by what they viewed as President Trump's timidity at taking on the Russians involved in election meddling. Mr. Trump has frequently wavered about whether he believes the Russians interfered in the 2016 elections to help his bid for the presidency.

But officials said broad agreement existed throughout the rest of the government that the Russian interference campaign was ongoing and required a more muscular response to deter further meddling.

With the new campaign, American officials said, they are trying to hamper Russia from meddling in the 2018 vote and deter future efforts. Cyber Command's new operations reflect a push by Defense Secretary Jim Mattis to expand the Pentagon's role countering Russian hackers threatening America and its allies. In the White House, John R. Bolton, the national security adviser, has also been pushing to speed up approval for election defense operations.

Mr. Bolton announced new cyberwarfare authorities last month, but the White House provided few details. Under the new guidelines, Mr. Trump has handed off approval for certain actions to the National Security Council, secretary of defense or head of Cyber Command, depending on the operation.

In the final months of the Obama administration, as details of Russia's interference in the 2016 election were uncovered, officials privately pushed Cyber Command and the National Security Agency to create options to respond.

Cyber Command and the N.S.A. were hesitant to offer options, a former official said, out of concern that if they tried to directly deter Moscow's activities, Russian operatives would learn too much about America's espionage techniques, among the government's most closely held secrets.

Since taking the helm of Cyber Command and the N.S.A. in May, General Nakasone has said he has the authority to act against adversaries threatening American elections. Inside both the command and the agency, he has pushed to develop new options to deter interference.

American officials say the Russian effort to destabilize the American elections is closely tied to Moscow's work in Europe.

The criminal complaint unsealed on Friday showed that Elena Alekseevna Khusyaynova, the St. Petersburg accountant involved in the disinformation campaign in the United

States, was also active in Europe, including in Ukraine, considered the focus of Moscow's efforts to weaken its neighbors and the West.

Cyber Command has also sent teams to Ukraine, Macedonia and Montenegro to build up defenses against Russian hackers intent on penetrating government networks on its doorstep in Eastern Europe.

The United States is helping Montenegro remove Russian cyberoperatives from nonclassified government systems, a senior Montenegrin official said. Painstaking work, the effort could take months to find and close all the access points Russian hackers have created. Russians have not penetrated the government's classified systems, the official said.

European leaders have been asking the United States to take a bigger role in helping block Russian meddling and cyberactivity.

Lithuania is working with the United States on military cyberdefense training as well as research and development on cyberdefenses, President Dalia Grybauskaite said in an interview. But Ms. Grybauskaite has also pushed for expanded cooperation, including a rotating presence of military experts at Lithuania's cyberdefense center.

"What we see is a steadily growing pressure on cyber, the information front, propaganda and, recently, fake news," Ms. Grybauskaite said. "Their efforts and instruments are becoming more sophisticated every day."

Helene Cooper and Eric Schmitt contributed reporting.

From: USDOJ-Office of Public Affairs <USDOJ-OfficeofPublicAffairs@public.govdelivery.com>
Sent: Saturday, November 3, 2018 4:43 PM
To: Rosenstein, Rod (ODAG)
Subject: DEPARTMENT OF JUSTICE 2018 ELECTION SECURITY FACT SHEET

“The Department of Justice and its component agencies protect our democratic process year-round,” said Attorney General Jeff Sessions.

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FOR IMMEDIATE RELEASE

SATURDAY, NOVEMBER 3, 2018

DEPARTMENT OF JUSTICE 2018 ELECTION SECURITY FACT SHEET

WASHINGTON In anticipation of the upcoming midterm elections on November 6, 2018, the Department of Justice today provided information about its efforts through the Civil Rights Division, the Criminal Division, the National Security Division, and the FBI to assist state and local jurisdictions in ensuring that all qualified voters have the opportunity to cast their ballots and have their votes counted free of discrimination, intimidation or fraud in the election process.

“The Department of Justice and its component agencies protect our democratic process year-round,” said Attorney General Jeff Sessions.

“During election season, we put in place additional security awareness and monitoring measures with our federal, state, and local partners to ensure the securest possible settings for our elections. Any attempts to interfere or subvert our democratic process by foreign or domestic entities will be met with severe consequences. The American people can be confident that their voices will be heard.”

Complaints related to violence, threats of violence, or intimidation at a polling place should always be reported immediately to local authorities by calling 911. They should also be reported to the Department of Justice after local authorities are contacted.

Below is a list of recent and ongoing action the Department of Justice has undertaken to ensure election security. The Department of Justice works year-round to ensure free and fair elections for all Americans.

Department of Justice’s Election Day Watch Program

In order to strengthen election security efforts, the Department of Justice and the FBI will host a live Election Day Watch at the FBI’s Strategic Information and Operations Center. President Trump outlined the Administration’s efforts to

protect the elections from foreign interference in a Sept. 12 announcement
<http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTgxMTAzLjk3MTE0NDQxJm1lc3NhZ2VpZD1NREItUFJELUJVTCoYMDE4MTEwMy45NzExNDQ0MSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&101&&&https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-protect-nations-elections-foreign-interference/?utm_medium=email&utm_source=govdelivery> .

Civil Rights Division

On Nov. 6, the Civil Rights Division will implement a comprehensive program to help protect the right to vote that will include the following:

- * The Civil Rights Division will conduct monitoring in the field at polling places around the country.
- * Civil Rights Division staff in Washington, D.C., will be ready to receive election-related complaints of potential violations relating to any of the federal statutes the division enforces. The division will take appropriate action and will coordinate with other entities within the Department of Justice concerning these complaints before, during, and after Election Day.
- * Civil Rights Division staff will be available to receive complaints related to voting by telephone (1-800-253-393 or 202-307-2767) or by TTY (202-305-0082), by fax (202-307-3961), by email (section@usdoj.gov <<mailto:section@usdoj.gov>>), and by complaint form on the Department of Justice's website at <https://www.justice.gov/crt/voting-section> <http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTgxMTAzLjk3MTE0NDQxJm1lc3NhZ2VpZD1NREItUFJELUJVTCoYMDE4MTEwMy45NzExNDQ0MSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&102&&&https://www.justice.gov/crt/voting-section?utm_medium=email&utm_source=govdelivery> .

For more information on the Civil Rights Division's efforts to protect the right to vote and prosecute ballot fraud, see here <http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTgxMTAzLjk3MTE0NDQxJm1lc3NhZ2VpZD1NREItUFJELUJVTCoYMDE4MTEwMy45NzExNDQ0MSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&103&&&https://www.justice.gov/crt/voting-section?utm_medium=email&utm_source=govdelivery> and here <http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTgxMTAzLjk3MTE0NDQxJm1lc3NhZ2VpZD1NREItUFJELUJVTCoYMDE4MTEwMy45NzExNDQ0MSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&104&&&https://www.justice.gov/opa/pr/justice-department-continues-protect-right-vote-and-prosecute-ballot-fraud?utm_medium=email&utm_source=govdelivery> .

Criminal Division

On Nov. 6, the U.S. Attorneys' Offices will work with specially trained FBI personnel in each district to ensure that complaints from the public involving possible voter fraud are handled appropriately. Specifically:

* In consultation with federal prosecutors at the Department of Justice's Public Integrity Section in Washington, D.C., the District Election Officers in U.S. Attorneys' Offices, FBI officials at Headquarters in Washington, D.C., and FBI special agents serving as Election Crime Coordinators in the FBI's 56 field offices will be on duty while polls are open, to receive complaints from the public.

* Election-crime complaints should be directed to the local U.S.

Attorney's Office or the local FBI office. A list of U.S. Attorneys'

Offices and their telephone numbers can be found at

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found at

<<http://links.govdelivery.com:80/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTlwMTgxMTAzLjk3MTE0NDQxM1lc3NhZ2VpZD1NREitUFJELUJVTCoYMDE4MTEwMy45NzExNDQ0MSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGI2YXJpYXRISWQ9JiYm&&&107&&>>&&http://www.fbi.gov/contact-us?utm_medium=email&utm_source=govdelivery> gov/contact-us

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* Department of Justice Public Integrity Section prosecutors are available to consult and coordinate with the U.S. Attorneys' Offices and the FBI regarding the handling of election-crime allegations.

For more information on the Criminal Division's efforts to fight election crime, see here

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National Security Division

On Nov. 6, National Security Division attorneys will participate in interagency Election Day sync meetings to ensure that the Department of Justice is aware of the latest information from the Intelligence Community, to secure necessary authorizations from Department leadership in the event of a federal response, and to coordinate any interagency response.

In addition, lawyers from the National Security Division's Counterterrorism Section and Counterespionage Section will be co-located at the FBI's national monitoring Command Post (CP) at the Strategic Information and Operations Center (SIOC) at FBI Headquarters to provide operational guidance to local U.S Attorney's Office and FBI field offices in the event of any election-related incident involving international or domestic terrorism, malicious cyber activities, or other threats to national security.

For more information on the National Security Division's Counterterrorism Section, see here <http://links.govdelivery.com:80/track?type_click&enid_ZWFzPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&111&&&https://www.justice.gov/nsd/counterterrorism-section?utm_medium_email&utm_source_govdelivery> .

Report of The Attorney General's Cyber Digital Task Force

On July 19, 2018, Deputy Attorney General Rod Rosenstein formally issued the Report of The Attorney General's Cyber Digital Task Force <http://links.govdelivery.com:80/track?type_click&enid_ZWFzPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&112&&&https://www.justice.gov/ag/page/file/1076696/download?utm_medium_email&utm_source_govdelivery> in response to the establishment of the Cyber Digital Task Force by Attorney General Jeff Sessions in February of 2018. The report addresses the Department of Justice's efforts to address cyber-enabled threats, including malign foreign influence operations that target U.S. elections. The Deputy Attorney General's full remarks at the Aspen Security Forum can be found here <http://links.govdelivery.com:80/track?type_click&enid_ZWFzPTEwMDEmc2VyaWFsPTE3Mzk3ODY4JmVtYWlsaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZ1c2VyaWQ9cm9kLnJvc2Vuc3RlaW41QHVzZG9qLmdvdiZmbD0mZXh0cmE9TXVsdGl2YXJpYXRISWQ9JiYm&&&113&&&https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-aspen-security-forum?utm_medium_email&utm_source_govdelivery> .

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From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, November 5, 2018 4:53 PM
To: Rosenstein, Rod (ODAG)
Subject: FW: QFRs from DAG hearing on 6/28

For your review attached draft responses to a couple of QFRs received from Goodlatte subsequent to your last hearing. Brad, Tash and I have drafted.

Edward C. O'Callaghan

(b) (6)

From: Weinsheimer, Bradley (ODAG)
Sent: Monday, November 5, 2018 11:54 AM
To: Gauhar, Tashina (ODAG) (b) (6) >; Groves, Brendan M. (ODAG) (b) (6) >
Cc: O'Callaghan, Edward C. (ODAG) (b) (6) >
Subject: FW: QFRs from DAG hearing on 6/28

Draft responses to QFRs 1 and 3 attached. Let me know if you have any comments, and I will respond to OLA. Thanks, Brad.

From: Lasseter, David F. (OLA)
Sent: Monday, November 5, 2018 10:58 AM
To: Gauhar, Tashina (ODAG) (b) (6) >; Groves, Brendan M. (ODAG) (b) (6) >; Weinsheimer, Bradley (ODAG) (b) (6) >
Cc: Rubens, William B. (OLA) (b) (6) >; Johnson, Joanne E. (OLA) (b) (6) >
Subject: RE: QFRs from DAG hearing on 6/28

Good morning ODAG. Hope the weekend was nice. Just checking in on these. Any sense of timing on the responses? We still need to get the responses through building clearance before they go over to OMB.

Thanks,

David

From: Johnson, Joanne E. (OLA)

Sent: Thursday, October 25, 2018 6:54 PM

To: Gauhar, Tashina (ODAG) (b) (6) >; Groves, Brendan M. (ODAG)

(b) (6) >; Weinsheimer, Bradley (ODAG) (b) (6) >;

Colborn, Paul P (OLC) (b) (6) >

Cc: Lasseter, David F. (OLA) (b) (6) >; Rubens, William B. (OLA)

(b) (6) >

Subject: QFRs from DAG hearing on 6/28

ODAG/OLC:

Attached are QFRs from the DAG and Director Wray's hearing before HJC in late June. (Hearing entitled, Oversight of FBI and DOJ Actions Surrounding the 2016 Elections, June 28, 2018). The transcript from the hearing is attached for reference. It appears that questions 2 and 4 would be within FBI's purview. Questions 5 and 6 may pertain to OLC, and 1 and 3 appear to be for ODAG for response. Please let me know if you disagree and would like me to forward to others, as well.

Thank you,

Joanne E. Johnson

Attorney-Advisor

Office of Legislative Affairs

U.S. Department of Justice

(b) (6)



Hon. Rosenstein
Questions for ...



Hearing
Transcript HJC.d...



Responses to
Congressman G...

**House Judiciary Committee Holds Hearing on Oversight
of FBI and DOJ Actions Surrounding the 2016 Elections
June 28, 2018**

Witnesses:

- *Deputy Attorney General Rod Rosenstein*
- *FBI Director Christopher Wray Testify*

GOODLATTE:

Good morning. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time.

Before we begin our hearing this morning, we need to vote to waive the committee's seven-day hearing notice requirement, pursuant to clause (a) of Rule III of the committee rules, the question is whether there is good cause to begin today's hearing less than seven days after it was noticed.

Those in favor will say aye. Those opposed, no. In the opinion of the chair, the ayes have it, and we may proceed with the hearing.

JACKSON LEE:

Mr. Chairman, I ask for a record vote.

GOODLATTE:

A recorded vote has been requested and the clerk will call the roll.

CLERK:

Mr. Goodlatte?

GOODLATTE:

Aye.

CLERK:

Mr. Goodlatte votes aye.

Mr. Sensenbrenner?

Mr. Smith?

SMITH:

Aye.

CLERK:
Mr. Smith votes aye.

Mr. Chabot?

CHABOT:
Aye.

CLERK:
Mr. Chabot votes aye.

Mr. Issa?

ISSA:
Aye.

CLERK:
Mr. Issa votes aye.

Mr. King?

KING:
Aye.

CLERK:
Mr. King votes aye.

Mr. Gohmert?

GOHMERT:
Aye.

CLERK:
Mr. Gohmert votes aye.

Mr. Jordan?

JORDAN:
Yes.

CLERK:
Mr. Jordan votes yes. Mr. Poe?

POE:
Yes.

CLERK:
Mr. Poe votes yes.

Mr. Marino?

MARINO:
Yes (ph).

CLERK:
Mr. Marino votes yes.

Mr. Gowdy?

GOWDY:
Yes.

CLERK:
Mr. Gowdy votes yes.

Mr. Labrador? Mr. Collins?

Mr. DeSantis?

DESANTIS:
Yes.

CLERK:
Mr. DeSantis votes yes.

Mr. Buck?

Mr. Ratcliffe?

RATCLIFFE:
Yes.

CLERK:
Mr. Ratcliffe votes yes.

Ms. Roby? Mr. Gaetz? Mr. Johnson of Louisiana?

Mr. Biggs?

BIGGS:
Aye.

CLERK:
Mr. Biggs votes aye.

Mr. Rutherford?

RUTHERFORD:
Aye.

CLERK:
Mr. Rutherford votes aye.

Ms. Handel?

HANDEL:
Yes.

CLERK:
Ms. Handel votes yes.

Mr. Rothfus?

ROTHFUS:
Aye.

CLERK:
Mr. Rothfus votes aye.

Mr. Nadler? Ms. Lofgren?

Ms. Jackson Lee?

JACKSON LEE:
No.

CLERK:
Ms. Jackson Lee votes no.

Mr. Cohen?

COHEN:
Nyet.

CLERK:
Mr. Cohen votes yes.

Mr. Johnson of Georgia?

(CROSSTALK)

COHEN:
No. No. You may not understand Russian yet (ph). You will. No.

CLERK:
Mr. Cohen votes no.

Mr. Johnson of Georgia?

H. JOHNSON:
No.

CLERK:
Mr. Johnson votes no.

Mr. Deutch?

DEUTCH:
No.

CLERK:
Mr. Deutch votes no.

Mr. Gutierrez?

GUTIERREZ:
No.

CLERK:
Mr. Gutierrez votes no.

Ms. Bass? Mr. Richmond? Mr. Jeffries?

Mr. Cicilline?

CICILLINE:

No.

CLERK:

Mr. Cicilline votes no.

Mr. Swalwell?

Mr. Lieu?

LIEU:

No.

CLERK:

Mr. Lieu votes no.

Mr. Raskin?

Ms. Jayapal?

JAYAPAL:

No.

CLERK:

Ms. Jayapal votes no.

Mr. Schneider?

SCHNEIDER:

No.

CLERK:

Mr. Schneider votes no.

Ms. Demings?

DEMINGS:

No.

CLERK:

Ms. Demings votes no.

GOODLATTE:

Has every member voted who wished to vote?

JACKSON LEE:
Mr. Chairman, how am (OFF-MIKE)?

GOODLATTE:
The gentlewoman is recorded as no.

JACKSON LEE:
(OFF-MIKE) in hearing, at least (ph). Did you want to ask how you're reported (inaudible) or no (ph)?

GOODLATTE:
We're going to wait another minute or two for the ranking member. So are you recorded? The gentleman is recorded.

M. JOHNSON:
Mr. Chairman, how am I recorded?

(CROSSTALK)

GOODLATTE:
Yeah, the gentleman from Louisiana is not recorded.

M. JOHNSON:
Yes.

CLERK:
Mr. Johnson votes yes.

JACKSON LEE:
Mr. Chairman, may I...

GOODLATTE:
The gentleman from California.

SWALWELL:
No.

CLERK:
Mr. Swalwell votes no.

JACKSON LEE:
Chairman, may I make a parliamentary inquiry?

GOODLATTE:

The gentlewoman will state her parliamentary inquiry.

JACKSON LEE:

Chairman, I'm trying to inquire of the basis of the emergency and the cause that has generated this resolution to ignore the regular order of the seven-day notice -- of the notice.

GOODLATTE:

Not an emergency, it's good cause. The gentleman from Maryland?

RASKIN:

How am I recorded?

CLERK:

Not recorded.

RASKIN:

No.

CLERK:

Mr. Raskin votes no.

GOODLATTE:

Good guess.

(LAUGHTER)

JACKSON LEE:

Mr. Chairman, continue your generosity -- could you state for the record what the good cause is?

GOODLATTE:

The fact that we worked very hard with these two gentleman, who I very much appreciate adjusting their schedules to be here. I know that they both -- the gentleman from New York.

NADLER:

No.

CLERK:

Mr. Nadler votes no.

GOODLATTE:

The clerk will report.

CLERK:

Mr. Chairman, 17 members voted aye; 13 voted no.

GOODLATTE:

And the...

JACKSON LEE:

Mr. Gentleman (ph), would you continue your -- finish your sentence? You said the two gentlemen...

GOODLATTE:

I'm going to -- I'm going to first declare that the vote is approved and the notice requirement is waived.

Now, I'm going to recognize myself for an opening statement, and I'll begin that opening statement by saying to both Deputy Attorney General Rosenstein and Director Wray that I am very appreciative of the fact that they have changed their schedules to be here so that we could have this hearing today and in a reasonable amount of time after the inspector general's report and testimony before the committee.

And I would also like to acknowledge the presence of John Lausch, the United States attorney for the Northern District of Illinois, who was appointed by the attorney general and the deputy attorney general to facilitate the production of documents which were not being produced in a timely fashion.

We still have complaints, but the situation, in my opinion, has improved considerably. But we'll have new issues that we will address here today as well.

GOODLATTE:

So I'll continue my opening statement.

The Church Committee was established on a bipartisan basis and chaired by Democratic Senator Frank Church in 1975 to review CIA, FBI and NSA surveillance abuses, including the improper surveillance of an American icon, Martin Luther King Jr., and other prominent individuals. The committee also conducted a review of the insidious monitoring of political activities of citizens exercising their First Amendment rights.

The Church Committee's findings resulted in passage three years later of the Foreign Intelligence Surveillance Act. FISA attempts to balance the need for secrecy in conducting surveillance against foreign agents with the protection of Americans' time-honored civil liberties.

This history shows we have already found ourselves once before in a situation where the FBI and other intelligence agencies violated their oaths to uphold and defend the Constitution of the United States. In monitoring systems political activity, the agencies exercised their responsibilities in a manner unworthy of U.S. officials.

The abuses of that bygone era, and really of any era, often happen because of power: power to influence political currents, power to collect sensitive information and power to yield -- to wield surveillance tools in improper ways to achieve improper purposes. That power can and has been abused in the past by individuals at the highest and lowest levels of our government.

Fortunately, the power of our intelligence agencies is overwhelmingly used to protect us from those wishing to do our country harm. That is the conundrum: We need our intelligence agencies to have the necessary tools and techniques to safeguard our nation, and we have to be constantly vigilant to ensure these tools are not manipulated by unscrupulous actors.

The recent inspector general's report revealed bias in the top echelons of the FBI during a hotly contested presidential election. It revealed that FBI agents, lawyers and analysts held profound biases against then-candidate Donald Trump, and in favor of his opponent, Hillary Clinton.

While those on the other side of the aisle continue to exclaim that these biases are only personal, political predilections that had no effect on the operation of one of the biggest investigations in our nation's history, I wonder whether these same members would say the same if text messages had turned up to the tune of "Hillary is a disaster," or "We'll stop her," or cursing her with all manner of expletives, or smugly stating that particular parts of the country "smell of Hillary supporters."

These types of comments were originating from people who were the fact-finders in the investigation. These profoundly inappropriate comments were coming from the individuals who were making decisions on whether to provide immunity to people who had already lied to investigators and whether subjects of an investigation could sit in on interviews with other subjects of the same investigation.

These were individuals who were plainly in positions of great power, with the opportunity to place greater, lesser or even no emphasis on certain facts or interpretations of law.

These actions led to complete legal exoneration of everyone involved in sending top-secret e-mails over personal servers and unsecured e-mails, and setting up a server for the explicit purpose of doing this. These actions even led to exposing at least one classified e-mail to a foreign party that risked serious damage to our national security.

Amazingly, considering their overwhelming biases, these people were also the very same people who were assigned to investigate the man that they hated, then-candidate Donald Trump.

GOODLATTE:

My reference to the Church Committee is apropos because it not only reviewed abuses by individuals, including the FBI director himself, but focused in on surveillance abuses. Here we now face the same allegations yet in manner that goes to the heart of our democracy.

It is right out of a novel, with salacious unverified dossiers, reports of informants that appear more like spies for the U.S. government, an application of the aforementioned surveillance powers to collect on a U.S. person once associated with President Trump's political campaign.

But it's not a novel. It's real life. And we are here today to understand a little bit more about why now -- why we now must review how our intelligence and law enforcement agencies engage in activity that appears not only wrong, but potentially illegal, all of which brings me to this body's constitutional oversight mandate and responsibilities.

Our responsibility to the American people is to conduct robust oversight agent -- of agencies within this committee's jurisdiction to ensure that taxpayer-funded agencies operate lawfully.

Our oversight, though, is only as good as the information we are provided. This committee's oversight has been hampered by both the FBI and DOJ's lack of consistent and vigorous production of the documents we need to hold the agencies accountable. While this production has significantly improved recently, it has felt like pulling teeth, much of the time, to obtain and review relevant documents.

Moreover, we just recently learned that some documents the inspector general received to conduct his investigation of the 2016 election have been interpreted by the Department of Justice to fall outside the first subpoena I ever issued as chairman of this committee.

Shockingly, e-mails and communications of DOJ officials have not been produced at all. Therefore, we have not received any e-mails between prosecutors working the Clinton case.

Said differently, we are not receiving and have not received potentially enlightening communications between prosecutors themselves, between prosecutors and DOJ management, including former Attorney General Lynch, or even communication between DOJ officials and those with the Obama White House.

This is unacceptable, particularly when we had, long before issuing the subpoena, requested all documents provided to the inspector general, other than certain ones pertaining to grand jury material.

The Department of Justice and the FBI are not mentioned in the United States Constitution. The president and Congress are. Our constitutional oversight necessitates that institutions like the FBI and DOJ yield to Congress' constitutional mandate.

This is nonnegotiable, because we must assure the American people that the agencies under our jurisdiction operate fairly, treating all equally under the law. This hearing emphasizes the importance of transparency in helping to regain both the perception and reality of impartiality of our law enforcement system.

Damage to the FBI and DOJ's reputations is not something any of us desire. But, now that both agencies have been on the front pages for so long, we must all work to ensure those stories are able to focus once again on the great men and women performing admirable and often heroic jobs to protect our country.

We expect to hear today how the FBI and the DOJ will hold people accountable and prevent this from happening again. Thank you, and I look forward to hearing from both Deputy Attorney General Rosenstein and Director Wray.

I now recognize the ranking member of the committee, the gentleman from New York, Mr. Nadler, for his opening statement.

NADLER:

Thank you, Mr. Chairman.

The events that have led up to this hearing are totally unacceptable. On Monday of this week, you notified us of this hearing without the seven-day notice required by the rules. On Tuesday, you started our committee markup more than an hour late again, again without notice to the minority.

NADLER:

Then you allowed Mr. Jordan (ph) to offer an amendment to a resolution of inquiry that was patently non-germane. And then you stood out of view of the cameras in the hallway, just off the hearing room, while the majority voted to overturn the ruling of their own chair that the amendment was not germane.

On Wednesday, you dropped all committee business to interview Peter Strzok, who had already volunteered to come in for an interview before you threatened him with a subpoena. Today, we meet so that the majority can criticize the deputy attorney general to his face, largely about his failure to produce documents that you know he cannot produce.

We will take a break so that we can go to the floor and vote on a so-called resolution of insistence, based on the Jordan amendment from earlier this week, a measure that is without precedent, without the force of law and clearly a pretext for a move against Mr. Rosenstein that the majority has already planned.

And what is the great emergency that justifies this last-minute hearing? Why has the majority abandoned the rules and traditions that govern civility in the House? The tired story of Hillary Clinton's e-mails, of course, plus a few conspiracy theories about this special counsel.

When President Trump and his administration were actively separating families at the border, ripping children out of the arms of their parents and causing untold suffering to thousands of families, that did not merit an emergency hearing by this committee.

Now that thousands of children are still separated from their parents, with no clear plan from this administration for reuniting these families, where is the emergency hearing on that issue?

We know that Russia, after successfully interfering with our 2016 elections, is actively working to disrupt the upcoming elections, as well. We are told this by all of our intelligence agencies.

The former national security adviser testified that our intelligence agencies, despite this, have received no instructions from the White House to protect the integrity of our election system. Have we scheduled an emergency hearing on that matter?

For that matter, have we conducted any oversight at all on election security, on the family separation crisis, on the administration's failure to protect Dreamers, on the Justice Department's radical decision not to defend the Affordable Care Act in court, on the Supreme Court's recent decisions to undermine voting rights and workers' rights, on the president's ongoing conflicts of interest and clear violations of the emoluments clause of the Constitution, or on the myriad other pressing issues within our committee's jurisdiction?

No. As with so many issues, this committee stays silent. But, on Hillary Clinton's e-mails, sound the alarms.

Despite the inspector general's report that, in more than 500 exhaustive pages, demonstrates conclusively that the outcome of the Clinton investigation was not affected by any improper bias, political or otherwise, we are wasting precious committee time to chase Hillary Clinton yet again.

The Republicans seem desperate to prove that there was some sort of pro-Clinton and anti-Trump conspiracy within the FBI when, in fact, the overwhelming evidence shows exactly the opposite.

Virtually every action criticized in the inspector general's report -- Director Comey's July announcement, his public comments on the Clinton investigation and refusal to confirm the existence of the Trump investigations, and his October decision to announce publicly the reopening of the Clinton e-mail investigation -- ultimately harmed the candidacy of Secretary Clinton and inured to the benefit of Donald Trump, and no one will deny that fact.

But I guess we shouldn't let facts stand in the way of a good manufactured emergency. According to the Republican memo for today's hearing, today is also an opportunity for members to consider, quote, "the Justice Department's compliance with the committee's March 22nd subpoena," close quote, a subpoena that was not issued in compliance with House (ph) rules and therefore cannot be enforced.

NADLER:

Even if it were a properly issued subpoena, the fight over document production seems to have boiled down to certain documents that the Republicans know the Department of Justice cannot turn over, much of it evidence relating to an ongoing criminal investigation, the scoping documents outlining specific lines of inquiry in an ongoing criminal investigation and the identities of confidential human sources still working undercover in the field.

And that, of course, is the whole point. As part of their coordinated and determined effort to undermine the special counsel's investigation, Republicans are requesting documents they know they cannot have.

If they somehow find themselves in possession of sensitive documents that go to the core of the special counsel's investigation and if past practice holds, those documents will end up in the possession of the -- of the subject of the investigation -- namely, President Trump -- and, shortly thereafter, on Fox News.

And, if the majority is, rightly, denied, they will do their best to undermine the credibility of the Department of Justice, the credibility of the deputy attorney general, and, by extension, the credibility of the special counsel.

They will likely try to hold Mr. Rosenstein in contempt. Some have even threatened him with impeachment. They may argue that he must be removed from his oversight role over the special counsel's investigation. This is an investigation, I might remind my colleagues, that has already yielded five guilty pleas and that has led to the indictment of 20 people so far.

The president and some of his closest advisers are under investigation for having participated in a criminal conspiracy with a foreign power against the United States. That is an emergency.

The president can -- practically confessed to lack -- the president practically confessed to Lester Holt on television that he obstructed the investigation into that conspiracy when he said that he fired former FBI Director Comey because of, quote, "this Russia stuff with Trump and Russia," close quote. That is an emergency.

But is that the subject of today's emergency hearing? No -- or of any emergency hearing? No, it is not. I know that this has been a hard week for the majority. I know that it must be tempting to change the subject and rally the base with cries of "Lock her up."

But we do not have the luxury of hiding or voting present at this critical juncture for our democracy. We cannot hide from our responsibilities. We cannot hide from our obligation to conduct oversight of a corrupt administration.

We cannot hide from our constitutional duty to protect our elections from foreign interference or to stand up for the rules and for our domestic institutions and for the rule of law. And we cannot hide from our responsibility not to interfere with a proper investigation.

I ask my colleagues to consider this question as we proceed: When the special counsel's work is complete, when the enormity of what he finds has been laid bare, how will the American people judge your actions today?

I yield back the balance of my time.

GOODLATTE:

Committee will stand in recess and return immediately after this vote series to hear the opening statements of the deputy attorney general and the director.

(RECESS)

GOODLATTE:

The committee will reconvene. We'd ask the media to at least settle down.

We welcome our distinguished witnesses, and, as is the practice of this committee, if you would please rise, I'll begin by swearing you in.

Sorry to make you keep standing up, Director. I know you're -- do you and each of your swear that the testimony that you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you. Let the record show that the witnesses answered in the affirmative.

Mr. Rod Rosenstein is the deputy attorney general of the United States. Throughout his distinguished career in public service, he has served in several divisions of the Department of Justice and, notably, as the United States Attorney for the District of Maryland from 2005 until 2017 before being nominated by President Trump to be deputy attorney general.

Director Wray is the eighth director of the Federal Bureau of Investigation. Mr. Wray began his Department of Justice career in 1997 as an assistant United States attorney for the Northern District of Georgia. He then served as the -- in the office of the deputy attorney general and was nominated by President George W. Bush to serve as assistant attorney general for the Criminal Division. He worked in private practice before President Trump nominated him to lead the bureau in August of 2017.

Your entire written statement will be entered into the record, and we ask that you summarize your testimony in five minutes. And, to help you stay within that time, there's a timing light at the table.

When you have one minute left, it will turn to yellow, and then, a minute later, to red. So we hope you'll keep your time within that limit, and then we'll open it up for questions. So we'll start with Deputy Attorney General Rosenstein. Welcome.

ROSENSTEIN:

Well, thank you, Chairman Goodlatte, Ranking Member Nadler and members of the committee. I always welcome the opportunity to appear before this distinguished body. But today is not a happy occasion.

Based on my 30 years of experience in federal law enforcement, working with the outstanding men and women of law enforcement, federal, state and local, in many of your districts, there's nobody who would be more committed to rooting out abuse and misconduct when there's credible evidence that it occurred.

The inspector general conducted a thorough investigation and found that some Federal Bureau of Investigation employees deviated from important principles in 2016 and 2017.

Everyone knew about some of those departures when they occurred, such as discussing criminal investigations and encroaching on prosecutorial decisions. We learned about others through the internal investigation, such as leaking to the news media and exhibiting political bias.

We need to correct errors, hold wrongdoers accountable and deter future violations. Director Wray will describe what the FBI is doing to accomplish those goals.

At the Department of Justice, our mandatory annual training will include lessons from the inspector general's report, and we are considering other recommendations.

We already revised the department's confidentiality policies to emphasize that nonpublic, sensitive information obtained in connection with our work is protected from disclosure.

We intend to enforce that principle on our employees and we need to demonstrate respect for it ourselves by protecting sensitive information entrusted to the FBI.

A (ph) congressional oversight is vital to democracy. My June 27th letter, which I will submit for your consideration, explains how the executive branch handles congressional oversight requests for law enforcement and intelligence information.

The FBI is managing an extraordinary volume of congressional oversight requests, some of which seek details about criminal investigations and intelligence sources.

As a result of President Trump's commitment to transparency, the FBI is making unprecedented disclosures to the Congress, including granting access to hundreds of thousands of pages of investigative information and thousands of pages of classified documents.

As with most things in Washington, the real work is not done on television, and it's not all done by me. Trump administration officials are meeting and talking with your staff every day.

They're working overtime with teams of FBI employees to accommodate requests and produce relevant information to this committee, other House committees and several Senate committees.

This committee requested the production of all documents relevant to the inspector general's review. As you well know, the FBI normally declines such requests. Because of the circumstances of this case and concerns that we developed during the investigation, the Department agreed to produce all relevant FBI documents.

ROSENSTEIN:

I understand that the universe of potentially relevant documents was in the range of 1.2 million, although only a fraction are actually relevant.

We began the production even before the inspector general finished his report, after we confirmed that the investigation was substantially complete and production at that time would not interfere with it.

As you know, the FBI struggled for some time with the scope and volume of the production. Some of your colleagues brought to my attention that the FBI's redaction policies created the appearance that relevant information was being concealed.

I looked into the issue, and I understood their concern. As a result, I called on U.S. Attorney John Lausch from Chicago to take charge of the project. Mr. Lausch is here with me today, and I know he's talked with some of you in recent days. He's been working on this project for some time.

Mr. Lausch brings experience in handling large document productions in the private sector. He worked with committee members and staff and arranged a production process that seems to be working very well.

I understand that some people still state concerns about the speed of the production. But those concerns are mistaken. Most requests have been fulfilled, and other document productions are in progress for this committee and other committees.

I have devoted almost 30 years to the service of my country. In my line of work, we keep an open mind; we complete our investigations before we allege wrongdoing by anybody. Our allegations are made under oath and supported by credible evidence. We treat everyone with respect and deal with one another in good faith.

You and I are the beneficiaries and the temporary trustees of a remarkable experiment in self-government. Like each member of Congress, the deputy attorney general, the FBI director and other department officials represent the people of the United States.

President Trump appointed us, the Senate confirmed our nominations and we swore an oath when (ph) we accepted responsibility for helping to run the Department of Justice. That oath requires us to make controversial decisions.

So here's the advice that I give Department of Justice employees: Faithfully pursue the department's law enforcement mission and the administration's goals in a manner consistent with laws, regulations, policies and principles.

Be prepared to face criticism. That's part of the job. But ignore the tyranny of the news cycle, stick to the rule of law and make honest decisions that will always withstand fair and objective review.

Our department's 115,000 employees work diligently every day to keep America safe. Most of their good work is never the subject of any congressional hearing.

It is a tremendous privilege to work in an organization that seeks the truth and serves the law. But the Department of Justice is not perfect. We will keep working to make it better. We welcome your constructive assistance.

Thank you.

GOODLATTE:

Thank you, Deputy Attorney General.

Director Wray, welcome.

WRAY:

Thank you.

GOODLATTE:

And I (ph) want to thank you both for getting here. I know you've come a long way to get here and under difficult circumstances, with a -- with an injury.

WRAY:

Thank you.

Good morning, Mr. Chairman, members of the committee. I appreciate this opportunity to discuss the FBI's response to the inspector general's report on DOJ and FBI activities in the run-up to the 2016 election.

We take that report very seriously, and we accept its findings and its recommendations. We are already doing a whole number of things to address those recommendations, and we are determined to emerge from this experience better and wiser.

The FBI is entrusted with a lot of authority, and our actions are appropriately, therefore, subject to close oversight. That oversight can make the FBI stronger and the public safer. Part of that oversight includes fulsome responses to legitimate oversight requests for documents and information.

For months, we've been working with your committees to make witnesses available, answer questions and produce or make available to you and your staff over, now, 880,000 pages.

Although we have now substantially complied with the majority of the committee's subpoena, we are determined to get through the outstanding items, and we have increased staffing on this project even further.

In just the past week, for example, we've had approximately 100 employees working day and night, dedicated to this project, through the weekend to collect, review, process and produce thousands of additional pages.

Turning to the I.G.'s report, although the I.G. report did not find any evidence of political bias or improper consideration actually impacting the investigation under review, that report did identify errors of judgment, violations of or disregard for policy, and decisions that certainly, in the benefit of hindsight, were not the best choices. So I'd like to briefly summarize the steps we're taking to address the report's recommendations.

First, we're going to be holding employees accountable for misconduct. We have already referred conduct highlighted in the report to the Office of Professional Responsibility, which is the FBI's independent disciplinary arm. And, once the necessary process is complete, we will not hesitate to hold people strictly accountable.

Second, we're making sure that every employee understands the lessons of the I.G.'s report through in-depth training, starting at the top, starting with the executives, so we don't repeat mistakes identified in that report.

Third, we're making sure that we have the policies, the procedures and the training needed for everyone to understand and remember what is expected of all of us.

That includes drilling home the importance of objectivity and of avoiding even the appearance of personal conflicts or political bias; ensuring that recusals are handled correctly; making all employees aware of our new media policy, which I issued last November, and making clear that we will not tolerate noncompliance with that policy; ensuring that we follow DOJ policies about public statements on ongoing investigations and uncharged conduct; and ensuring that we adhere strictly to all policies and procedures on the use of FBI systems, networks and devices.

I've also directed our new associate deputy director, the number three official in the FBI, to lead a review of how we staff, structure and supervise sensitive investigations so that we can make sure that each one is conducted to our highest standards.

The I.G. report makes clear that we've got important work to do. But I do want to emphasize that this report is focused on a specific set of events in 2016 and a small number of employees connected with those events.

Nothing in this report impugns the integrity of our workforce as a whole or the FBI as an institution. I want to be very clear with this committee about the FBI that I've gotten to see, up close and personal, in the 10 months since I've taken on this job.

As I meet with our offices all over the world, offices represented by every one of the members up here on the dais, I encounter really remarkable, inspiring stories about the work our 37,000 men and women are doing every single day.

WRAY:

We've rescued more than 1,300 kids from child predators this year alone. We've arrested more than 4,600 violent gang members in just the past few months. We've disrupted, recently, terrorist plots ranging from places like Fisherman's Wharf in San Francisco, to a crowded shopping mall in Miami. And I could go on and on.

Our men and women are doing all of that great work and much, much more with the unfailing fidelity to our Constitution and the laws that it demands, the bravery that it deserves and the integrity that the American people rightly expect.

That means we're going to do this job by the book. I am committed to doing that. I would not be here if I wasn't committed to making sure we do it that way, and I expect all our employees to do the same. That means following our rules, following our policies, following our longstanding norms.

There will be times when we feel extraordinary pressure not to follow our process and policies, but, in my view, those are precisely the times that we need to adhere to them the most.

We've got to stay faithful to our best traditions and our core values, making sure that we're not only doing the right thing, but doing it in the right way and pursuing the facts independently

and objectively, no matter who likes it. That, in my view, is the only way we can maintain the trust and credibility of the people we serve.

So, Mr. Chairman and members of the committee, thank you again for the opportunity to address the inspector general's report. And I look forward to answering the committee's questions.

GOODLATTE:

Thank you, Director Wray.

We'll now proceed under the five-minute rule with questions. And I'll begin by recognizing the gentleman from Florida, Mr. DeSantis.

DESANTIS:

Thank you, Mr. Chairman; welcome, to the witnesses.

Mr. Rosenstein, August 8th, 2016, text message in the I.G. report from Lisa Page to Peter Strzok: "Trump's not ever going to become president, right? Right?" Peter Strzok responds, "No, no, he's not. We'll stop it."

Now, the Justice Department had previously provided text messages from that date. They included all the messages we now have, except the "We'll stop it" text message. Why didn't the Justice Department produce that to Congress when we asked?

ROSENSTEIN:

Mr. DeSantis, I spoke with our inspector general, Michael Horowitz, yesterday, and he told me that, when he testified, he didn't have a full opportunity to explain, and the technology details are pretty complicated.

But he assured me he had had a long telephone conversation with Mr. Jordan after the hearing and explained it. He's much better positioned than I. What I can assure you...

DESANTIS:

So let me just ask this then...

(CROSSTALK)

ROSENSTEIN:

If I could explain, sir, I want to assure you and the American people, we're not withholding anything embarrassing. The message was not in the original material that the inspector general -- he -- he found these messages.

DESANTIS:

Right, so he -- you guys didn't find it, and he did. And so we're asking you to produce stuff, and obviously, you know, we're expecting a good-faith effort. You guys didn't find it, and maybe somebody else deleted or something happened before you guys, but he was able to find it, and you didn't.

So it's very disappointing to see that text message there, because I think you would agree -- just think of the timeline here. You have Peter Strzok; he opens up the counterintelligence investigation against Trump's campaign at the end of July.

Then, a week later, this text message -- "He ain't going to be president; we'll stop it" -- then, the next week, the infamous "insurance policy" text message, where he says, "We can't take the risk of a Trump presidency; you need an insurance policy."

The American people see that. Doesn't that undermine the whole integrity of the actions of people like Peter Strzok?

ROSENSTEIN:

Yes, Congressman, that obviously is highly inappropriate, and I'm as troubled by it...

DESANTIS:

Well, it's more than that, though...

(CROSSTALK)

ROSENSTEIN:

... as you are.

DESANTIS:

It's more than that. I mean, the inspector general did find that the bias affected -- he didn't say it affected the decision about Hillary.

But he said, once we got into the fall, when you had the Huma Abedin e-mails and there was slow-walking on that by Peter Strzok -- he was really concerned with pursuing this collusion investigation. And he testified on the record that it was absolutely reasonable to say that the bias not only existed, but affected what he did.

Let me ask you this: What did the DOJ or FBI do in terms of collecting information, spying or surveillance on the Trump campaign, be it via Stefan Halper or anybody else working on behalf of the agencies?

ROSENSTEIN:

As you know, Congressman, I'm not permitted to discuss any classified information in an open setting, but I can assure you that we are working with oversight committees and we're producing all relevant evidence that will allow them to answer those questions.

DESANTIS:

Let me ask you this, then: Did the Obama administration -- anybody in the administration -- direct anybody -- Halper or anybody else -- to make contact with anyone associated with the Trump campaign?

ROSENSTEIN:

As I said, Congressman, I appreciate, obviously, the -- in understand your interest, but I'm not permitted to discuss classified information.

DESANTIS:

Well, we want the documents. So I know we're in a back-and-forth on that, but -- but the American people need to know, were the counterintelligence powers of the -- of the Obama administration unleashed against Trump's campaign? If that was done, was it done inappropriate (ph)?

Let me ask you this, you -- you know, they talk about the Mueller investigation -- it's really the Rosenstein investigation. You appointed Mueller. You're supervising Mueller.

And it's supposedly about collusion between Trump's campaign and Russia and obstruction of justice. But you wrote the memo saying that Comey should be fired, and you signed the FISA extension for Carter Page.

So my question is to you, seems like you should be recused from this, more so than Jeff Sessions, just because you were involved in making decisions affecting both prongs of this investigation. Why haven't you done that?

ROSENSTEIN:

Congressman, I -- I can assure that, if it (ph) were appropriate for me to recuse, I'd be more than happy to do so and let somebody else handle this. But it's my responsibility to do it, and all I can tell you, sir...

DESANTIS:

Well, how does it -- then how do you have obstruction of justice possibility for a president exercising his powers to fire an FBI director that you said should be fired? And, by the way, the I.G. report makes it clear Jim Comey should have been fired. So why are we still doing this with the Mueller probe?

ROSENSTEIN:

Sir, I am not commenting on what is under investigation by the Mueller probe, and, to the best of my knowledge, neither is Mr. Mueller. I know there's a lot of speculation in the media about that, but that doesn't relieve me of my obligation not to discuss the subject matter of the investigation.

DESANTIS:

Do you accept what I.G. Horowitz said regarding Peter Strzok and the fall campaign, with Huma Abedin, e-mails, how he slow-walked that versus how he was so gung-ho about the -- the Trump Russia collusion?

Remember, he texted Lisa Page the -- the other thing, "Hillary mattered because we didn't want to mess it up, but this matters because it matters." That's what he wanted to do, and that's where he was focusing his energy on.

Horowitz said his bias is the -- is appropriate explanation for his conduct. Do you agree?

ROSENSTEIN:

I certainly agree with the findings of the inspector general report, and I think those messages clearly do indicate bias.

DESANTIS:

Then (ph) you guys have some work to do, because, if the bias is affecting official action, that is a big, big problem. I yield back the balance of my time.

GOODLATTE:

The chair recognizes the gentlewoman from California, Ms. Lofgren, for five minutes.

LOFGREN:

Deputy Attorney General Rosenstein and Director Wray, this may be an appropriate time to make what is kind of an easy request.

But could you state for the record what is the Department of Justice and Federal Bureau of Investigation's policy on commenting on any matter related to an ongoing criminal or counterintelligence investigation? And does this policy apply to document production, even when requested by Congress?

ROSENSTEIN:

Yes, Congresswoman. And Director Wray may be able to speak more specifically to the reasons why the FBI doesn't comment on counterintelligence investigations, but we do not discuss counterintelligence investigations or criminal investigations while they're ongoing.

WRAY:

Congresswoman, it's always been my experience that the department and the FBI do not comment on ongoing investigations. There are a number of reasons for that that are -- that go back to all the days when I was a line prosecutor, and long, long before that.

They have to do with protecting the reputations and the privacy of the people who are subject to the investigation. They have to do with protecting the integrity of the ongoing investigation.

They have to do with protecting the rights to fair trial, when that's relevant. And there are a whole number of reasons.

And, when you add the counterintelligence dimension, there's the need to protect sources and methods. And one of the central learnings of the inspector general's report, frankly, that we're here talking about with this committee, is about what goes wrong when you do talk about ongoing investigations.

LOFGREN:

Right. So these policies apply to all current and former personnel at DOJ and the FBI, as well as to the special counsel investigation, correct?

ROSENSTEIN:

That's correct.

LOFGREN:

Thank you.

You know, it seems to me -- I mentioned this the other day -- that we are here pursuing release of information that, in my experience on this committee -- 24 years on this committee and nine years as a member of this staff, one of the members of the committee -- I've never seen this happen before.

And, having been given the opportunity, along with just Mr. Nadler, Mr. Goodlatte and Mr. Gowdy, to actually read the entire application on the Carter Page -- the FISA application, along with the accompanying documents -- took me all day. I mean, I canceled all my appointments -- it's very obvious why that material should not be in the public arena.

There are people, I think, who would -- certainly could lose their lives if their identities were made known. And it's an example of the requirement that you labor under, but also that the committee labors under.

I want to mention that Mr. Jordan is here, so he'll correct me if -- if my understanding is incorrect, but I understand Mr. Jordan accused you, Mr. Rosenstein, on the floor, during debate, of threatening the HIPC staff if they attempt to hold you in contempt for failing to comply with document requests.

And I think it's important we put this on the record. Have you, Mr. Rosenstein, ever threatened congressional staff, including, but not limited to House Intelligence Committee staff, as it relates to requests for your -- for you to produce documents, or any other matter, for that...

ROSENSTEIN:

Congresswoman, people make all kinds of allegations. And, in my business, we ask, who's the witness and how credible are they? And, if somebody comes forward and swears under oath that I threatened them, I'll be happy to respond.

All I can tell with regard to that matter to is that in the room at the time were three officials appointed by President Trump, confirmed by the United States Senate -- Director Wray, Assistant Attorney General Boyd and me. Two former Republican U.S. attorneys were also in the room with us: Greg Brower, who, at the time, was serving as the legislative liaison for the FBI; and Scott Schools.

LOFGREN:

So your answer is no.

ROSENSTEIN:

The answer is no. I have not threatened...

LOFGREN:

Thank you very much.

I'd just like to close with this, as my time is running out. It just seems to me that we are asking you two to violate the policies that you labor under, and we've been doing that repeatedly. We got the 500-page I.G. report. You've acknowledged the needs to improve areas.

Last week we held a six year (ph) -- hour hearing; yesterday, 11 hours trying to get the FBI to violate the same policies that you are upholding today. And I think it it's really not what this committee should be doing.

I do not believe it is in the best interest of this country, and, certainly, it does not uphold and elevate the rule of law, which is what this committee should be doing and has been doing for the quarter-century that I've served on it.

And I yield back, Mr. Chairman.

GOODLATTE:

The chair recognizes the gentleman from Florida, Mr. Gaetz, for five minutes.

GAETZ:

Thank you, Mr. Chairman.

Director Wray, I am in violent agreement with the statements you made after this report was published that nothing in the report impugns the patriotic work of the FBI employees who are serving in my district and around the world.

And this mess in Washington has nothing to do with them, and I want to make that very clear. And I appreciate your statements on that subject.

Deputy director, the Democratic memo that the president declassified says the Department of Justice accurately informed the court that the FBI initiated its counterintelligence investigation on July 31st, 2016. Did any investigative activity regarding the Trump campaign and Russia occur before July 31st, 2016?

ROSENSTEIN:

Congressman, as you know, we were dealing with the Intelligence Committee on that issue. And Chairman Nunes met with Director Wray and me.

I received the same briefing that he received, so I don't know any additional information beyond what he knows about that. And I'm not able to produce any information beyond what the FBI has told me. So I...

GAETZ:

Are you aware, as you sit here today, of any payments that were made to any person to collect intelligence on the Trump campaign, prior to July 31st, 2016?

ROSENSTEIN:

No, but keep in mind I wasn't there. I only know what information that we've obtained from the FBI records.

GAETZ:

Are you, as you sit here today, aware of any efforts to contact Roger Stone that occurred prior to July 31st, 2016?

ROSENSTEIN:

I don't have any personal knowledge, Congressman, but I know that we are seeking to respond to Chairman Nunes' request. I think one thing you need to understand...

GAETZ:

How about the same question as it will -- regards to Michael Caputo?

ROSENSTEIN:

I wasn't there, and so I can answer questions that we direct to the FBI, and then have them search...

(CROSSTALK)

GAETZ:

You're (ph) there now, right? I mean, have you asked these questions of anyone?

ROSENSTEIN:

We have absolutely conveyed all the questions that Chairman Nunes has raised. And I'm optimistic that we'll be able to respond to him fairly soon.

GAETZ:

You could understand why it would be of tremendous importance to the country that -- if the Department of Justice has represented to a court that this investigation began on July 31st, and if -- the fact that you cannot tell me definitively that, before July 31st, there was not intelligence collected on the Trump campaign -- that that is something of great interest to us.

ROSENSTEIN:

Congressman, I think you should understand there's nobody more committed to rooting out abuse and misconduct than I. We talk with the FBI. We take those allegations seriously, and we look to find any credible evidence. If we find it, we're going to produce it to Chairman Nunes.

GAETZ:

Thank you. Let's do that quickly. And let's get into your -- your determination to find out that activity which is occurring in your department.

At the last hearing we had, I asked you when you first became aware that Nellie Ohr, the wife of your associate deputy attorney general, Bruce Ohr, was working for Fusion GPS and was actively assigned to the dossier that said all these nasty things about President Trump.

As you sit here today, do you know when you became first aware of that?

ROSENSTEIN:

I believe it would have been sometime in the fall of 2017. As I think I told you last time, Mr. Ohr was never working, to my knowledge, on that Russia investigation. And...

GAETZ:

Well, his wife -- but his wife was, right? I mean, like, he's your assistant -- or your associate deputy attorney general, and his wife gets hired for that -- I actually -- I asked you this question on the 13th of December.

I wrote you a letter on the 18th of December, nine months ago. You have not responded to it. We need a date when you found out that the wife of your deputy was working for people who were actively trying to undermine President Trump.

Don't you think that's a really important date for you to know about your -- the spouse of your own associate deputy attorney general?

ROSENSTEIN:

Yes. I think it's important for you to understand, Congressman, Mr. Ohr is a career employee of the department. He was there when I arrived. To my knowledge, he wasn't working on the Russia matter.

GAETZ:

I don't care...

(CROSSTALK)

ROSENSTEIN:

I think it's important for you to know, sir, that, when we learned of the relevant information, we arranged to transfer Mr. Ohr to a different office.

GAETZ:

Let's get to...

ROSENSTEIN:

In addition to that, sir...

(CROSSTALK)

GAETZ:

I'm sorry; I've got to reclaim my time, Mr. Rosenstein.

The FISA renewal that you signed -- list for me the people who briefed you on the substance of that -- of that FISA renewal to go and spy on people.

ROSENSTEIN:

So, Mr. Gaetz, here's one thing I think it's important for you to understand. People can make all kinds of allegations publicly. I am quite confident about my conduct throughout this investigation. That matter is under review by the inspector general. We'll see what the inspector general finds.

GAETZ:

Did you read the FISA application before you signed it?

ROSENSTEIN:

I'm not going to comment about any FISA application.

GAETZ:

So you won't say to this committee whether or you even read the document you signed that authorized spying on people associated with the Trump campaign?

ROSENSTEIN:

I -- I dispute your characterization of what that FISA is about, sir.

GAETZ:

Did you read or did you not read it?

ROSENSTEIN:

I'll be happy to review -- I'll be happy to discuss the details with you, but, as I told you, sir...

GAETZ:

Well, did Peter Strzok brief you on it?

ROSENSTEIN:

No.

GAETZ:

Did Lisa Page brief you on it?

ROSENSTEIN:

No.

GAETZ:

Did Sally Moyer brief you on it?

ROSENSTEIN:

Now, let me explain the process, if I may.

GAETZ:

Well, did Trisha Anderson brief you on it?

ROSENSTEIN:

No FBI personnel briefed me on it. The process, sir, is that these FISA application and renewals first come up through the FBI chain of command. They are sworn under oath by a career federal agent. I'm not the affiant.

GAETZ:

You signed it.

ROSENSTEIN:

I'll explain the process to you.

GAETZ:

Did you thoroughly review it, yes or no?

ROSENSTEIN:

I want to explain the process to you.

GOODLATTE:

The time.

GAETZ:

I'm out of time. Did you thoroughly review it?

GOODLATTE:

The time of the gentleman has expired. The witness will be permitted to answer the question.

ROSENSTEIN:

I'd like to explain the process. Director Wray can explain it to you, sir. My responsibility, at that time, was to approve the filing of FISA applications, because only three people in the department are authorized to be the final signoff: the attorney general, the deputy, and the assistant attorney general for national security who -- at the time, the position was vacant.

So it was my responsibility to do that. I have, fortunately, been relieved of that responsibility. Director Wray still does it every day. And I don't know exactly what his process is, sir.

But we sit down with a team of attorneys from the Department and Justice, all of whom review that, provide a briefing for us about what's in it. And, sir, I've reviewed that one in some detail, and I can tell you, sir, that the information that's public about that doesn't match with my understanding of the one that I signed.

But I think it's appropriate to let the inspector general complete that investigation. These are serious allegations, and I don't do the investigation. I'm not the affiant. I'm reviewing the finished product, sir.

GAETZ:

Are they investigating you?

ROSENSTEIN:

If the inspector general finds that I did something wrong, then I'll respect that judgment. But I think it's highly, highly unlikely, sir, given the way the process works.

GAETZ:

I yield back.

GOODLATTE:

The chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for five minutes.

JACKSON LEE:

Mr. Chairman, thank you very much. And let me thank the ranking member, who remains on the floor. I know he's en route.

I'm almost believing that I've just attended, or I'm in the midst of a monster ball, and we're looking for monsters wherever we can find them. As I was on the floor -- as I was on the floor, I heard someone say, Mr. Deputy Attorney General, that they're interested in holding you in contempt.

Maybe they may be mollified by a resolution that really has no real point to it. But this is the absurdity that we are dealing with in an investigation that has proceeded and, I believe, has concluded.

So let me ask you: Two investigations that were ongoing in 2016 -- could you just, very briefly, say what they were? Two investigations regarding presidential candidates -- what were those investigations?

ROSENSTEIN:
Congresswoman...

JACKSON LEE:
Ms. Clinton -- what was the investigation for Mrs. Clinton?

ROSENSTEIN:
I'm not going to comment on any investigation that may have been ongoing. I know there's a lot of publicity about it, but I'm not going to comment on it.

JACKSON LEE:
All right. Can you comment on the I.G. report? What was the I.G. report about?

ROSENSTEIN:
Yes, the I.G. report is about -- actually, it's about a variety of misconduct that occurred in the FBI in 2016 and 2017.

JACKSON LEE:
Relating to?

ROSENSTEIN:
Relating to -- well, it's primarily focused on the Hillary Clinton e-mail investigation, but the inspector general actually addressed a few other issues in that report, as well.

JACKSON LEE:
Did that report -- did that investigation come to a conclusion in 2016, to your knowledge?

ROSENSTEIN:

The Hillary Clinton e-mail investigation?

JACKSON LEE:

Yes.

ROSENSTEIN:

Well, it did, based upon public reports.

JACKSON LEE:

And, based upon public reports, was the Department of Justice satisfied with those -- the end of that investigation?

ROSENSTEIN:

Congresswoman, I -- the same response I had to Mr. Gaetz: I wasn't there, and I'm not the one to comment on whether or not people were satisfied with the result. We all know what the result was.

JACKSON LEE:

Director Wray, your agents were involved in the FBI investigation of the Clinton e-mails. Is that accurate?

WRAY:

Yes. Obviously, I was not there at the time, but, yeah, absolutely.

JACKSON LEE:

You've had a chance to review the inspector general's report?

WRAY:

I have.

JACKSON LEE:

And saw the fractions that were cited to the FBI?

WRAY:

I'm sorry, the fractions?

JACKSON LEE:

The fractions -- the infractions support (ph)...

WRAY:

The infractions?

JACKSON LEE:

Yes.

WRAY:
Yes -- yes.

JACKSON LEE:
Have you corrected or do you have a comment on any of the infractions which you've corrected, i.e. director speaking about an investigation without the presence or yielding to one of the prosecutors of the DOJ, such as what Director Comey did?

WRAY:
Well, Congresswoman, I'm not going to add my own personal opinion on top of the inspector general's very thorough report. But we -- as I said earlier, we do accept the findings that are in the report and the recommendations in it. And I would say that...

JACKSON LEE:
And what have you done -- what have you done with respect to the recommendation about the idea of a director of the FBI making such statements, going forward?

WRAY:
So we've done a couple of things. One is that we have issued a new media policy that is much more clear so that we ensure that people follow our policies.

We've also directed people to make sure that they're adhering to DOJ policies about commenting on ongoing investigations and specifically about uncharged conduct.

JACKSON LEE:
From the law enforcement perspective, which is what your arm is...

WRAY:
Correct.

JACKSON LEE:
... is that correct?

WRAY:
We're not the prosecutors.

JACKSON LEE:
Thank you.

Do you have any comment on the suggestion that one of your officers delayed in investigating the Weiner laptop? Do you think that was done to undermine the investigation?

WRAY:

Well, Congresswoman, again, I think, rather than substitute my characterization for the inspector general's, which is very detailed, I would just say that my read of the inspector general's report is that he found that there were delays as a result of a number of factors.

And we are taking steps to make sure that, going forward, as I said in my opening comments -- that we structure staff and supervise sensitive investigations in appropriate ways so that we don't repeat any of the mistakes that are reflected in this report.

JACKSON LEE:

And, looking back, do you think that impeded or impacted on the final conclusion of the Clinton e-mail investigation?

WRAY:

Well, again, I would defer to the inspector general's own characterization of his investigation. My understanding of it is that he found that there was no political bias ultimately impacting the investigation that he reviewed.

JACKSON LEE:

Mr. Attorney General, do you believe, as Donald Trump indicated, that the investigation of which you have read the inspector general's report has vindicated Mr. Trump, as relates to collusion with Russian agents, as he indicated...

ROSENSTEIN:

Congresswoman.

JACKSON LEE:

... or is the investigation ongoing?

ROSENSTEIN:

There is an ongoing investigation, yes.

JACKSON LEE:

And it's not concluded?

ROSENSTEIN:

Correct.

JACKSON LEE:

And no conclusion has been made on any aspect of the investigation?

ROSENSTEIN:

Well, there have been several charges that have been filed. And so you're familiar with those.

JACKSON LEE:

Correct.

GOODLATTE:

The time of the gentlewoman has...

JACKSON LEE:

It's ongoing. Thank you. I yield back.

GOODLATTE:

The chair recognizes the gentleman from South Carolina, Mr. Gowdy, for five minutes.

GOWDY:

Thank you, Mr. Chairman.

The Russia investigation has been going on for almost two years now. Special counsel's investigation has been going on for over a year now. For most Americans, it's important to know what Russia did to our country in 2016 and with whom, if anyone, they did it.

When a foreign state interferes with our democratic electoral process, it should be the chance of a lifetime for a law enforcement agent to investigate that, except, apparently, the one that was actually picked to investigate it. That was Peter Strzok.

FBI Agent Peter Strzok was picked to lead the FBI's investigation into what Russia did in July of 2016. It was a counterintelligence investigation that begun in late July 2016, and he was leading it.

And, at about the exact same time he was picked to lead it, this dispassionate and fair FBI agent was calling Trump a disaster, destabilizing for the country. I -- I'll leave out all of the F adjectives he used to describe that. I'll just go with "disaster" and "destabilizing."

The same time his FBI lawyer -- girlfriend, Lisa Page, was telling him he was meant to protect the country, this neutral, dispassionate FBI agent said, "I can protect the country at many levels."

The same time Peter Strzok, who was picked to objectively, fairly, neutrally look into the Russia investigation was talking about an insurance policy with Andy McCabe and Lisa Page in the event Donald Trump became the president -- all of this was happening at the same time Peter Strzok said he could smell the Trump support in southern Virginia.

All of this was at the same time that this FBI agent said a Trump presidency would be f-ing terrifying and that it will never happen -- "No, no, we'll stop it."

So, while investigating Russia and their attempt to subvert our democracy may have been important to the rest of the country, it wasn't all that important to about a half dozen FBI agents and lawyers who were assigned to the case.

For them, it was an investigation to stop Donald Trump, which then brings us to May of 2017 and the appointment of special counsel, where we find Peter Strzok again, the same supposed-to-be-dispassionate, neutral, fair FBI agent.

You would think he'd be really excited about investigating what a foreign power tried to do to this country, but you would be wrong again for Peter Strzok.

At precisely the same time that Bob Mueller was appointed -- precisely the same time -- Peter Strzok was talking about his unfinished business and how he needed to fix and finish it so Donald Trump did not become president.

He was talking about impeachment within three days of Special Counsel Mueller being appointed -- three days. That's even quicker than MSNBC and the Democrats were talking about impeaching. Within three days, the lead FBI agent is talking about impeaching the president.

So this is where we are. We're two years into this investigation, we're a year and a half into the presidency, we're over a year into special counsel. You have a counterintelligence investigation that's become public.

You have a criminal investigation that's become political. You have more bias than I have ever seen manifest in a law enforcement officer in the 20 years I used to do it for a living and four other DOJ employees who had manifest animus towards the person they were supposed to be neutrally and detachedly (ph) investigating.

Democrats are using this investigation as a presumption of guilt, which I find astonishing and, in the long run, for the health of this republic, I would encourage them to go back to the presumption of innocence that we used to hold sacred.

There's a presumption of guilt. There's a desire by Democrat senators to fund-raise off of your investigation. More than 60 Democrats have already voted to proceed with impeachment before Bob Mueller has found a single solitary damn thing. More than 60 have voted to move forward with impeachment, and he hasn't presented his first finding.

So I'm going to say this to you Mr. Wray, Mr. Rosenstein. I realize that neither one of you were there when this happened, but you're both there now. Russia attacked this country; they should be the target. But Russia isn't being hurt by this investigation right now.

We are. This country is being hurt by it. We are being divided. We've seen the bias. We've seen the bias. We need to see the evidence. If you have evidence of wrongdoing by any member of

the Trump camp -- campaign present it to the damn grand jury. If you have evidence that this president acted inappropriately, present it to the American people.

There's an old saying that justice delayed is justice denied. I think, right now, all of us are being denied. Whatever you got, finish it the hell up, because this country is being torn apart.

I would yield back, Mr. Chair.

GOODLATTE:

Do either of the witnesses care to respond to the...

ROSENSTEIN:

I would simply respond, Mr. Gowdy, I certainly share your views about those text messages. And nobody is more offended than I about what's reflected in those messages.

With regard to the investigation, I've heard suggestions that we should just close the investigation. I think the best thing we can do is finish it appropriately and reach a conclusion.

I certainly agree with you, sir, that people should not jump to conclusions without seeing the evidence. I've been the victim of fake news attacks myself, so I'm sympathetic.

I agree with you, sir, that there's been no allegation made by the Department of Justice or the special counsel, other than what's reflected in those documents that are filed publicly that charged folks. Nobody should draw any conclusions beyond those charges.

GOODLATTE:

The chair recognizes the gentleman from Tennessee, Mr. Cohen, for five minutes.

COHEN:

Thank you.

Director Wray, Mr. Rosenstein, was Peter Strzok the head of any of those investigations?

WRAY:

Well, Congressman, I don't know that I would characterize him as the head of any of the investigations. Certainly, he played a significant role in the investigations that are described in the inspector general's report. But there was a supervisory chain, and then, as the inspector general found, there were a number of people involved in that chain, above him.

COHEN:

And I know you've spoken already about the investigator (ph) general's report. It was very thorough, and you accepted it. It came to the conclusion that, while he may have had biases, none of his biases played a role in their actions or their conclusions. Is that correct?

WRAY:

Well, again, I -- I would defer to the inspector general's own characterization of his very thorough investigation. But my understanding of it is that he found no evidence of political bias actually impacting the investigation that he reviewed.

COHEN:

So what we -- all we had was some talk between friends, maybe lovers. And it was just talk, but no policy and no action to bring about or effectuate any of their beliefs. Correct?

WRAY:

Well, again, I -- I don't know that I want to start characterizing their text messages. I expect all our folks to conduct themselves professionally at all times.

And the other reason I want to be careful about straying too far is that, as I said in my opening, we have referred a number of individuals whose conduct is highlighted in the report to our Office of Professional Responsibility.

And my commitment to doing things by the book includes making sure that our disciplinary process is done by the book. And having the director comment on their conduct in this setting is probably not conducive to that.

COHEN:

Thank you, sir. Am I correct that both -- each of you were appointed by President Trump? Is that correct?

ROSENSTEIN:

Yes, sir.

WRAY:

Yes.

COHEN:

And who appointed the special counsel?

ROSENSTEIN:

I did.

COHEN:

And you were appointed by President Trump.

ROSENSTEIN:

Correct.

COHEN:

Now, President Trump talks about 13 Democrats running this investigation. Do you know who he's speaking about and if there's any way that the Justice Department or President Trump knows if these people are Democrats, Republicans, Libertarians, Bolsheviks?

ROSENSTEIN:

You'd have to ask him, sir. I do not know.

COHEN:

You don't know if they're Democrats?

ROSENSTEIN:

I do not -- I do not know their political registration; no, sir.

COHEN:

Director Wray, do you any of these people's political registrations?

WRAY:

I'm not familiar with their political registration, no.

COHEN:

Thank you.

This report -- the special counsel has gone on for a long time. Could that be because there is so much information and so many issues that have arisen from his investigation that it's impossible to just turn it off? Is that possible, Mr. Rosenstein?

ROSENSTEIN:

Sir, I -- I do not think you should draw any inference -- I don't think, as these sort of investigations go, that it's actually been going on for a long time.

And I can assure you Director Mueller understands that I want him to conclude it as expeditiously as possible, consistent with his responsibility to do it right.

COHEN:

Has anybody ever accused Director Mueller -- Special Counsel Mueller, excuse me -- of being dilatory, lazy, slow?

ROSENSTEIN:

I certainly haven't, sir. I don't know what other allegations people make, but I certainly do not view that as accurate.

COHEN:

Director Wray, do you know Special Counsel Mueller's reputation for promptly doing his work and proceeding in a diligent fashion (ph) -- path?

WRAY:

My -- my own experience and familiarity with Director Mueller is that none of those adjectives would describe -- to (ph) much of anything he's done in his career for this country.

COHEN:

Director Mueller, as I remembered, volunteered to join the Marines in Vietnam, got a Purple Heart and had other commendations. Is that what you understand, too?

ROSENSTEIN:

Yes, sir.

COHEN:

And then, when he came back, he went to -- to law school, and he went to work for Justice. He could have gone to Wall Street and made a lot of money. In fact, he went into private practice for a while, but he didn't like it. Then he came back because he wanted to prosecute criminals. Is that correct?

ROSENSTEIN:

Well, I don't know his motivation, but I do know he's been -- he's devoted much of his career to public service and has forgone more lucrative opportunities.

COHEN:

And he prosecuted Manuel Noriega, did he not?

ROSENSTEIN:

Gosh (ph), I'm not certain whether he was -- I think he was in a management position. I don't know if he personally prosecuted it, but I think that's correct...

(CROSSTALK)

COHEN:

And John Gotti?

ROSENSTEIN:

I don't know the answer to that, sir.

COHEN:

Well, he's gone after big fish.

Let me ask each of you to promise me something. Will you promise me and the American people that, no matter what pressure is brought about -- and brought on you by whomever,

that you will stay in your position and finish the job and do what you were appointed to do and what the American people need you to do?

ROSENSTEIN:

Congressman, in the Department of Justice, we're accustomed to criticism, and it does not affect our work.

WRAY:

Congressman, as I've said repeatedly, I am committed to doing this job by the book in all respects, and there's no amount of political pressure that's going to dissuade me from that by either side.

COHEN:

Thank you. And I find you and -- each of you and Special Counsel Mueller as paragons and people who should be revered and not torn down, and people who tear them down...

GOODLATTE:

Time of the gentleman...

COHEN:

... tear down the flag and tear down the American...

(CROSSTALK)

GOODLATTE:

Time of the gentleman has expired.

COHEN:

I yield back and hope the Constitution is respected.

GOODLATTE:

Time of the gentleman has expired.

The chair recognizes the gentleman from Ohio, Mr. Jordan, for five minutes.

JORDAN:

Thank you, Mr. Chairman.

Mr. Rosenstein, why are you keeping information from Congress?

ROSENSTEIN:

Congressman, I am not keeping any information from Congress that it's appropriate for...

(CROSSTALK)

JORDAN:

In a few minutes, Mr. Rosenstein, I think the House of Representatives is going to say something different.

ROSENSTEIN:

I don't agree with you, Congressman. I don't believe that's what they're going to say, and if they do, they'll be...

JORDAN:

I disagree, but I think...

(CROSSTALK)

ROSENSTEIN:

... they will be mistaken.

JORDAN:

I think, in a few minutes, the House of Representatives is going to go on record saying you haven't complied with requests from a separate and equal branch of government, that you haven't complied with subpoenas and you got seven days to get your act together.

I think that's what's going to happen in a few -- that's just not -- that's not Jim Jordan. I think that's the House -- I think that's the majority of the House of Representatives. In just a few minutes, I think that's going to happen.

And I want to (ph) know why you won't give us what we've asked for.

ROSENSTEIN:

Sir, I certainly hope that your colleagues are not under that impression. That is not accurate, sir, and...

(CROSSTALK)

JORDAN:

It is accurate, we have caught you hiding information...

(CROSSTALK)

(UNKNOWN)

Mr. Chairman, can we allow the witness to answer? Mr. Chairman, point of order. We can go to Mr. Jordan's press conference and listen to him, but we came here to hear from the witness.

GOODLATTE:

The time belongs to the gentleman...

JORDAN:

Mr. Rosenstein...

(UNKNOWN)

Can we allow him to answer?

JORDAN:

... we have caught you hiding information from Congress.

(CROSSTALK)

(UNKNOWN)

... allow him to answer?

GOODLATTE:

He will be permitted to answer in Congress. He will be permitted to answer when (ph) Mr. Jordan...

(UNKNOWN)

Why do we have them here, if they're not...

(CROSSTALK)

GOODLATTE:

... and we'll allow him additional time...

(UNKNOWN)

... allowed to answer?

GOODLATTE:

... to answer. The gentleman is...

(UNKNOWN)

Why are they not allowed to answer?

GOODLATTE:

The gentleman is out of order. The gentleman from Ohio is recognized.

JORDAN:

Mr. Rose (ph), let me make this one point (ph), then I'll let you answer.

ROSENSTEIN:

... Yes, Mr. Jordan (ph). I'd like to answer (ph) your accusation, sir.

JORDAN:

Let me -- let me make this one point where we've caught you...

ROSENSTEIN:

May I answer your accusation, sir?

JORDAN:

... hiding information. Then you can answer.

Why did you hide the fact that Peter Strzok and Judge Contreras were friends? Why did you redact that in the documents you gave to us? Peter's -- I mean, Judge Contreras is kind of important -- FISA court judge, more importantly -- just as importantly, the judge that heard Mike Flynn's case. Why'd you try to hide that from us?

ROSENSTEIN:

Mr. Jordan, I appreciate you giving me the opportunity to respond. I've heard you make those sort of allegations publicly on TV...

JORDAN:

It's -- I got -- I got them right here.

ROSENSTEIN:

And, if you'll let me respond, sir...

LOFGREN (?):

Mr. Chairman, he should be given the opportunity...

JORDAN:

They're right here.

LOFGREN (?):

... to answer.

ROSENSTEIN:

Now, Mr. Jordan...

JORDAN:

It's redacted.

ROSENSTEIN:

I am the deputy attorney general of the United States, OK? I'm not the person doing the redacting. I'm responsible for responding to your concerns, as I have.

I have a team with me, sir. It's just a fraction of the team that's doing this work. And, whenever you've brought issues to my attention, I have taken appropriate steps to remedy them.

So your statement that I am personally keeping information from you, trying to conceal information from...

(CROSSTALK)

JORDAN:
You're the boss, Mr. Rosenstein.

ROSENSTEIN:
... is not true. That's correct, and my job is to make sure that we respond to your concerns. We have, sir.

Now, I have appointed Mr. Lausch, who is managing that production, and my understanding is it's (ph) actually going very well, sir.

So I appreciate your concerns...

JORDAN:
Again, I think the House of Representatives...

ROSENSTEIN:
... and I understand them (ph)...

(CROSSTALK)

JORDAN:
... is going to say otherwise.

ROSENSTEIN:
But your use of this to attack me personally...

JORDAN:
Why did you -- it's not a personal...

(CROSSTALK)

(UNKNOWN)
Point of order, Mr. Chairman. May the witness be permitted to answer the question that's been (ph) posed?

JORDAN:

It's not -- it's not personal.

GOODLATTE:

The gentleman will suspend.

The witness is going to have an opportunity to say whatever he wants at the end of Mr. Jordan's five minutes. Until the...

JORDAN:

It is not personal.

GOODLATTE:

... end of those five minutes, they're his time.

JORDAN:

I appreciate your service. It's not personal. We just want the information.

Why'd you tell Peter Strzok not to answer (ph) our questions yesterday? When I asked -- when I asked Peter Strzok if he'd ever communicated with Glenn Simpson, he gave us the answer he gave us dozens of times: "On advice of FBI counsel, I can't answer that question."

Why couldn't he answer that question?

ROSENSTEIN:

Mr. Jordan, I appreciate your sincere concerns, but I didn't give Peter Strzok any instructions. If there was some problem with the instructions he had, I'll be happy to look into it.

JORDAN:

Not what -- not what his FBI lawyer said.

ROSENSTEIN:

You have to understand, Mr. Jordan, when -- when you find some problem with a production or with questions, it doesn't mean that I'm personally trying to conceal something from you. It means we're running an organization that's trying to follow the rules, and we're going to respond to your...

(CROSSTALK)

JORDAN:

You know what was interesting? When I asked him if he'd ever talked to Bruce Ohr, he said he had; said he had three times in 2016 and 2017. Then I asked him, "Have you ever talked to Nellie Ohr?" And he said, "No, I haven't."

I said, well, why can you answer that question? Because Nellie Ohr worked for Glenn Simpson, worked for Fusion. He could answer that question, but he couldn't answer, because FBI counsel told him he couldn't -- he couldn't answer the question whether he'd ever communicated with Glenn Simpson, a journalist. Why couldn't he answer that question?

ROSENSTEIN:

Mr. Jordan, I appreciate you saying it isn't personal; sometimes, it feels that way. How do I know, sir? I mean, I -- you interviewed Mr. Strzok. I didn't. So I can't answer that.

JORDAN:

Works for you. Doesn't work for us.

ROSENSTEIN:

There are 115,000 people who work for me, sir.

JORDAN:

Mr. Rosenstein, did you threaten staffers on the House Intelligence Committee? Media reports indicate you did.

ROSENSTEIN:

Media reports are mistaken.

JORDAN:

Sometimes. But this is what they said: "Having the nation's number one law enforcement officer threaten to subpoena your calls and e-mails is downright chilling."

Did you threaten to subpoena their calls and e-mails?

ROSENSTEIN:

No, sir, and there's no way to subpoena phone calls.

JORDAN:

Well, I mean, I'm just saying.

(LAUGHTER)

I'm reading what the press said. I'm reading what the press said.

ROSENSTEIN:

Well, I would suggest that you not rely on what the press says, sir.

JORDAN:

Well, I didn't ask if there's no way to do it, I asked if you said it.

ROSENSTEIN:
If I said what?

JORDAN:
What I just read you.

ROSENSTEIN:
No, I did not.

JORDAN:
Well, now, who are we supposed to believe? Staff members who we've worked with, who have never misled us? Or you guys, who we've caught hiding information from us, who tell a witness not to answer our questions? Who are we supposed to believe?

ROSENSTEIN:
Thank you for making clear it's not personal, Mr. Jordan.

(LAUGHTER)

JORDAN:
Well, I -- I didn't -- I'm saying the Department of Justice.

ROSENSTEIN:
You should believe me because I'm telling the truth and I'm under oath. And, if you want to put somebody else under oath, and they have something different...

(CROSSTALK)

JORDAN:
I know these staff members.

ROSENSTEIN:
... happy to respond.

JORDAN:
Here -- here's my last question. What's so important that you know, that you don't want us to know, that you won't give us the documents we're asking for, that the House of Representatives is about ready to go on record saying you should give us?

What's so darn important that you will threaten members -- at least according to media reports and according to the staff members -- threaten members (ph)...

(CROSSTALK)

JACKSON LEE:
Parliamentary inquiry, Mr. Chairman.

JORDAN:
What is so important, Mr. Rosenstein?

JACKSON LEE:
Parliamentary inquiry, Mr. Chairman.

GOODLATTE:
This is not an appropriate time for a parliamentary inquiry.

JACKSON LEE:
Then, point of order. The gentleman keeps representing that the House of Representatives -- yes, it will be the Republicans, who continue to...

GOODLATTE:
That is not a -- that is not an appropriate point of order.

JACKSON LEE:
Well, he -- he needs to be correct in his statement.

GOODLATTE:
The time of the gentleman -- the gentleman will be restored into...

(CROSSTALK)

JACKSON LEE:
It will be the members of the Republican Party that (inaudible) in that...

GOODLATTE:
The gentlewoman will suspend. The time of the gentleman from Ohio will be restored for an additional 15 seconds, and then the deputy attorney general will be allowed to respond.

JORDAN:
Thank you, Mr. Chairman.

Mr. Rosenstein, Mr. Wray, I do appreciate your work. But I'd also appreciate if the House of Representatives could get the information we have repeatedly -- Mr. Gowdy talked about how long this investigation has been going on, how long there's been a special counsel.

We started asking for information in July of last year, and some of that is still not given -- still has not been given to the Congress, still not has -- been given to this committee, the committee charged with defending the -- the Judiciary Committee.

So I appreciate what you do. I just want the information. And we're so frustrated that there is now a resolution on the floor of the House in just a few minutes that will be voted on.

(CROSSTALK)

GOODLATTE:

The time of the gentleman has expired. Mr. Rosenstein will be allowed to respond.

ROSENSTEIN:

I don't have any control over what resolutions you vote on, sir...

JORDAN:

I know you don't.

ROSENSTEIN:

... and you should feel free to do that.

(CROSSTALK)

GOODLATTE:

The gentleman will suspend. If -- the time now is the attorney general's.

ROSENSTEIN:

If you're interested in the truth, Mr. Jordan, the truth is we have a team of folks. They're Trump appointees and career folks, and they're doing their best to produce these documents.

Director Wray explained to you the process. He's got hundreds of people working around the clock, trying to satisfy these requests. So whether you vote or not is not going to affect it. You're going to get everything that's relevant that we can find and produce to you.

I support this report, sir. I'm not trying to hide anything from you.

GOODLATTE:

The chair recognizes the gentleman from Georgia, Mr. Johnson, for five minutes.

H. JOHNSON:

OK. All right. Thank you, gentlemen. I appreciate your service. I've been impressed with your diligence and your honesty and your integrity in this very difficult environment that we find ourselves in.

And, basically, it's a situation where the majority is hurting this country. We're hurting our country with what we're doing today. What we're doing today is holding an emergency hearing -- a so-called emergency hearing based on allegations that political influence or political bias within the FBI and the DOJ has somehow led to a illegitimate result in the Hillary Clinton e-mail investigation.

That's an investigation that was conducted originally -- it was conducted by the FBI and DOJ, no criminal charges filed, investigation closed. Then there was a -- a inspector general's investigation of that investigation. Those reports -- or that report was issued last week. It found that there was no wrongdoing in the investigation of the investigation.

And now, today, we have an investigation of the investigation of the investigation. And it's a emergency situation. Also a part of this hearing is a attempt to investigate the ongoing criminal investigation into the allegations and indications of collusion and perhaps conspiracy with Russians in the conducting of the 2016 presidential election.

And, ominously, what the Republicans are trying to do is force the FBI and DOJ to turn over to this committee investigating the investigators information, documents that go to the heart of the criminal investigation.

It's been my experience that the criminal investigators never turn over information -- they're never even asked to turn over information in an ongoing criminal investigation. Can you both comment on the uniqueness of what's happening today and the danger that it poses to justice in this country?

ROSENSTEIN:

Congressman, I don't believe it poses any danger, because we are not going to produce any documents that will interfere with an ongoing investigation.

H. JOHNSON:

Well, if you...

ROSENSTEIN:

I said the -- in response to Mr. Jordan's question, we actually are producing the documents. It's a large volume of documents. It's taking a lot of time. And I -- as I said, you know, I thought he had a legitimate point about the redactions that made it appear as if the bureau was concealing information.

So we brought in Mr. Lausch. We changed the process. And I actually think, in reality, it's working quite well. And whatever anybody votes on is beyond my control.

H. JOHNSON:

Well -- go ahead.

WRAY:

Congressman, we are committed to being responsive to legitimate congressional oversight. We're trying our hardest to produce documents as quickly as we possibly can and as completely as we possibly can.

We also have an obligation to protect ongoing criminal and counterintelligence investigations. We also have an obligation to respect grand jury secrecy. We also have an obligation to protect sources and methods. And we're sworn to do those things, just like we are to protect and be responsive to congressional oversight.

And the inspector general's report -- ironically, the report that we're here to talk about -- is very pointed on the subject, as one of the principal failings that it found was commenting on an ongoing investigation, publicly and with Congress. And so we take those lessons very seriously. We're trying to learn those lessons.

H. JOHNSON:

Well, Director Wray, threatening you with a subpoena, threatening you with contempt of Congress for noncompliance with a -- a congressional subpoena puts you in a bad position, doesn't it?

WRAY:

Well, certainly, when I was minding my own business in private practice in Atlanta, I didn't think I was going to be spending the first 10 months of my job dealing -- staring down the barrel of a contempt citation for conduct that occurred long before I even thought about being FBI director.

Having said that, I am committed to making sure that we're responsive to these committees. And, to the extent that we can do better, we're trying to do better.

H. JOHNSON:

Well, there's certain information...

WRAY:

At the same time -- but at the same time, in my experience, there is -- there are two principles that have to be balanced: responsiveness to congressional oversight, which is very important to me personally; but also respecting ongoing criminal investigations...

H. JOHNSON:

And there's certain...

WRAY:

... which is (ph) also very important.

H. JOHNSON:

... and there's certain information that you cannot provide...

GOODLATTE:

The time -- the time of the gentleman has expired.

H. JOHNSON:

... to this committee, based on the ongoing nature of the criminal investigation. Is that correct?

WRAY:

Yes.

GOODLATTE:

Time of the gentleman has expired.

The committee will stand in recess. There's seven -- or six minutes and 45 seconds remaining in a vote on the floor, and we will reconvene as soon as that vote concludes.

(RECESS)

GOODLATTE:

The committee will reconvene. And the chair recognizes the gentleman from Texas, Mr. Ratcliffe, for five minutes.

RATCLIFFE:

Gentlemen, Agent Peter Strzok gave us the timeline yesterday that, following his work on the Hillary Clinton e-mail investigation, he was assigned as the lead agent of the Russia collusion investigation from late July of 2016 until May of 2017.

Then, in late May of 2017, following your appointment of Robert Mueller, Agent Strzok became part of Special Counsel Mueller's investigative team until late July of 2017, when he was removed by Special Counsel Mueller and returned to the FBI.

Any disagreement about that timeline?

ROSENSTEIN:

I don't know the precise dates, but that sounds generally accurate.

RATCLIFFE:

During the 11 hours of testimony yesterday, Agent Strzok testified at length about his roles during that year, from late July of 2016 to late July of 2017, as part of those investigative teams.

He testified, in fact, that he drafted the initial investigative plan on the Russian collusion (ph) investigation, that he made investigative decisions and took actions to gather information and collect evidence in both the Trump Russia matter and -- and the special counsel probe.

Agent Strzok also admitted that before and during that same year...

(CROSSTALK)

LIEU:

A point of order, Mr. Chairman. We had a closed hearing on Peter Strzok. If you want to color his testimony like this, release the transcript. Have an open hearing. Don't characterize and not let him testify.

GOODLATTE:

That is not a...

LIEU:

Don't take things out of context.

GOODLATTE:

... that is not a...

LIEU:

Release his transcripts.

GOODLATTE:

That is not a valid point of order. Gentleman, proceed.

RATCLIFFE:

So Agent Strzok also...

NADLER:

Point of order, Mr. Chairman (ph).

RATCLIFFE:

... Agent Strzok also...

NADLER:

Point of order, Mr. Chairman.

GOODLATTE:

Gentleman state his point of order.

NADLER:

I assume it is a valid point of order to object to quoting or characterizing statements in a -- in a confidential setting?

LIEU:

Release the transcript, Mr. Chairman. The American people deserve to hear...

(CROSSTALK)

LIEU:

... Peter Strzok's testimony under oath. Do not hide his testimony.

NADLER:

(inaudible) let him go (ph) on my point of order.

RATCLIFFE:

The testimony, Mr. Chairman, as you know from the transcribes interviewed -- transcribed interviews, can be used for hearing purposes.

LIEU:

Release the transcribed interview to the American people.

GOODLATTE:

The -- the transcript will be released to the American people at the appropriate time...

(CROSSTALK)

GOODLATTE:

... but the gentleman can use it for the purpose of this question to the witness in the hearing.

NADLER:

We're under the impression, Mr. Chairman, that these hearings -- that these transcripts were not to be quoted.

GOODLATTE:

The chair has ruled.

RATCLIFFE:

Gentlemen, so Agent Strzok also admitted that, before and during that same year...

(UNKNOWN)

(OFF-MIKE)

RATCLIFFE:

All right. Agent Strzok admitted that, before and during that same year, he sent many, many text messages about Donald Trump -- text messages that we've already established, and you've agreed...

(UNKNOWN)
(OFF-MIKE)

(UNKNOWN)
It's a little recalcitrant.

(UNKNOWN)
(OFF-MIKE)

RATCLIFFE:
The gentlemen finished?

(UNKNOWN)
(OFF-MIKE)

RATCLIFFE:
So, again, Agent Strzok sent many text messages about Donald Trump. We've established and you've agreed that those reflect a hatred and bias towards Donald Trump.

Now I reviewed with Agent Strzok, and he confirmed, that he was in fact the person who sent the text messages that said, "F Trump," "Trump is an f-ing idiot," that talked about stopping Trump from becoming president, that talked about impeaching Trump as the president, that talked about protecting the country from Trump and talked about an insurance policy against the risk of a Trump presidency, just to name a few.

Those are the very same texts, by the way, that Inspector General Horowitz, as you know, characterized as deeply troubling and expressed his concern that Agent Strzok may have acted upon the bias expressed in those Trumps (ph) in prioritizing his work on the Russia collusion investigation -- on the Weiner laptop issue, a matter that he's now investigating.

Now, when I asked Agent Strzok about his conversations with Special Counsel Mueller or anyone on his team about his removal, he described the details of a single conversation. He said it lasted about 10 or 15 minutes, but certainly less than 30 minutes.

RATCLIFFE:
He said Special Counsel Mueller made it very clear that he was being removed from the case because of the text messages. But I was surprised that he said that neither Special Counsel Mueller or anyone on his team asked him about the text or his expressed hatred of Donald Trump.

He said special counsel never asked him what he meant when he sent those texts. He said that Special Counsel Mueller never asked him if he acted the bias and the hatred reflected in those texts.

I asked Agent Strzok at least a half a dozen times, did Special Counsel Mueller or anyone on his team ever ask you about these troubling text messages and whether any of your actions taken, whether any of your decisions made and when -- whether any of the evidence you collected may have been corrupted or tainted or in any way influenced by the hatred, bias, or prejudice expressed in these texts? He repeatedly and unequivocally said no.

Yes, we know that Special Counsel Mueller removed him from the case, but what did Special Counsel Mueller do to determine whether or how the actions taken, the decisions made and the evidence gathered by a Donald Trump-hating lead investigator -- how that may have prejudiced Donald Trump as a subject -- evidence, by the way, that Agent Strzok unequivocally stated in the presence of FBI counsel that became part of the -- Special Counsel Mueller's foundational evidence and that was used by the special counsel team.

If Special Counsel Mueller was here, I know what I would ask him, but he's not. But his supervisor is. So, Mr. Deputy Attorney General, what, if anything, has Special Counsel Mueller done to determine whether the actions taken, the decisions made and the evidence collected by Special Agent Peter Strzok was impacted by his very clear hatred and bias of President Trump?

ROSENSTEIN:

Congressman, as I know you're aware, Director Mueller has vast experience both as a prosecutor and as a supervisor of (ph) the FBI. So I can assure you that he understands the importance of considering any credibility issues in determining whether or not to rely upon a -- a person. With regard to the...

RATCLIFFE:

Well -- so let me stop you. So what actions has he taken as his supervisor?

ROSENSTEIN:

Well, I -- we're not going to talk publicly about the substance of the investigation, so.

RATCLIFFE:

I don't want you to do that. Can you tell me whether you know he has...

ROSENSTEIN:

Yes.

RATCLIFFE:

... taken steps to determine?

ROSENSTEIN:

Yes. Director Mueller has taken appropriate steps. And keep in mind, Congressman...

RATCLIFFE:

Well -- so let me stop you there. I'm -- I'm thrilled to hear that he's taken steps. You and I are both former prosecutors. How does a prosecutor go about eliminating bias, prejudice and expressed hatred from foundational evidence?

Because you know, of course, that, if your root evidence is fairly called into question, everything that comes from that evidence is fairly called into question, right?

ROSENSTEIN:

Yes. I realize I -- I'm just about out of time. But, to give a somewhat comprehensive response, as you know, when we conduct an investigation, the purpose is to determine whether or not there's sufficient evidence to prove -- the purpose is to determine whether or not there's sufficient evidence to prove a case in court.

And, if you go into court and you're taking a piece of evidence, you're relying upon a witness, you need to consider any issues that go to the credibility of the witness or the credibility of the evidence.

And so you used the term "foundational evidence." I'm not sure exactly what you have in mind. But if, for example, Director Mueller were to rely upon a document that Mr. Strzok produced or a statement that he took or were to call him as a witness, obviously, he'd need to consider that evidence that would be evidence that would tend to impeach his credibility. And Director Mueller well knows that.

I just wanted to quickly respond, if I could -- I recognize we're out of time, but Director Mueller and I learned about this issue at the same time. And we learned about it from the Inspector General, who (ph) brought it to our attention soon after he discovered it -- I believe it was last July.

And so it was our understanding that the inspector general was conducting an investigation on Mr. Strzok. So the fact that Director Mueller didn't spend a lot of time questioning him -- I think that was probably appropriate, because that was the inspector general's job.

But I would also point out that I don't think it took Director Mueller very long after seeing those text messages to decide what was the right thing to do.

RATCLIFFE:

Thank you. I -- I yield back.

GOODLATTE:

The chair recognizes the gentleman from New York, Mr. Nadler, for an opening...

NADLER:

Thank you.

GOODLATTE:

... for -- for his questions.

NADLER:

This month, I wrote to both of you regarding the apparent outing in the media of a confidential human source involved in the early stages of the Russia investigation. I understand that, while I was on the floor just now, one of my Republican colleagues had the gall to quiz you about his identity again today.

In my letter, I asked that you, quote, "investigate this case for potential violations of the Intelligence Identities Protection Act, as well as other statutes and department guidelines designed to protect the lives of covert operatives and confidential human sources," close quote.

Director Wray, last month, you testified before the Senate that the day that we can't protect human sources is the day the American people start becoming less safe. Can you further and briefly explain what you mean by that statement?

WRAY:

Congressman Nadler, in investigation after investigation in the counterintelligence front, the counterterrorism front, organized crime front, human trafficking front and really virtually every area of enforcement that the FBI is responsible for, we rely heavily on human sources to come forward and share information with us, often at great peril to themselves and to their families.

And that is one of the single most valuable and important tools that we have to keep the American people safe. And it's something that we've relied on for, now, coming up on almost 110 years of the FBI. And, if we start losing that tool because people don't trust us to protect their identities appropriately, the American people will be less safe.

NADLER:

Well, thank you. First of all, happy 110th birthday.

It seems that Chairman Nunes has now asked the FBI for the identities of all, quote, "undercover agents and/or confidential human sources," close quote, who may have interacted with the Trump campaign. Have you received this request, Director?

WRAY:

I am aware that we received a letter very recently from Chairman Nunes. I haven't looked at it closely yet. I've been...

(CROSSTALK)

NADLER:

Would it be dangerous for this information to be made public -- the identities of all undercover agents and or confidential human sources who may have interacted with the Trump campaign?

WRAY:

Well, as I said, we're going to do everything we can, appropriately, to protect sources and methods. We are also going to do everything we can to be responsive to legitimate congressional oversight.

And my experience has been that, when both sides -- both the Congress and the executive branch -- come into it with the recognition that both are important -- Congress needs its questions answered and sources need to be protected. And we're going to do our best...

NADLER:

The revelation of those names...

WRAY:

... to make sure we do both.

NADLER:

... would be dangerous. A public revelation of those names might be dangerous.

WRAY:

A public revelation of source identity or anything that could lead to source identity would be dangerous.

NADLER:

Thank you.

Mr. Rosenstein, in a January 2000 letter to Representative John Linder, the department outlined the rationale for its longstanding policy to decline to provide congressional committees with access to open law enforcement files. The letter acknowledges that Congress has clear, legitimate interest in determining how the department enforces statutes.

But it also notes that "Disclosure of documents from our open files could also provide a roadmap of the department's ongoing investigations that could fall into the hands of targets of the investigation through inadvertence or a deliberate act on the part of someone -- on the part of someone having access to them," close quote.

Mr. Deputy Attorney General, does the Linder letter still guide the department's response to congressional requests for information?

ROSENSTEIN:

Yes, Congressman.

I've tried to explain this issue to some of your colleagues. And (ph), yesterday, I wrote a lengthy letter to Chairman Grassley, with a copy to Chairman Goodlatte, that goes into some detail about the background and explains why it is, sir, that this committee would not want us to turn over every document of FBI files.

This committee would want us to exercise the appropriate responsibility to make sure we're not damaging any case, risking the life or safety of any informant or causing harm to national security. And that's what we're doing.

NADLER:

OK. Thank you.

Finally, Mr. Rosenstein, I'm sure you hear complaints that the special counsel's investigation is taking too long. I don't know what Mr. Mueller knows, other than what -- other than what he has put into his charging documents and plea agreements.

Everything else we hear about the investigation has either been leaked or made up entirely by President Trump and his lawyers, and then repeated by Republicans hoping to undermine the special counsel. I don't know what Mr. Mueller knows, and most of my colleagues are similarly situated.

But you know the case better than anyone else, so I have three brief questions. Is the special counsel's investigation taking too long? Has he deliberately slowed his pace? And, when his work is done, will the American people look back and view it as a waste of time?

ROSENSTEIN:

Sir, I can assure you that Director Mueller is moving as expeditiously as possible, consistent with his responsibility to do it right.

NADLER:

He has not deliberately slowed his pace?

ROSENSTEIN:

Of course not.

NADLER:

And, when his work is done, the American people will look back and not view it as waste of time?

ROSENSTEIN:

People can draw their own conclusions, sir.

NADLER:

And, finally -- and, finally, my last question before the bell rings, is it atypical or typical for an investigation of this magnitude to take as long as this has done (ph)?

ROSENSTEIN:

No, sir, I don't think it's atypical at all. I believe that it's being done as expeditiously as possible. That was one of my goals in appointing somebody I knew who would be focused on the task, would not be distracted by other matters and would get it done right and as quickly as possible.

NADLER:

So it's typical, not atypical.

ROSENSTEIN:

Well, every investigation is unique, but I think, for investigations of this type, I believe it's not atypical, and it's certainly not unduly long, given the nature of the investigation.

NADLER:

Thank you very much. I yield back.

GOODLATTE:

The chair recognizes the gentleman from Ohio, Mr. Chabot, for five minutes.

CHABOT:

Thank you, Mr. Chairman.

Mr. Rosenstein, I had a telephone town hall meeting last night with people back home. That's where people get to ask us questions. We try to respond to them to the best of our ability. And quite a few people participated.

And here's what one lady asked me: "Congressman Chabot, what's your reaction to the inspector general's report, and how do you feel about the bias to exonerate Hillary Clinton by the DOJ? And where do you stand on holding Rosenstein in contempt for withholding documents?" You're getting pretty famous.

What I see out there and I hear out there among a significant portion of the American public, including that lady who asked me that question last night, is a great deal of skepticism, of mistrust of their own government, particularly mistrust of high-level people within the Justice Department.

I think there's a -- I really think that's a shame. But I guess it shouldn't be surprising -- not when you consider what they've seen from their own government in recent years.

Now, I happen to represent the city of Cincinnati and some other areas surrounding that area, and we have an IRS facility there. And, in that facility, likely at the direction of higher-ups in this city, Washington, they were targeting conservative groups for special harassment and ignoring liberal groups.

And the president of the United States, Barack Obama, who was supposed to ensure that investigations of such matters were handled fairly and without bias, instead went on TV and gave his opinion -- and probably gave a signal to all the investigators under him -- that there was "not even a smidgen of corruption."

That was a quote from the president at the time -- "not even a smidgen of corruption." And the person who headed up that improper targeting, Lois Lerner, not only took the Fifth and refused to testify, but she was found in contempt by this body -- by the United States House of Representatives -- with no consequences. No wonder many Americans are skeptical.

They've seen an investigation of one presidential candidate, Hillary Clinton, that was supposed to be unbiased, but the proverbial thumb was on the scale to her benefit. She sets up an illegal e-mail server and swears she never sent classified e-mails, but she did and gets a pass.

FBI Director Comey, who's supposed to be unbiased, drafts a statement exonerating her before he's even interviewed her. Hillary's staff gets immunity deals that smell to high heavens. Hillary's operatives use hammers and BleachBit to destroy sought-after cell phones and e-mails -- again, with no consequences -- and on and on.

But the other presidential candidate, the one who actually won, but wasn't supposed to -- well, he's treated very differently. A team of supposedly unbiased investigators turns out to be anything but. Nine out of the 16 have made political contributions, almost all to Democrats, including to Hillary Clinton and Barack Obama; none gave to Trump.

And two of them, as we've heard over and over again today, were communicating back and forth about how they were going to stop candidate Trump from being elected, and even had a so-called insurance policy -- a pretty sinister-sounding thing -- to make damn sure he wasn't elected.

So my question to you, Mr. Rosenstein, is this: Do you see why that lady last night might believe there's bias in the Justice Department and how these investigations, when you compare one to the other, have been carried out?

ROSENSTEIN:

Yes sir, and I share your concern. As you know, I wasn't the one running the investigation in 2017. I absolutely share your concern. I understand that.

And I think one of the challenges that we face -- and Director Wray and I are very familiar with this challenge -- is that the culture of the Justice Department in which we operate -- now, there are exceptions, obviously, but the culture in which we operate is one in which we make a conscious effort not to consider partisan issues.

In fact (ph), the way I've run my offices -- I've been a manager in the Justice Department in a number of different capacities, at this point, for about 16 years or so, and my -- I've been very attuned (ph) to this issue...

CHABOT:

Let me stop you there.

ROSENSTEIN:

... and I make every effort, Congressman...

CHABOT:

I'm running out of time. My time's very short at this point. I appreciate that you weren't there; you are now, so we appreciate your cooperation, appreciate your hard work. So let me just conclude with this.

The American people, like that lady last night who asked that question on my telephone town hall meeting -- and, of course, she felt that there was bias by the DOJ investigation, clearly, by the way she asked it -- I think the American people deserve a whole lot better than what they've been getting from their Justice Department of late.

They have a right to unbiased, fair investigations. They have a right to expect equal treatment and equal justice, whether a person that they're investigating is a Democrat or a Republican, whether they're conservative or liberal, whether they were expected to win an election or not, whether their name happen to be Hillary Clinton or Donald Trump. And I'm afraid that's not what happened here.

And I yield back.

ROSENSTEIN:

Congressman, as I was saying, I do share your concern. One of the challenges we face, sir, is that we operate in an environment where, in our interactions in the office, we make every effort to avoid any references to politics and where we focus on the facts and the law and we consider all the evidence before we reach conclusions.

American people are getting their information from other sources, and they don't always hear both sides. And I think it's important, sir -- this give (ph) me and Director Wray an opportunity to explain the way that we're running our organizations. There are going to be mistakes, but I think the assurance to the American people comes in our commitment to follow the rules.

ROSENSTEIN:

There were violations of the rules. I recognize that. We're making every effort to make sure that doesn't happen on our watch. With 115,000 employees, we're going to have issues, as well, but I can assure you that we're going to deal with them appropriately.

And, with regard to my commitment, Congressman, the attorney general has been very clear about his desire to ensure that the department follows regular order.

We follow these traditional rules and practices. And if we adhere to these rules, there will sometimes be skeptical questions because we're not able to respond publicly to criticism. But at the end of the day, Congressman, I can assure you that cases that are brought on our watch are going to be in compliance with the rules.

And so I hope that over time, seeing us follow the rules, the American people will regain whatever confidence they've lost. Because as Director Wray said, these folks we work with day in day out, they are almost all there to do the right thing. And to the extent that they're not, we'll hold them accountable.

CHABOT:

Thank you. I yield back.

GOODLATTE:

Chair recognizes the gentlemen from Illinois, Mr. Gutierrez, for five minutes.

GUTIERREZ:

Thank you very much, Mr. Chairman.

Mr. Rosenstein, the president likes to use the term 100 percent. So I want to make sure that I'm hundred percent sure. The president of the United States did appoint you to your position, is that 100 percent?

ROSENSTEIN:

Yes, sir.

GUTIERREZ:

Mr. Wray, you're the new FBI director. I knew the ex-FBI director before he was fired by the President of the United States. Is it 100 percent that this president appointed you to the position that you currently hold as the FBI director?

WRAY:

Yes, sir.

GUTIERREZ:

Hundred percent, so we don't have -- there's no wiggle room here. It's 100 percent, like the president says.

So I just want to ask you, they keep talking about 13 angry Democrats that are running the investigation. Mr. Wray, are you one of those 13 angry Democrats that my Republican colleagues keep referring to?

WRAY:

Well Congressman, of course I'm not working on the Special Counsel investigation.

GUTIERREZ:

But you're the head of the FBI. Are you -- are you a --- a Democrat? Did -- did the president reach over to the Democratic Party as -- as presidents have, and picked you because he wanted to have Democrats in his administration?

WRAY:

Congressman, I'm --I'm trying to do this job apolitically ...

GUTIERREZ:

And I -- and I -- and I get that -- and I get that ...

WRAY:

I do not consider myself -- I do not consider myself an angry Democrat. You can be quite confident in that.

GUTIERREZ:

OK. Are you a Democrat? Are you a Democrat?

WRAY:

No, I am not.

GUTIERREZ:

You're not a Democrat. Thank you. I should -- maybe I should have gone to that question.

Mr. -- Mr. Rosenstein, are you a Democrat?

ROSENSTEIN:

I'm not a Democrat and I'm not angry.

GUTIERREZ:

You're not angry. Well, I could understand if you were angry, however. I could understand that totally. And you have done a remarkable job of restraining yourself and containing any anger.

So I want to just ask you, Mr. Rosenstein, what was the purpose of appointing Mueller as Special Counsel?

ROSENSTEIN:

Congressman, as I said at the time, and I've repeated previously, the purpose of the appointment was to ensure that the investigation would be completed in a way in which the American people could have confidence.

GUTIERREZ:

Good. Now I want to go to what I believe three basic questions are. See if we can't reach some agreement. Number one, was our country attacked by a foreign government that wanted to influence the 2016 elections, in order to undermine the United States? Was our country attacked? Now, was our country attacked, Mr. Rosenstein?

ROSENSTEIN:

Congressman, we have the assessments of the intelligence community, and we also have an indictment that was returned that charged foreign nationals for interfering with an election.

GUTIERREZ:

Thank you. Mr. Wray, what's your opinion.

WRAY:

Same.

GUTIERREZ:

So the head of the FBI and the deputy attorney general, relying on the intelligence community of the United States, including the FBI, have determined that our country was attacked in order to influence our election.

Yet that's not the purpose of this hearing. The purpose of this hearing is to undermine the FBI, to undermine Mr. Rosenstein and to undermine our system of justice.

If that attack has already been established, why aren't -- why are we asking questions that undermine the very people that are at the head of this investigation? I'll tell you why; because the majority doesn't want the end and a conclusion to this investigation.

Number two: Would part of the investigation be, Mr. Rosenstein, (inaudible) has anyone taken steps either during the campaign, or since being sworn in to lie, obfuscate, obstruct, misdirect or undermine the investigation into the attack that you said occurred?

Would that be part of, Mr. Rosenstein -- Mr. Rosenstein, of Mueller's investigation?

ROSENSTEIN:

I haven't commented, Congressman, on the subject matter of the investigation. But the Special Counsel does have authority to investigate any obstruction that occurred in the course of the investigation.

GUTIERREZ:

So on two basic questions, we agree. Mr. Wray, would you agree that that would be part of the -- you're -- you're helping the investigation, your agents are helping, right?

WRAY:

We have agents working on Special Counsel's investigation.

GUTIERREZ:

Thank you. So you're part of the investigation because your agents are working on it. Would you agree that part of the investigation is obstruction, obfuscation or otherwise trying to derail the investigation that Mr. Rosenstein appointed Mr. Mueller to conduct?

WRAY:

Well, I'm not going to discuss the scope of Special Counsel Mueller's investigation. But I'll agree with the deputy attorney general's comments already.

GUTIERREZ:

Well he said that it would be part of it. So in agreeing with him, we have established -- so we've established two things. Our government and the American people were attacked. And our democracy was attempted to undermine. And that part of that investigation should be. So I just want to ask the Chairman, if he would, I'd like to enter this.

Because Mr. Rosenstein, it doesn't matter. They want you. They want to impeach you. They want to indict you. They want to get rid of you. Because in getting rid of you, they want to stop the two fundamental questions that we already agreed to.

(CROSSTALK)

And that is, they want to undermine this investigation. So Mr. Rosenstein, good luck. We're in the minority.

GOODLATTE:

The Chair recognizes himself for the purpose of asking questions.

Deputy Attorney General Rosenstein, we recently learned that your department is interpreting the Judiciary Committee's subpoena in a manner that restricts a particular set of documents from being produced to Congress.

Specifically, we have been told that we have not received documents that were given to the inspector general pertaining to communication between DOJ prosecutors, between officials of

the department, including Former Attorney General Lynch and Deputy Attorney General Yates, and in any communication between DOJ officials and the White House.

You are well aware that we requested multiple times, prior to our subpoena, all documents and communications given to the inspector general with minimal exclusions. Why have you not produced these documents and communications pursuant to the subpoena?

ROSENSTEIN:

Congressman, I don't necessarily know that I am well aware. But we do have, as you know, a staff that's working diligently with you and with your staff.

Now with regard to the subpoena, sir, I've heard these suggestions that the subpoena may not be valid. It doesn't matter to me. We're trying to accommodate Congress by providing the information that you need to complete your responsibilities.

I -- I -- I welcome the opportunity. I wish I had more of an opportunity to tell our side before anybody voted on this issue this morning. But it's important for you to understand, Congressman, that we're going to do everything we can to accommodate your requests. And if somebody misread or if you intended to obtain information that wasn't provided, I'm going to make sure that happens.

I spoke briefly to Mr. Lausch at the lunch break. I was not previously aware of this issue, but he assured me that he's going to work with your staff to ensure you get what you need.

I understand that there are some -- there's some correspondence with department officials but if there's more that's relevant to you, we'll make sure we identify it and get you what you need.

GOODLATTE:

You plan to do so immediately.

ROSENSTEIN:

Pardon me?

GOODLATTE:

Immediately.

ROSENSTEIN:

Yes, sir. Well, you -- keep in mind, immediately, when you're talking about 1.2 million documents -- Mr. Lausch -- if he were testifying, he'd be much more effective than I, because he's handled these productions in the private sector.

It's as quickly as we can, as Director Wray said. People are working day and night.

GOODLATTE:

I've got limited time and a few more questions. So let me ask you, are there any documents pertaining to the Clinton investigation that were not provided to the inspector general?

ROSENSTEIN:

I do not know, sir. I wasn't around at the time that the inspector general collected those documents.

GOODLATTE:

No one, to our knowledge, has been indicted or held criminally liable for the spillage of over 100 classified e-mails over unsecured and unclassified servers and accounts.

Those of us who hold security clearances wonder whether the executive branch still takes seriously oversight of handling of classified information. So does DOJ ever plan on holding anyone accountable for the significant spillage of classified information during the Clinton reign as secretary of state?

ROSENSTEIN:

Sir, in the event that the evidence is sufficient to prove beyond a reasonable doubt that a crime was committed and it meets our principles of federal prosecution, yes, we would prosecute it.

GOODLATTE:

How much of your job involves access to classified information?

ROSENSTEIN:

Sir, it varies, really, from day to day or week to week, but certainly a significant component.

GOODLATTE:

But you would -- how would you characterize setting up a private server to conduct your business that would inevitably lead to classified information passing across that server?

ROSENSTEIN:

Sir, I don't want to comment on the case. I can tell you, from my personal perspective, having been a government employee for 30 years, I do not expect government employees to be conducting government business on their personal accounts.

Now, occasionally, there may be exceptions, but, as a general matter, the purpose of the government e-mail system is to capture all the official correspondence.

GOODLATTE:

Is that gross negligence or extreme carelessness?

ROSENSTEIN:

I don't want to put a legal standard on it, sir. It just isn't something we...

GOODLATTE:

There is a legal standard. It's in the statute.

ROSENSTEIN:

Right, your question is -- anybody's conduct, you need to evaluate the facts and circumstances of the case. But I -- I trust that our employees know that official business should be done on Department of Justice servers.

GOODLATTE:

What would happen to me as Judiciary Committee chairman if I set up a private server and conducted all my government business, and classified information passed through that server?

ROSENSTEIN:

Well, as you know, Congress has speech and debate privilege, so they're not governed by exactly the same rules, sir. But I would hope that you would not do that.

GOODLATTE:

Mr. Wray, we have repeatedly asked FBI personnel whether the fact that an agent has an extramarital affair is a problem. I'm not asking because I want to be the morality police.

I'm asking because it seems clear that an affair that is unknown to a spouse could be a significant vulnerability for an FBI agent, especially a counterintelligence agent. Do you agree with that sentiment?

WRAY:

Well, Mr. Chairman, we have a specific offense code, and I don't want to comment on any of the ongoing personnel matters that are going through the disciplinary process right now, which I think answering your question at this particular time might cause me to do.

GOODLATTE:

And, finally, Mr. Rosenstein, in light of the decision by Inspector General Horowitz to look at the potential abuse of the FISA process, are you currently signing FISA applications?

ROSENSTEIN:

The normal process is that there are three people authorized to sign them, and the low man on the totem pole gets the responsibility. So, generally speaking, it'd (ph) be the assistant attorney general for the national security division.

If he were absent or unavailable, or occasionally, if there is a matter in which he might have a conflict, then it would come to me. But I want to assure you, Mr. Chairman, there's no reason that I should refrain from my responsibility to sign FISA applications when they meet the standards required by the statute.

In fact, it'd be a dereliction of duty for me to fail to approve a FISA that was justified by the facts of the law.

GOODLATTE:

Thank you.

The chair recognizes the gentleman from Florida, Mr. Deutch, for five minutes.

DEUTCH:

Thank you, Mr. Chairman.

Mr. Chairman, earlier in his questioning -- in his statement, Mr. Gowdy had some interesting things to say. He -- he said that he acknowledged that Russia attacked this country and that they should be the target.

Then he went on to say, "But Russia isn't being hurt by this investigation; we are. The country is being hurt by this investigation into Russia's meddling in our election." I would ask General Rosenstein, Director Wray, what is the purpose of this investigation?

ROSENSTEIN:

Congressman, I think that there are actually two different issues. The first is this investigation, which is an historical investigation of interference with the 2016 election. The second question, which I think is of tremendous importance, is what's happening now and what's going to happen in the future.

And I think it's important for the American people to understand that this is not a one-shot deal. There are foreign countries that, on a regular basis, are attempting to infiltrate the American computer systems and interfere in our democracy.

And the FBI has a task force that is focused on this problem. It's working with officials in the Department of Justice, and we're going to continue to do everything that we can to protect the American people against this sort of abuse.

DEUTCH:

Director Wray, when -- when Mr. Gowdy says -- and, again, I quote my friend -- "Whatever you've got, finish it the hell up," can you tell me the way the FBI conducts investigations? And does it operate on the timeline that permits it to gather the -- the evidence, all of it, in full? Or does it operate on the timeline established by members of the United States House?

WRAY:

Congressman, we are not going to do our investigation subject to any political influence by either side. We are going to do our investigations as expeditiously, but responsibly as we possibly can.

As I've said repeatedly, we're going to play it straight and by the book, and that would extend to every investigation that we have responsibility for.

DEUTCH:

General Rosenstein, you submitted a letter to Senator Grassley, the chairman of the Judiciary Committee in the Senate -- also, a letter to Speaker Ryan -- about the resolution.

You actually go -- you take (inaudible) great length to explain the way that you've been complying with congressional oversight, working diligently and in good faith to provide an unprecedented level of congressional access to information that members of Congress believe may be relevant.

Since there have been so many accusations about the way you've conducted this, I -- I thought it would be helpful for you to spend just a couple of minutes explaining how it is that you have been cooperative, the volume of the documents you've been -- provided and anything else that you think would be relevant in our understanding, and that would have been relevant, had members had the chance to hear it before being rushed to the floor to vote on that resolution.

ROSENSTEIN:

Congressman, I don't want to comment on the motivation of anybody who's proposing resolutions. That's within the domain of Congress to make those determinations. If anybody's voting on me, though, you would think that they would want to know the truth before they voted.

And, if you wanted to know about all of the things we're doing to comply with congressional subpoenas and document requests and all the many inquiries that we get, you wouldn't have to talk to just me. You'd have to talk to the dozens of folks who are working diligently every day to try to comply with these requests.

So I'm happy to take whatever blame you want to assess. That's one of my jobs. But, if you want a true understand of what we're doing, it would take a very long time. And, as Director Wray adverted (ph) to, when you say 880,000 documents, it's a lot, but it still sounds like just 880,000 documents.

But (ph) you're actually talking about collecting documents from throughout the organization and then reviewing them to make sure there's no grand jury information, to make sure you're not exposing any informants, to make sure you're not including any personal information that the Congress probably doesn't want.

ROSENSTEIN:

And so it's a complicated process, and it's difficult to explain, even in a minute or two. But, as I said, if you actually had a full and fair review of what we're doing, I'm confident that you would recognize we're doing everything we can to comply and whether people vote or don't vote as I

said we're going to do everything we can because we believe and frankly the President has made quite clear that he wants us to be as transparent as possible consistent with the restrictions that we have and we're complying with that advice.

DEUTCH:

Mr. Rosenstein and Director Wray, I very much appreciate your coming. I very much appreciate your agreeing to testify under oath and I would finally just take exception, vehemently so, with the assertion made by my friend, Mr. Jordan earlier who said and I quote him, "Well now, who are we supposed to believe? The staff members who we've worked with who have never misled us or you guys who we've caught hiding information from us?"

That's a question that he asked you, Mr. Rosenstein as you were answering questions under oath. The only conclusion from a statement like that, from a question like that is the suggestion that you've appeared before us and under oath are lying to the members of this committee. It is offensive. It was inappropriate for my colleague to do that. I regret that he had and I yield back the balance of my time.

GOODLATTE:

The Deputy Attorney General is allowed to respond if he chooses to do so.

ROSENSTEIN:

No need, Mr. Goodlatte, thank you.

GOODLATTE:

The Chair recognizes the gentleman from California, Mr. Issa, for five minutes.

ISSA:

Rosenstein, I want to start by characterizing my questions as all related to what I perceive is a double standard, the standard that the American people live under versus the standard that you all live under. And I'm just going to give you one quick example. You -- and I think they brought you down a copy of it -- 2 U.S.C. 194 says it shall be the duty of said President or Senate or Speaker of the House in the case where they certify -- I'll get to it bottom line, even shorter, when we find somebody in contempt and refer it, the U.S. attorney for the District of Columbia, whose duty it shall be to bring the matter to a grand jury for its action.

Now under both President Bush and under President Obama, you two and your predecessors have decided that you're just going to consider shall as a if I feel like it. If I think the case is worthy. I will consider it de novo and in both cases not do it.

So let me ask a simple question. Under 2 U.S.C. 194, if either of you are held in contempt, will you allow yourself or allow the U.S. attorney to bring that case before a grand jury pursuant to the law or will you, like your predecessors, object?

ROSENSTEIN:

Congressman, I'm glad to say that I'm actually not familiar with that issue. I haven't dealt with it before...

ISSA:

Well you were serving at the Department of Justice under both of these cases, the Harriet Myers Case and then the Fast and Furious with the Attorney General, himself, were held in contempt and they obstructed and did not allow the case to go to the U.S. attorney.

You will recede (ph) U.S. attorneys including the one for the District of Columbia at this point; U.S. attorney for the District of Columbia did not make that decision in a vacuum that decision was made at the highest level of the Department of Justice, simply to hold out. Now ultimately, an Obama appointee gave us much of the information that we wanted.

It was far more than the Attorney General who lied to us about how much was there said there was and ultimately it uncovered obstruction by the Attorney General. So the question is would you allow the statute to go forward that says shall present to a grand jury or do you believe that you have the ability to be above the law, something the American people do not.

ROSENSTEIN:

No sir, I do not have the ability to be above the law.

ISSA:

Good, since you do not believe that, I will take that as if you're held in contempt it will go forward.

ROSENSTEIN:

Well, I haven't answered the question.

ISSA:

You said no, and yes or no was fine that you don't believe you're above the law.

ROSENSTEIN:

Correct.

ISSA:

The former director of the FBI came before, he was exactly where Mr. Wray is sitting, he was that far away and he told us that nowhere in the FBI did you have the capability of -- of cracking open an iPhone and as a result you needed to go to court, you needed to order and get an order to force Apple to create a backdoor so that you could remotely get into it. Now that turned out to be untrue. Mr. Wray, do you have the ability, do you have a great organization, or do you have the inept group that was unable to do it until shortly after his false statement here when it was uncovered that for about 250 bucks it could be done and has been done.

WRAY:

Well Congressman, certainly I think we have the premier law enforcement and national security organization in the world.

ISSA:

The real question is, when he came here and said he'd exhausted all capabilities, he was not telling the truth because shortly afterwards, very simple assets allowed that and, of course, Apple never had to produce it.

So the question is -- no, let me -- let me go on because I have limited time. Recently, Mr. Comey was given an advanced copy of the Inspector General's report in return for which he signed a nondisclosure agreement. He violated that nondisclosure agreement in that he contacted a news source more than four hours beforehand because it was published four hours before it was released, probably 24 to 48 hours in advance.

Will you agree to look into whether or not he violated that NDA since the -- there is no authority, obviously by the Inspector General. Will you agree to investigate Former Director Comey, not (inaudible) law or double standard for his violation of that nondisclosure agreement?

WRAY:

Well Congressman, I'm -- I'm certainly not going to be commenting here on whether not we're going to open or not an investigation into someone. I will say that I haven't...

ISSA:

So you're not going to say (ph) whether he's above the law or not for what he did?

WRAY:

I'm sorry?

ISSA:

You're not going to say whether he's above the law or not?

WRAY:

I do not think there's anyone on this planet who is above the law.

ISSA:

Well, we'll see whether or not you actually open an investigation. That will tell me that. Now yesterday, Mr. Strzok managed to have your attorney obstruct us from getting the answers we wanted by claiming that, in fact, he wasn't going to answer questions even if they were tangentially related to an ongoing investigation.

So you stand by that today that in fact behind closed doors in a classified setting, we are not entitled to those questions answered?

GOODLATTE:

The time of the gentleman has expired but the witness may answer the question.

WRAY:

I would like to answer that, yes. So Congressman, I -- I was not present as you know for the interview. And I understand you all talked to him for 11 or 12 hours and I don't know the specifics of what questions were asked, which questions were objected to and what the context is, and in my experience as a prosecutor and as a lawyer on the other side of it, those kind of details matter. So I really can't speak to whether or not any particular objection made sense and I would need to know a lot more about that. I will say -- I will say that it is a long-standing principle recognized by the Inspector General in this report that we don't discuss ongoing criminal investigations, not just publicly but with Congress.

ISSA:

Mr. Chairman, for the record, the 800,000 or so records that earlier the Deputy Attorney General was talking about how difficult and how long it took to produce them, is it my understanding that they're being looked at in a camera (ph) and as such, if there were any information of the type that they said they wanted to protect, those would -- those could be objected to before their release. Isn't that true?

GOODLATTE:

That's correct.

ISSA:

So the fact is, all of the objections that we've heard about the delay really don't apply when it's in camera do they?

GOODLATTE:

I -- I can't answer that question but...

ISSA:

Perhaps one of the individuals can.

GOODLATTE:

Would the Director or the Attorney General would like to respond? You're welcome to it.

WRAY:

I'm happy to respond in part. Which is that even information that's provided in camera has to be reviewed first, for example, for grand jury secrecy, which we are prohibited from disclosing. So there are some things that we have to review for even to put it in the in-camera room, legally we're required to. There are many more things that based on discussion with the chairman and his staff that would then be relevant to any subsequent production.

So you're partially right but there are some things -- some significant things that have to get reviewed for even before it goes in the -- the reading room legally.

ROSENSTEIN:

Mr. Chairman, may I respond?

GOODLATTE:

Yes.

ROSENSTEIN:

The issue of contempt. As I said, I'm not familiar with that particular statute or what the department's policy has been but I would like -- I have the advantage of having been a lawyer for 38 years and prosecutor for almost 30 years, just to explain. I made an effort in this letter to explain I recognize that not every member of Congress is -- is a lawyer let alone a prosecutor.

But I set forth in my letter an explanation of the history of the accommodation process between the executive and legislative branches. I think it's important to understand, Mr. Chairman, that the fact that the department receives a subpoena and is unable to comply immediately because of volume or they need to make redactions, that doesn't mean that we're in contempt.

And there sometimes may be legitimate differences of opinion as to whether or not certain information is subject to being produced. It doesn't mean you're in contempt. There are mechanisms to resolve this without threatening to hold people in contempt; which is in fact a crime. So my recommendation, Mr. Chairman, is if there are differences of opinion, you know, read the letter, understand how this has been done historically.

We'll resolve it. If it needs to be resolved by a judge, you can seek enforcement of your subpoena civilly in court. But I can assure you, Mr. Chairman, I'm working with a really superb team. Some of the best lawyers in the country, Republicans, Democrats, career, political appointees. We are not in contempt of this Congress and we are not going to be in contempt of this Congress. Thank you.

GOODLATTE:

Thank you. Chair recognizes the gentlewoman (ph) from California, Ms. Bass for five minutes. Oh, OK. If -- if you're -- the ranking member advises me that Mr. Cicilline has a pressing need to go first. So he's recognized for five minutes.

CICILLINE:

Thank you, Mr. Chairman. I thank the gentlelady from California. Thank you to our witnesses for being here. And we're -- we're here today because the FBI violated a longstanding policy of not commenting on anything related to an ongoing criminal or counter intelligence investigation in the summer and fall of 2016. This violation resulted in a year and a half I.G. investigation, a 500

page exhaustive I.G. report and it's the genesis of three concurrent investigations in the House alone.

Last week, we -- I attended along with my colleagues a six-hour hearing with the I.G. on the FBI's violation of this policy. Yesterday our Republican colleagues spent 11 hours trying to get the FBI to violate the same policy. And today the deputy attorney general and the FBI director have been brought before us in an attempt by our friends on the other side of the aisle to force the FBI in this open forum to violate this policy all over again.

All this is an attempt to discredit the Department of Justice, to undermine the Special Counsel and to protect President Trump. And I'll say at the outset, it is my hope and prayer and I know the prayer of the American people for the sake of our country that you both remain strong and faithful to the oath that you've taken no matter how much bullying you endure in an effort to persuade you to violate this sacred responsibility, whether it be by way of letter, by way of contempt threats, by way of resolutions or public hearings such as this.

I was particularly disturbed to hear the chairman of the committee say the FBI and the DOJ are not in the Constitution but the president and the Congress are and you must yield to us. I remind the chairman respectfully and I remind both of you gentlemen you must not yield to us to the extent that doing so would require you to violate your oath to defend the Constitution and laws of the United States.

And I hope that is the sentiment of everyone on this committee. Of course we're having an emergency hearing about the Clinton e-mails.

We're not having an emergency hearing on the corruption in this administration, the conflicts of interest and violations of the emoluments clause, the election security which is so essential for our upcoming election, the family separation policy which is ripping children from their parents, the failure to pass the DREAM Act or address the scourge of gun violence in America, but we're having another hearing about the Clinton e-mail server.

And you know, I spent many years as a criminal defense lawyer. It would've been a really clever and very useful thing if I had the ability to demand information about an ongoing investigation during the course of that investigation. I never thought to do that because of course it's so obvious you are not entitled to that.

And so this notion of making these demands in the hopes that you will continue to honor your oath and deny them and they will use that as a pretext, as Mr. Gutierrez said, to take some action against you as something we should all guard against very closely. There've been out -- 18 -- there remain 18 outstanding indictments, five guilty pleas from the president's deputy campaign manager, the president's former top national security advisor among others.

You have already said our country was attacked in order to influence the outcome of our election. My first question is, are foreign adversaries including Russia continuing to attempt to interfere with our next election?

WRAY:

Congressman, it is I think the consensus of the intelligence community, that Russia among other foreign powers will continue to look for ways to influence our populace. Whether or not they would try to interfere with the election in the sense that a lot of laypeople think of it is more of an open question.

But certainly there is plenty of information to show that they continue to look for ways to try to divide us and sow discord to undermine the faith of the American people in the democracy that we hold so dear.

CICILLINE:

And do you recall, director or deputy attorney general, in all of the subpoenas and letters and demands for information, have our colleagues on the other side of the aisle written to you and asked you to comment and provide information about the efforts that are being made to protect the 2018 election from any foreign interference?

WRAY:

Well the FBI, I know, has provided numerous briefings on our efforts. As the deputy attorney general mentioned, I created a foreign influence task force dedicated to this topic and while I can't speak specifically to -- just because I don't remember exactly which committee they've done what with, I know we've provided a lot of briefings. We also -- I personally addressed the full House of Representatives along with the secretary of Homeland Security and the director of National Intelligence on this subject.

CICILLINE:

And the I.G. report that was prepared, that -- what was the subject of that report?

WRAY:

Well, I think the report largely speaks for itself, but the focus is on the handling of the Clinton e-mail investigation.

CICILLINE:

And did that report address the independent counsel's investigation relating to Russian interference in coordination with the Trump campaign?

WRAY:

That's not my read of the report.

CICILLINE:

OK. It's not my read either. And would it be correct -- the president made a statement after receiving the I.G. report and he said, and I quote, "this report totally exonerates me. There's no collusion. There was no obstruction." Referring to obstruction of justice. Is that an accurate statement of the conclusions of that 500 page report, Director Wray?

GOODLATTE:

The time of the gentleman has expired. The director can answer the question.

WRAY:

And Congressman, I'll let the report speak for itself.

CICILLINE:

Thank you. I yield back, Mr. Chair.

GOODLATTE:

Chair recognizes the gentleman from Iowa, Mr. King, for five minutes.

KING:

Thank you, Mr. Chairman. Direct (ph) my first question to Mr. Rosenstein. Mr. Rosenstein, I -- I know that you're a constitutionalist and I think about the framework we're dealing with here in this article one asking questions of article two. And I would ask is in our -- in our role of oversight here in our -- article one role of oversight, is there any information that's housed within the executive branch -- anywhere in the executive branch -- that would be permanently and forever unavailable to the oversight of the United States Congress?

ROSENSTEIN:

You know, I don't know that -- the answer to that, Congressman, with regard to the information at the Justice Department. There are certain categories of information, as Director Wray said, that we typically wouldn't release.

And -- and my experience is, typically, that Congress doesn't want to know, for example, the identities of confidential sources. I think what's significant -- you need to understand -- is Director Wray and I don't know the names of the confidential sources. To the extent we ever hear them, they're masked. And so, there is information that I think it would be inappropriate...

(CROSSTALK)

KING:

If I could just zero in on that just a little bit -- because what I'm trying to get at here is that the public is never going to have confidence in this broader issue that we've been talking about for so long until as much information as possible can have sunlight on it.

And Congress is not going to have confidence until we actually get information that we don't have to pull and try to fill in the blanks, and then fill in the blanks and redactions, et cetera.

And so I would submit that there's no information that's housed within the executive branch, in whatever form, even if it's just institutional knowledge, that would forever be foreclosed from access to United States Congress.

ROSENSTEIN:

Yes, sir, I agree. Forever is a long time. But I certainly am sympathetic, and I understand the -- the concern. There are certain types of...

KING:

So, do you generally agree with me on that statement, though?

ROSENSTEIN:

There are certain types of information, Congressman, that -- we've developed protocols with the Intelligence Committees, where the intelligence agencies will actually provide briefings, at least at a high level, for information that's not further distributed.

I know this is a challenging issue for (inaudible).

(CROSSTALK)

KING:

And I'm aware of that, and I'm not really going to take you down (ph) on the specifics. I just want to get to this point that...

ROSENSTEIN:

Yes, sir.

KING:

... and I'll assert this, and you can disagree with me if you like -- for -- under the right format, whether it's in a SCIF, whether it's the people that are appropriate members of the committees of jurisdiction, Congress must eventually have access to all information that's housed within the executive branch of government, or that empowers the executive branch, then, to be -- be beyond oversight.

Would you agree with that?

ROSENSTEIN:

There is an executive privilege, Congressman, and, as you said, we don't want to (ph) have a constitutional debate...

(CROSSTALK)

KING:

Hey (ph), let me turn that executive privilege back again. What if the president of the United States just simply issued an order that all information relevant here that Congress is asking for is now declassified, and directed you to release that to the United States Congress? And, whether it be the Select Committee on Intel, here, or Oversight, would you -- would you then abide by such an order?

ROSENSTEIN:

And what I regret that you're not seeing going on behind the scenes is that Director and I -- Wray and I have been in regular contact with Director Coats and with CIA regarding some of these requests. And our goal is to provide as much information as we can to the oversight committees...

(CROSSTALK)

KING:

But -- but I'm not really hearing the answer to my question, Mr. Rosenstein, which is, if the president declassified and gave a direct order to simply come clean with all things of interest to Congress' oversight on these topics, would you abide by such an order?

ROSENSTEIN:

Yes, but we'd have to talk about -- when you say all information, I think, you know, Director Wray and Director Coats would, presumably, consult with the president...

(CROSSTALK)

KING:

I'll yield to the caveats. I just wanted to get to the point.

ROSENSTEIN:

Yes.

KING:

Then -- then there is a way, but that may be the only way that Congress is going to get this information necessary to put this whole jigsaw puzzle together and, first, have the confidence that we actually know what all went on.

But, just to move one, the -- you gave the directive to Robert Mueller. And can you -- can you paraphrase to us the directive he has for that mission?

ROSENSTEIN:

I don't want to paraphrase it, sir. I actually have a -- in front of me, a copy of the order, which assigns him to conduct a full and thorough investigation of the Russian government's efforts to interfere in the 2016 presidential election.

KING:

That's directly from the order, that you've just -- you've just read?

ROSENSTEIN:

Yes, sir.

KING:

Thank you. Now, that -- that is available to the public, and I thank you for that.

And how many FISA judges are there?

ROSENSTEIN:

Pardon me?

KING:

How many FISA judges are there?

ROSENSTEIN:

I do not know the answer to that, sir.

KING:

And do you know how many FISA judges might have signed off on warrants relevant to this investigation -- how many different judges?

ROSENSTEIN:

You know, my understanding, there was information that was declassified. And I believe that the information declassified indicated one application, renewed three times, so a total of four.

And I believe that there were four different judges, but I don't know that for a fact.

KING:

OK. And -- but would their names be public?

ROSENSTEIN:

The names of the judges?

KING:

Yes.

ROSENSTEIN:

I don't know the answer...

(CROSSTALK)

KING:

I've got one more question I want to ask before I run out of time. And that is, who was in the room with Hillary Clinton on July 2nd, 2016?

ROSENSTEIN:

Lord, lord, lord.

KING:

We now know Peter Strzok was one of them. Who else was in that room?

ROSENSTEIN:

I only know from whatever is in the report. I have no personal knowledge.

KING:

And do you have a way of finding that information out?

ROSENSTEIN:

Well, that's the point that I've actually tried to make to several of your colleagues -- is, you know, this was something that happened before I got there, and I didn't have personal involvement. I need to rely on other people to tell me the information. So I wouldn't know any more than what's in the report.

KING:

We must know that...

GOODLATTE:

The time...

KING:

... if we're going to get to the bottom of this.

GOODLATTE:

... the time of the gentleman has expired.

KING:

I thank the gentleman.

ROSENSTEIN:

Mr. Chairman, may I...

KING:
I yield back.

ROSENSTEIN:
... may I just respond briefly?

GOODLATTE:
Yes.

ROSENSTEIN:
And I recognize, Mr. King, that your time is limited.

KING:
That was recognized.

ROSENSTEIN:
But what I want to assure you is we do think it's important for the American people to know of any wrongdoing that occurred. It's difficult for us to articulate that publicly. We rarely have time to respond publicly.

But we are actually working very cooperatively with Chairman Nunes, and I respect what he's trying to do. And I think he understands that I am trying to do the right thing.

And so Director Wray and I actually have worked with and provided classified briefings. And we're making an effort to get him all the information that we can. And I believe he knows as much as I know about these questions that he's trying to answer.

And if there's anything else that he believes we're -- we don't know, he believes should be known by him, we're going to look for it. So Director Wray and I are not in any way trying to conceal any kind of wrongdoing from you or from the American people.

GOODLATTE:
Now, the gentlewoman from California, Ms. Bass, is recognized for five minutes.

BASS:
Thank you. Thank you, Mr. Chair. Let me begin by thanking both of you for your service to this country. We often have this phrase, here in Congress that -- we associate ourselves with the comments and questions of colleagues.

But I'd like to take a moment, actually, to disassociate myself with the manner in which I believe you two have been treated. And I believe that your service has not been respected.

And, having said that, you know, I've talked to both of you before about a subject matter that I'm critical of of the department. But I'm critical of the department in the context of respecting your service and the service of your officers.

So, if you do remember me, we've had a couple of conversations about black identity extremists and about that report. And I've asked both of you, at different times, if you would look into the matter further. And I didn't actually hear back.

And so I want to ask you questions that I've asked before. And we also had a meeting -- it was a classified meeting with -- with your departments. And I'm still in search of answers.

And the answers I'm in search of is that -- if you have identified who drafted the report and, way more important than the individual, the department, and what was the basis for the report. And I'd like to ask both of you to respond to that.

WRAY:

You're talking specifically about the report regarding black identity extremism?

BASS:

"Black Identity Extremists Likely Motivated to Target Law Enforcement Officers" is the long-winded name of that report.

WRAY:

Right. And so I -- as to who drafted it, I don't have that information with me, certainly. I thought that the meeting that I had with -- with you all and your colleagues -- I think it was about two hours -- I thought it was very constructive.

I appreciate hearing your concerns. I hope you understood at least how we went about what we did. It all happened before I arrived. That conversation has, I can tell you, prompted us to go back and take a very hard look at how we are bucketing the different categories of domestic terrorism.

And its -- I think it's been a useful learning experience for us. And I expect we will see some changes in how we do things going forward.

BASS:

I appreciate that. Thank you very much.

Deputy Rosenstein?

ROSENSTEIN:

I believe you asked me questions about this in December when I was here. And I have no further knowledge of it beyond what Director Wray has.

But I do want to assure you that based upon what I've seen in the FBI during my tenure there, when they use the term extremist, the FBI is focused on violence and violations of law, not focused on people who are exercising their First Amendment rights.

BASS:

So you know what? When we did meet, I also asked both of you if you were aware of any cases, in that point, you said that you weren't, you didn't know of any investigations.

But since then, you might be familiar with the case in Dallas, where there was a young man who you know, put some, in my opinion, crazy stuff on his Facebook page, but had no history of violence, and wound up being incarcerated for several months. And the Black Identity Extremist Document was the basis in which he was arrested. Are either of you familiar with that case?

WRAY:

I'm not.

BASS:

No? How about you?

ROSENSTEIN:

I'm not familiar with it. And I -- the FBI's report would not be the basis for prosecuting or arresting...

BASS:

Not prosecuting, it was the basis from which they -- I mean, they labeled him that.

ROSENSTEIN:

Not familiar with it.

BASS:

OK, so I would ask again, follow-up, I would appreciate it, because my concern that I raised to you then -- and I still have that concern, is that until this report is retracted and clarification is made to thousands of police agencies around the country, that that report can be used, especially if you have -- when my concern is young African-American activists who might protest police -- police violence.

You know where there's a police shooting, like the one that just happened in Pittsburgh -- the guy running and was shot in his back, or in Sacramento, because these shootings continue to occur and they continue to be videotaped.

WRAY:

Well, as I said, we're continuing to look at the information we used for that report and the manner in which we described it. As I also I think, said to you back when we spoke last, we have

very strict guidelines about, not just in this area, but in any domestic extremism situation, we only investigate when we have those three things, remember?

BASS:
Right.

WRAY:
Credible evidence of a violation of federal criminal law, number one; number two, credible evidence of violence or a threat of violence; and then third, motivated by some extremist ideology (ph). And if we don't have those things, our folks not allowed to open up an investigation.

BASS:
So I would, in wrapping up, would ask if you, you know would follow-up. I'm encouraged to hear that it's caused, you know maybe some reconsideration.

What worries me though is that -- if that reconsideration takes place within the department is great, but those 2,000 law enforcement agencies, if there is not correction, clarification, I still worry that it could be used. And so we -- maybe perhaps we could follow-up with that.

GOODLATTE:
Time of the gentlewoman has expired.

The chair recognizes the gentleman from Texas, Mr. Gohmert for five minutes.

GOHMERT:
Thank you, Mr. Chairman. Deputy attorney general, a common theme it seems to many of your responses has been basically, gee, I wasn't here then, that wasn't me, I didn't personally do that, I didn't redact Judge Contreras' name from the documents so Congress couldn't see that he was friends with Peter Strzok, that was (ph) someone else.

But you have added quite pointedly to Mr. Jordan, that I am the deputy attorney general, and you certainly are. But the actions of your subordinates, which are all employees of the Department of Justice, aren't you vouching for those? Don't those people respond to you?

ROSENSTEIN:
Those people all ultimately report to me, yes sir.

GOHMERT:
And that would include when Bruce Ohr's office was directly next to yours, I believe? Isn't that correct? Didn't he work for you?

ROSENSTEIN:

He worked in the deputy attorney general's office. I think it was a couple of doors down, but yes.

GOHMERT:

OK, a couple doors down. Well, we're aware of some of the events that occurred before your confirmation as the deputy attorney general.

However, some of your team members certainly were involved. So I want to ask, was Tashina Gauhar your deputy or Trashina - I'm sorry, Trisha Anderson involved in any stage of drafting, editing or approving (ph) the four FISA applications to spy on Carter Page?

WRAY:

I wasn't sure if you were directing that question to me. But Congressman, I don't -- sitting here right now, I don't know exactly who was involved in drafting what FISA application.

GOHMERT:

So just to be clear, apparently Director Wray, you have to answer for the deputy attorney general about FISA applications he signed?

ROSENSTEIN:

No, you were asking about...

GOHMERT:

Yeah, the four applications to spy on Carter Page. And I think you've been a bit vague on whether you even signed...

ROSENSTEIN:

No, no sir. Let me try to clarify for you, if I may.

GOHMERT:

Well, did you sign the fourth FISA application?

ROSENSTEIN:

I approved the filing of a, basically what's been ...

(CROSSTALK)

GOHMERT:

OK, now you say you approved that application. Now that's going for a FISA...

ROSENSTEIN:

That's my job, that's my job, sir.

GOHMERT:

That's your job, OK. You approved it. Well, when you approve a FISA application, in your mind, does that mean you should read it and understand what's part of it?

ROSENSTEIN:

You should certainly understand what's part of it, sir.

GOHMERT:

But that -- you're parsing words. So that doesn't mean you need to read it, in your opinion, is that correct?

ROSENSTEIN:

It depends on the circumstances, sir, and ...

GOHMERT:

Well telling you, being a former felony state judge, if I had somebody like you come before me ...

ROSENSTEIN:

You're (ph) not the one to (inaudible), sir.

GOHMERT:

... and now it was revealed later that the guy that signed and approved an application for a warrant ...

(CROSSTALK)

... had not even read the application that would allow spying on somebody...

ROSENSTEIN:

That would be atrocious.

GOHMERT:

... I would look at everything he signed from then on, with a jaundiced eye. And I'm telling you I was a little concerned...

ROSENSTEIN:

Will you give me a chance to explain, sir?

GOHMERT:

Well, you have. You said...

ROSENSTEIN:

No, I have not.

GOHMERT:
...approve it.

ROSENSTEIN:
I did approve it.

GOHMERT:
I didn't ask that question because you've said you approved it but you took out the words that you read it.

(CROSSTALK)

GOODLATTE:
The gentleman from Texas will suspend. The gentleman from Texas will suspend.

I just want to make clear, to the deputy attorney general, you will be afforded the full opportunity...

ROSENSTEIN:
Thank you, sir.

GOODLATTE:
... to respond once his time is expired. If he wants to yield to you during that time ...

GOHMERT:
My time continued to run while the chairman took up some of my time, so.

GOODLATTE:
You'll have that time.

GOHMERT:
And actually, I was being interrupted. I did not have a question. I was taking the words that the deputy attorney general himself said.

So, well let me ask you about this: you said earlier, Bruce Ohr was not working on the Russia investigation. Let me ask...

ROSENSTEIN:
To my knowledge.

GOHMERT:
To your knowledge. Did you not know that Bruce Ohr was meeting with Christopher Steele, getting information about the -- the dossier and supplying that information to the FBI at the

same time his wife, Nellie, was working for Fusion GPS that was helping Hillary Clinton? Did you not know he was doing that for the FBI?

ROSENSTEIN:
Correct.

GOHMERT:
You did not know that?

ROSENSTEIN:
Correct.

GOHMERT:
OK, so he officed a couple of doors down, but you had no idea the he was actually the go-between to get that information. So when did you find out about that?

ROSENSTEIN:
So as I said, sir, the inspector general is reviewing these FISAs, and I hope I have an opportunity to explain.

GOHMERT:
Well, let me just say...

ROSENSTEIN:
I understand why you don't...

GOHMERT:
... you look at the deputy -- look at the summary. The -- Mr. Horowitz said, "We did not have confidence that Strzok's decision to prioritize Russia investigation over following up on the mid-year related investigation led -- lead (ph) discovered on the Weiner laptop was free from bias." Pretty clear to most of us...

GOODLATTE:
Time...

GOHMERT:
... his bias did affect that decision, and it -- and -- you...

GOODLATTE:
The time of the gentleman has expired. The deputy attorney general may respond.

ROSENSTEIN:
Thank you, Mr. Chairman. I apologize. I thought you were asking me questions, sir.

I completely understand your concern. And this FISA process is being reviewed by the inspector general. If he finds some problem with it, I'll respect that.

Now, we don't talk about FISAs. It's illegal for us to talk about FISAs. And this particular example -- as a result of the Intelligence Committee, certain information was declassified, and so I'm comfortable talking about that.

You have to understand, in context, sir, that the department had made the decision to disclose the existence of a FISA to the House and Senate before I got there -- before I got there.

Now, what I signed was what's called a renewal application. It'd already been approved three different times by a federal judge. It was signed under oath by an FBI agent who attested that it was true and correct.

Now, if he was wrong, we'll hold him accountable. But let's allow the process to conclude before we jump to conclusions about that. Because I assure you, sir, I'll be just as offended as you if I find there was some incorrect information in that application.

GOHMERT:

Well, Mr. Chairman, since we've learned that he relies heavily on people that were part of his team to do these applications, I don't think we can get to the truth until we question Tashina Gauhar and Trisha Anderson.

And that would also include why she slow-walks the notices of NSC meetings to the attorney general when she's working for the DAG, just to make him look bad. So we need to get those two people in here and question them...

(CROSSTALK)

GOODLATTE:

The gentlemen's time is -- the gentlemen's time is expired (ph).

ROSENSTEIN:

Mr. Chairman, if I could respond. You know, if there's any evidence of wrongdoing, sir, by anyone on my staff or anyone in the department, I would expect you to give them fair process.

Bring the information to my attention or the inspector general's attention. Let's hear both sides, and then let's reach a conclusion. I think what's important to understand -- and I understand the FISA process is -- is very obscure to most people.

But these are essentially search warrant affidavits. A federal agent has to swear under oath that everything in that application is true. And then there are review processes within the FBI, within the department. And, ultimately, the decision is made by a federal judge.

There can be mistakes. And we'll find out if there are any mistakes in this one. But it's not a matter of just slapping a document and signing it. It's a very thorough process. And, in that particular case, four different federal judges found probable cause.

The inspector general will review it, and I'll await those conclusions, sir. But I just would encourage you not to jump to any conclusions that I or anybody else did anything wrong until we have all the information.

NADLER:
Mr. Chairman...

GOODLATTE:
For what purpose does the gentleman from New York seek recognition?

NADLER:
Mr. Chairman, earlier, I referenced a January 27th, 2000 letter to John Linder, who was then the chairman of the Rules Committee -- of the Subcommittee on Rules and Organization of the House Committee on Rules, from the then-deputy -- assistant attorney general, Robert Raben. I'd like unanimous consent to insert this into the record now.

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

NADLER:
I thank you, sir.

GOODLATTE:
And the chair recognizes the gentleman from California, Mr. Swalwell, for five minutes.

SWALWELL:
Thank you, Chairman. And, Mr. Rosenstein, Mr. Wray, thank you both for your service, and I hope you pass along my thanks to the men and women who serve at the Department of Justice and the bureau.

This morning, Donald Trump, our president, tweeted, "When is Bob Mueller going to list his conflicts of interest?" Mr. Rosenstein, does Bob Mueller have any conflicts of interest?

ROSENSTEIN:
Mr. Chairman (ph), if there were any conflicts of interest that were brought to our attention, I would discuss with Mr. Mueller, and then there could be review within the department, if there were a credible allegation of a conflict of interest. And so I'm not aware of any disqualifying conflict of interest.

SWALWELL:

In your experience at the department, are you aware, ever, in your experience of (ph) the department's history, of an unindicted subject of an investigation being given evidence that exists in the case where that person's a subject?

ROSENSTEIN:

I wouldn't want to (ph) comment on has it ever happened. But, generally, that would not be our practice.

SWALWELL:

And do you intend to change that with the requests that Rudy Giuliani, the president's counsel, has made that unindicted information would be given over to the president as it relates to the Russia investigation?

ROSENSTEIN:

I'm not aware of any request that Mr. Giuliani has made to me.

SWALWELL:

Mr. Wray, you agree that the FBI's responsibility is to prevent attacks on America?

WRAY:

That's one of many of our responsibilities, yes.

SWALWELL:

Would you agree that, in 2016, Russia electronically, through weaponizing social media and hacking e-mails, attacked our democracy?

WRAY:

I think that's a shorthand for what was in the intelligence community assessment, which I have every reason to accept.

SWALWELL:

This morning, Mr. Wray, the president tweeted, "Russia continues to say they had nothing to do with meddling." Do you believe that Russia had something to do with the meddling that occurred in the last election?

WRAY:

As I -- I think indicated, I think the intelligence community's assessment, which I agree with, is that Russia attempted to sow discord in our country in an effort to influence the last election.

As the deputy attorney general mentioned, there's also, now, an indictment through the special counsel's office that speaks to much the same subject.

SWALWELL:

And, Mr. Wray, has President Trump personally told you to use your resources at the FBI to counter future election meddling by the Russians?

WRAY:

We did -- as I think the White House has reported and disclosed, we did have a meeting not just with the FBI but with the deputy attorney general, the homeland security secretary -- I think Director Coats may have been there; the attorney general, maybe, also -- where the whole focus was on making sure that we are doing what we should be doing collectively.

SWALWELL:

But was the president -- was the president...

WRAY:

And the president chaired -- the president chaired the meeting, so yes.

SWALWELL:

OK. Did he personally, though, express that he wanted the FBI to devote resources to counter Russian meddling?

WRAY:

I don't remember the exact words in the meeting, but the gist of it was to make sure we're doing -- all of us, not just the FBI, but all of the parts of the government that have responsibility for protecting our country against foreign influence -- that we're all doing what we should be doing; if there's more that we can be doing, that we're doing that.

SWALWELL:

Mr. Rosenstein, has President Trump contacted you, either personally, by phone or in writing, with respect to the Russia investigation?

ROSENSTEIN:

Sir, in -- in my capacity as deputy attorney general, I do have meetings with the president. I don't discuss my conversations with the president, other than to say I have not received any improper order from the president to do something that I believe was wrong.

SWALWELL:

What would you do if the president did give you an improper order?

ROSENSTEIN:

Well, I -- I wouldn't follow any improper order, sir.

SWALWELL:

I've read the inspector general report about Mr. Strzok, and I've heard about how he's been characterized today, and I, too, share your belief that he acted inappropriately and we shouldn't allow opinions to get in the way of law enforcement duties.

And the inspector general found that he had opinions that were distasteful, especially toward our president -- candidate Trump, but that there was no finding that that influenced the investigation.

I just want to ask, are you aware of Mr. Strzok setting up a June 9th meeting at Trump Tower, where the president's son, son-in-law and campaign chairman met with individuals seeking to offer dirt from the Russians on Hillary Clinton. Did he set that up or was he involved in that in any way?

ROSENSTEIN:

I have no personal knowledge about that.

SWALWELL:

And did Mr. Strzok ask Candidate Trump or write a speech for Candidate Trump in the summer of 2016 to invite the Russians to conduct further hacking. Was that a part of any finding that you had?

ROSENSTEIN:

Not to my knowledge.

SWALWELL:

Do you find it, Director Wray, unhelpful that the president would Tweet in the manner that he did this morning and the public comments he's made when he doesn't acknowledge that Russia interfered in our election yet you're tasked with trying to counter Russian interference in our election?

WRAY:

Congressman, there are a lot of opinions out there about a lot of things including on Twitter. I'm not really a Twitter guy and our folks aren't really either. We're more focused on just trying to make sure we get our work done.

SWALWELL:

Thank you. And the country is counting on you as we go into the midterms. I yield back.

GOODLATTE:

The gentleman from Georgia, Mr. Collins, is recognized for five minutes.

COLLINS:

Thank you Mr. Chairman. Just a few things, I think one of the interesting things here is I mean this is amazing how this whole went (ph) -- especially the last few minutes when we just went to making crap up, but it's an interesting process here and one of the problems goes back though before you got there and this is the problem that this committee saw in the previous attorney general and the previous FBI director and the previous, you know, previous two

attorney generals to be honest in this, in which things were done out of order, out of sequence, meeting with the former president on the tarmac and not disclosing it.

These are the things that have just led to some distrust as we go forward. I just have a few questions -- specific questions and these can be, without commenting on an ongoing investigation, in all of any kind, is there in your opinion, a constitutional standard that guides your department in investigating any president, a president or any president? Mr. Rosenstein.

ROSENSTEIN:

Is there a constitutional standard?

COLLINS:

Yes, do you think there is or is not?

ROSENSTEIN:

I'm not aware of any provision in the Constitution that addresses that.

COLLINS:

OK. Is there an Office of Legal Counsel opinion that informs the department in this area and if so, are you directing Special Counsel Mueller to follow it?

ROSENSTEIN:

You (ph) referring to the issue of whether a president can be indicted?

COLLINS:

Well not just in the sense of how these investigations are to be handled. I think that's been a lot of this conversation that we've -- we've had around.

ROSENSTEIN:

I - I know that there are two historical opinions but I have not read them. I haven't read them recently; I probably have seen them at some point, but I'm not in a position to comment on the details of them and I don't recall whether it's a constitutional issue or not.

COLLINS:

When I think it does - this goes to the indictment as well. I mean it does go to that issue as well. Has there been any discussion about that? There is a possibly of indictment or non-indictment of that -- of the President.

ROSENSTEIN:

I -- I have not, congressman, commented on anything about who may or may not be indicted. All of that speculation that you read, sir, has nothing to do with me.

COLLINS:

And that's fine and that's why you're right here answering questions and I appreciate that with you both. Let's go back to something that I asked you, that you and I had a conversation about a few months ago and this was Mr. Strzok's issue. I asked you at the time did he have a security clearance? You said that you would check, you were assuming that he did at that point. It now appears that that security clearance has been revoked.

The concern that I have here is again, process inside the -- inside the Department of Justice on what happens when you have someone of his caliber, counterintelligence level. This is not -- this is not a new recruit. This is somebody who's been around whose had very sensitive information and on January 13, 2016, an individual from the FBI's Washington field office emailed Mr. Strzok and other employees that their polygraphs were out of -- I think it was out of scope.

I asked you about that and asked you if he had been polygraphed. You didn't know at the time. It said the polygraph raised flags. Now my question about this would be, you didn't know about polygraph at the time. We'll just assume now that it is out there, you do. Would the topic of the extramarital affair have come up in that polygraph or -- or a possibility come up in that polygraph of Mr. Strzok that could have put it out of scope.

ROSENSTEIN:

I do not know the answer.

COLLINS:

Or either way (ph).

WRAY:

I -- I have no idea what would have been raised in any specific person's polygraph at this moment.

COLLINS:

Could he have passed a polygraph given the text, and I'm putting this in context, so the text that we see now before continuing in very sensitive areas such as the investigation -- the Mueller investigation, again the Hillary Clinton, but knowing the bias that we have seen, that we've commented on today, if those texts take into account, were on this polygraph would he or could he have passed a polygraph if he, you know, on his own ability, denying an affair with Lisa Page.

WRAY:

Well Congressman, I'm not going to engage in hypotheticals, especially hypotheticals when, as I've said before, we have referred a number of individuals mentioned prominently in the report to our Office of Professional Responsibility for the appropriate disciplinary process. And my commitment to doing things by the book includes not, as FBI director, commenting on them while they're ongoing.

COLLINS:

OK, then (ph) lets' just go by the process of personnel here. If they're out of scope, do you think it's interesting that you would continue to have someone in an investigation of such magnitude and sensitivity who's basically had a failed polygraph or an out of scope polygraph test, in which they had to then go back and re-answer or add complete sensitive departmentalized information request on this. Would they stay in that investigation and if so, were they treated differently because of his position or who he was?

WRAY:

Well again, I'm not going to engage in hypotheticals about individuals that may have been referred for our disciplinary process.

COLLINS:

Does it not strike you as strange though Mr. Wray, and I was not going here but now you've led me here. Does it not strike you strange that someone who had an issue with a polygraph during the investigation which you have, in which sensitive information was coming about, in which we've now seen the text and other things, what would be the -- so could they just flunk a polygraph and you just keep them on? If they could flunk questions, you keep them on sensitive information simply because that -- not particularly Mr. Strzok here, I'm talking an overall policy. Is your policy just to keep people around that lie?

WRAY:

Of course not.

COLLINS:

OK, then why would we have an issue here in which there is at least an assumption that something is not right. How did this individual continue to stay on investigations when there is polygraph evidence where he had to go back through and say it's out of sorts. And we know that from one of those, the other employees were in a relationship and later got married and disclosed that relationship. So how was this individual kept in an investigative role in this when there was a sensitivity factor here of possibly lying or even now we know, bias.

GOODLATTE:

The time -- the time of the gentleman has expired. The director...

WRAY:

I would like to respond. As I have said repeatedly, we're going to hold people accountable and make sure that we follow our policies strictly and that does not include me commenting on pending matters involving those people. I want to make sure that people are held accountable but I want to make sure it's done right and by the book and I'm not going to do it any other way.

COLLINS:

And I understand that, Mr. Director, but I also say this, and Mr. Rosenstein you made this comment and I appreciated the comment earlier. You said this needs to finish appropriately. And my question is what -- and then I'll finish with this and just say, what time is appropriately and what does it look like?

GOODLATTE:

The time of the gentleman has expired, but Mr. Rosenstein can answer the question.

ROSENSTEIN:

I clarified my earlier answer. Mr. Collins I apologize, I think I misunderstood you were asking me about department policies. If you're referring to issues of whether for example whether you can issue a subpoena, then maybe what you had in mind in terms of process and so, if those issues arose, we would do an appropriate review as to what the facts and law are and we'd make an appropriate decision. And my answer was simply focused on your original question. I don't think anything in the Constitution directly addresses that but certainly there could be constitutional issues.

GOODLATTE:

The chair recognizes the gentleman from Illinois, Mr. Schneider, for five minutes.

SCHNEIDER:

Thank you, Mr. Chairman.

I want to thank my colleagues for allowing me to jump ahead and have the opportunity to have the questions.

I want to thank Director Wray, Deputy Attorney General Rosenstein, for your patience here but more importantly for your resilience, and as you said publicly, deputy attorney general, refusal to be intimidated. I think it's critical that the investigation -- investigations be allowed to go to their end. And we, in all of our responsibilities, follow them to their conclusion, and follow our responsibilities to the Constitution.

Deputy Attorney General, as my colleague from Florida was speaking to you earlier about the importance of the Mueller investigation, especially in the context of protecting our elections, I'm going to paraphrase what you said, but I think it's important to reiterate.

You said the investigation is, tremendously, important. It's important to understand what's happening now, what happened in a past election, but also what's likely to happen in the future. We have to be certain and do everything we can to protect the American people and our elections. Is that a fair paraphrase of what you said?

ROSENSTEIN:

Yes, sir.

SCHNEIDER:

And I'll add that we have ensure that every American has the confidence in the integrity of their own vote and the integrity of our overall elections. And it's important to make sure we understand what's happening and we defend against it. Deputy Attorney General, are you confident that we are where we need to be, today, to prevent interference when Americans go to the polls in four months?

ROSENSTEIN:

Congressman, we only know what we know. And as Director Wray said, he has established a task force. I've met with that task force. And we're continuing to do what we can, along with the Department of Homeland Security, which works with our state election officials.

So, I can assure you that we are taking a lot of steps to protect against election interference, both, with regard to the protection of the ballot itself, and with other efforts to interfere.

SCHNEIDER:

So, last year each of you came before this committee. I had the opportunity to ask you, I had the opportunity to ask the attorney general, when he was here, about what we were doing. This was back in the fall.

I was, particularly, concerned by the attorney general -- general's answer to my question of, are we doing what we need to do? His response, essentially, was that we're not where we need to be, quoting, "I've not followed through to see where we are on that." But he said he would personally take action to do so.

And I asked, at that time, if he would brief this committee. Despite that commitment to brief us and let us know what's being done, we've been unable to schedule a briefing to understand everything that's happening.

I believe Congress needs to know what is being done, so that we can better understand whether or not we are prepared and what actions we have to take.

My question to you, Deputy Attorney General and Director Wray, will you commit to sending the appropriate representatives to brief my colleagues on this committee to understand what's being done on both the Department of Justice and the FBI?

WRAY:

Well, Congressman, a couple of things. First, I'm not sure if you were at the -- we did a full House of Representatives briefing.

SCHNEIDER:

I was there.

WRAY:

And so, I'm happy to do additional briefings on top of that. But we are doing a number of things to brief committees and members of Congress on all of the things we're doing.

I guess the second thing I would say, you referenced the attorney general's earlier testimony on the subject. And I think -- I think it was a question to me when I testified in front of this committee in December.

SCHNEIDER:

I did ask you that, right.

WRAY:

And as I said, there are a whole lot of things that we're doing. And that's on me for not having, at the time -- he now has gotten much more extensively briefed, but that's not -- that's on me for not having briefed the attorney general on all the great new things the FBI is doing on that subject.

SCHNEIDER:

I appreciate that and I've had the chance to meet with the clerks of the two counties I represent to understand what they're doing and what they're help (ph).

There's a report that there was a meeting last month in Silicon Valley between eight tech companies and representatives of the DOJ and the FBI. Are you aware of -- of that meeting?

WRAY:

There have been a number of meetings with companies in Silicon Valley. We are working closely with them, in appropriate ways, to try to enlist, in ways that are again, appropriate, their assistance in trying to better protect the country from improper malign influence.

SCHNEIDER:

And I want to correct the record. It was between DHS and the FBI. But some of the reports that came from that meeting is that there was a sense of an unwillingness to cooperate, collaborate with tech companies to make sure that they are aware of any efforts that might be undertaken by foreign entities or, otherwise, to interfere in elections.

Has your agency provided, to these companies, what they need to make sure they are able to put up the defenses and respond to any threats?

WRAY:

I will say, Congressman, this is the first time I've heard any complaints about what information we're providing. Again, under the -- the new efforts that we're making, we've actually provided all sorts of information to those companies in effort to make them more effective.

And I think from our perspective, we're now looking to see what they come back to us with in order -- as, again, in a joint coordinated effort to protect -- and they have to protect their own platforms, we're providing them information to help them do that.

So, my own experience, including having gone out to Silicon Valley and met with some of these companies myself, is that we're doing a whole lot of things that weren't being done before the 2016 election ...

(CROSSTALK)

SCHNEIDER:

I -- I appreciate it. And like I said, these were reports. So, I don't want to make any claims. But I do want to make the request that we work in partnership with the tech companies to do everything we can to ensure that every American's vote is counted fairly, and every American has confidence in their vote and the ultimate, election. The American people are counting on -- on you both. And with that, I yield back.

WRAY:

Thank you.

GOODLATTE:

The Chair recognizes the gentleman from Arizona, Mr. Biggs, for five minutes.

BIGGS:

Thank you, Mr. Chairman, and thank you gentlemen for being here, today.

The Inspector General testified that Peter Strzok led the investigation, both, for the email investigation and the initial Russian investigation. Would you -- would you agree with his characterization of that?

WRAY:

Well, again, I wasn't there. I do think the -- it's fair to say that Mr. Strzok played a lead role in both investigations. Exactly how it was structured and who supervised whom, you know, that's probably subject to a little more context and explanation by others. But I don't think that's far off.

BIGGS:

Good, fair enough. And then, so what's been characterized today is that -- that the finding in (ph) the inspector general was that there was none of the bias, that has brought Mr. Strzok into such -- under a microscope so closely, affected the decisions made in the Hillary Rodham Clinton investigation.

But that's a bit of a mischaracterization, because under questioning -- and let's just -- let's just go there. You probably have the book right there, if you go to page 211, I think it is, to -- nope, page 149.

What you'll find -- and this is one thing the inspector general testified as well, is that the -- he did not find a document or testimony evidence that improper considerations of Clinton political bias directly affected this specific investigative decision -- decisions.

Well, when we explored it, he admitted that those biases that Mr. Strzok had -- and not just Mr. Strzok, but the others listed that, I think, have been referred for discipline, probably indirectly affected, not only the information the decision makers had, but the decisions that were made.

Would that be accurate? I know neither one of you were there, but do you think that might be accurate?

WRAY:

Well, Congress, I think I'm going to let the inspector general's report speak for itself. I don't think ...

BIGGS:

I'm talking about his testimony, not his (inaudible).

WRAY:

Yes -- no, I wasn't here when he -- when he testified.

BIGGS:

Yes, it was -- I didn't expect you to be watching it, as riveting as it was. So -- so, that -- that leads me to a series of questions related to what's going on here.

And -- and we move into the last investigation, the ongoing investigation. So, I'll go to you, Mr. Rosenstein.

The scope letter, who wrote the scope letter for Mr. Mueller's -- what the scope of his duties would be?

ROSENSTEIN:

I don't -- I don't know, exactly, who wrote it, but I'm responsible for it.

BIGGS:

You signed off on it, probably?

ROSENSTEIN:

Correct.

BIGGS:

And have you turned an unredacted copy of that over to any -- any congressional committee?

ROSENSTEIN:

Not as far as I know.

BIGGS:

OK. Let's -- and why is that?

ROSENSTEIN:

Congressman, I really appreciate that question because I understand why there's some confusion about this, and we only have two minutes and seven seconds.

But I wrote in my letter dated yesterday, the history and the explanation of why it is wrong for the Department of Justice to publicly identify people who are subjects of the investigation, so I certainly completely can understand why you ask the question. But I -- I hope that the -- the letter will speak for itself in explaining why it is our policy not to do that.

Now, people have deviated from that in the past, and my commitment is to follow the rules. That's the commitment I made to the attorney general, Jeff Sessions, when I took this job. And I recognize it's confusing, because people have departed from the rules in the past. We're following...

BIGGS:

But please, we're talking specifically to the scope letter, so...

ROSENSTEIN:

Yes, sir.

BIGGS:

... so, OK, that's...

ROSENSTEIN:

We do not identify a person's -- as is disclosed in the portion that's made public. We don't identify persons publicly unless they're charged, and we explain that in the letter.

BIGGS:

OK. So let's go into -- I've -- I sent you a letter, and I don't know if you've got it, because it's just a couple days old, June 25th, asking if you were going to provide us with the names of everyone who has served, past and present, on Mr. Mueller's Special Counsel investigation. Because as you might guess, we're kind of curious what vetting has gone in. The inspector general, found at least in his testimony, that there was still probably one person still on that investigative team that he found to have a -- a untoward bias. And so are you inclined to release that, or is this something you and I need to talk about offline?

ROSENSTEIN:

Sir, when I took this job, I committed that I was going to read every letter personally.

BIGGS:

Good luck.

ROSENSTEIN:

(inaudible) point -- pointed out that's not practical, so I haven't been able to do that. I completely understand that question. We'll review it. Obviously, our administration is very committed to backing the blue, and protecting law enforcement officers from any kind of abuse or retaliation. I'd be reluctant to publicly name people who aren't on the frontlines just because of what that might invite, not by you, obviously, but by people who are ill-motivated.

But I think you raise an important question. I have talked with Mr. Mueller on several occasions about the importance of making sure the people on his team (inaudible)...

BIGGS:

OK, I don't want to cut you off, and -- but we'll -- we'll get back to that, maybe offline, or something like that.

ROSENSTEIN:

Yes, sir.

BIGGS:

But, so I've got ten seconds left. I -- this is important. September 20 -- 2, 2016, Lisa Page write -- wrote a letter to -- to Mr. Strzok saying that she had talking points for Director Comey because POTUS wants to know everything we're doing. Please identify POTUS, and what you think she meant when she said (inaudible)

ROSENSTEIN:

I don't want to speculate on what Ms. Page meant. I -- I do want to say, if I may, I'm just going to -- I think it's important for you to understand that I completely understand the president's frustration with what's reflected in this report. I mean, nobody would be happy to know that people were sending those sort of text messages, and they had those kind of views. And so I completely understand his frustration.

My commitment is to make sure that everything that we do accords with the facts and the law, and we do not allow any bias to influence what happens on our watch.

GOODLATTE:

The gentleman's time is expired. The chair recognizes the gentleman from California, Mr. Lieu, for five minutes.

LIEU:

Thank you, Mr. Chair.

Let me start by saying it is ridiculous and stupid we're having an emergency hearing into an investigation of Hillary Clinton's emails in 2016. It is now June, 2018, and thousands of kids have been ripped away from their parents by the Trump administration's child separation policy. They have not yet been reunited, and the kids not knowing if they are ever going to see their parents again, or where they are is a trauma and horror we can only imagine.

But since Republicans control the agenda, let's at least try to have this stupid hearing be based on the facts. And the central fact from this I.G. investigation is that no personal views of any FBI or DOJ employees affected their integrity of their investigation.

So Director Wray, I'm going to read to you some of the findings from this I.G. investigation; ask if you agree with it. The I.G. found or reviewed; did not find evidence to connect the political views expressed in the text messages to the specific investigative decisions. Do you agree with that?

WRAY:

We accept the finding, yes.

LIEU:

All right. It further found that the investigative decisions were the result of discretionary judgments made during the course of investigation by agents and prosecutors, and that these judgment calls were not unreasonable. Do you accept that finding?

WRAY:

We accept that finding.

LIEU:

I.G. report further found, in fact, that Agent Strzok advocated for more aggressive investigative measures against Hillary Clinton, including the use of grand jury subpoenas and search warrants to obtain evidence. Do you accept that finding?

WRAY:

We accept that finding.

LIEU:

And the reason Agent Strzok did that is because in America, we let people have personal views, but we expect that when they go do their job, when they enter the FBI building, they check their views at the door. That's what we expect of our agents.

And in your case, Director Wray, you're a Republican, nominated by a Republican president, confirmed by a Republican-controlled Senate. You have made over \$39,000 exclusively in

donations, Republican candidates. I still trust you, because you check your beliefs at the door, and you're doing your job. And in fact, when you interview agents to hire, you can't ask them if they are a Democrat or Republican, and whether you should hire them. Isn't that right?

WRAY:

That is correct. I will say, Congressman, that I take very seriously our obligation to do our jobs apolitically, independently and objectively, no matter who likes it, either side. I will also say that we don't subject our agents to political litmus tests. I will also say that we expect our agents to check their opinions, as you said, at the door, not unlike -- not unlike, in this system, judges all around the country, who have their own political views that range across the spectrum, and sometimes hold them very deeply, or juries that have all kinds of views, or doctors that hold all kinds of views. All of them are entitled to have those views. But -- but -- we need them to check those views at the door and honor their oaths, and that's what I expect of every agent, analyst and professional staff person in the FBI.

LIEU:

Thank you. I deeply appreciate that.

I was at the closed hearing of Peter Strzok yesterday, and I just have to say, my Republican colleagues have mischaracterized his testimony. A number of his text messages have been misconstrued and mischaracterized. It is deeply ironic that my Republican colleagues are yelling and screaming about document production when they refuse to release his unredacted transcript from yesterday's closed hearing. They need to release it to the American people. We need to see Peter Strzok's testimony, and he needs to be at an open hearing. I hope my Republican colleagues will do that.

Now, let me move to something that the president said in an official statement on Twitter. He said a number of times that we've got a deep state. So I asked in another hearing, Secretary of State Mike Pompeo, was there a deep state at the State Department? He laughed, and he basically said, "No, there was not."

So Director Wray, I'm going to ask you, is there a deep state at the FBI?

WRAY:

Congressman, I've never completely understood the term deep state. What I can tell you is that we have 37,000 men and women working in field offices all over the country, and in legat offices all over the world, and they are people of character, of courage, of principle, of selflessness and of patriotism, and that's the FBI that I see.

LIEU:

Thank you. I appreciate that, and I hope the president stops attacking the FBI.

And then, let me conclude my comments to you, Deputy Attorney General Rosenstein. You have shown immense courage in the face of unfair criticism and overreaching requests. Stand

your ground. You took an oath to the Constitution, not to any particular administration or political party, or even this Judiciary Committee. Do not produce documents that would jeopardize people's lives. Do not produce documents that can threaten sources and methods. Do not produce documents that will affect an ongoing investigation. Stand your ground. Play it straight. Do it by the book, as you have been doing, and history will judge you kindly for that.

I yield back.

GOODLATTE:

The chair recognizes the gentleman from Pennsylvania, Mr. Rothfuss, for five minutes.

ROTHFUS:

Thank you, Mr. Chairman. And thank you, gentlemen, for being here today.

And let me also echo my thanks to the department and the FBI for the tremendous work that's being done in Western Pennsylvania as we grapple with any number of issues, from the heroin epidemic to cyber issues, et cetera.

I want to go to Mr. Rosenstein. The I.G. report noted that there were discussions about whether to employ a special counsel. But Mr. Horowitz' recent testimony was that Attorney General Lynch made the decision that she did not need to recuse.

Furthermore, on page 5 of the report summary, the I.G.'s team said, quote, "We did not" -- "we did find evidence that Comey never seriously considered requesting a special counsel."

Do you think that Attorney General Lynch should have recused herself, especially after meeting with former President Clinton on the tarmac in Arizona?

ROSENSTEIN:

Congressman, I -- I don't have any opinion about that. I would recommend you ask Attorney General Lynch. I don't know what her state of mind was.

ROTHFUS:

Well, what level of interaction can an attorney general have with a potential witness of a criminal investigation before they should recuse themselves?

ROSENSTEIN:

Every case, Congressman, is evaluated based on the facts and circumstances. I believe she said that she consulted with ethics experts, and that's what I would do, as well. So I don't know what the nature of that conversation was.

ROTHFUS:

I would hope that, if a situation similar to what she encountered encounters you, there would be a recusal.

You know, I -- throughout this report, decisions related to the investigation were -- were politically driven, whether or not they were partisan. I see evidence of them wanting to wrap things up because of an impending election.

On page 4 of the summary, Director Comey also had conversations with Deputy Attorney General Yates about insisting that a special counsel be appointed, the closer they got to the election.

But his statement to Yates was really to pressure the DOJ -- DOJ, to induce the department to move more quickly to obtain the Mills and Samuelson culling laptops and to complete the investigation.

I -- I see decisions, with respect to Director Comey's statements on July 2nd and October 28th, all driven by politics. And so we just had a conversation about whether -- what's going to control the timelines of investigations. That -- again, I -- I see politics driven throughout this. Do you not?

ROSENSTEIN:

Congressman, I do. If I could address the preface to your question, Attorney General Sessions and Director Wray and I have an understanding that we're going to have a candid relationship.

We recognize some of the things that went wrong may have involved personal interactions between leaders of the department. That's not going to happen on our watch.

With regard to the inspector general's report, I wasn't there. The inspector general did a very thorough investigation. I would have to respect his conclusions.

ROTHFUS:

A little bit about the special counsel. How is the power of the special counsel limited? The special counsel has the same powers as a U.S. attorney, correct?

ROSENSTEIN:

Within the scope of his responsibility, yes.

ROTHFUS:

A U.S. attorney can be discharged at will by the president?

ROSENSTEIN:

A Senate-confirmed U.S. attorney can. We also have...

ROTHFUS:

Correct.

ROSENSTEIN:

... some non-Senate-confirmed U.S. attorneys.

ROTHFUS:

But there is -- but the -- the regulation that appoints the special counsel does not provide for such, correct?

ROSENSTEIN:

Correct...

ROTHFUS:

It has to be for cause (ph).

(CROSSTALK)

ROSENSTEIN:

... makes him a subordinate official. So, unlike a U.S. attorney, he can be fired by the attorney general, which -- a U.S. attorney would technically require the president's...

ROTHFUS:

Well, there was a question about subordinate -- and -- and I just want to ask you that. The -- there are -- some in the legal community have made an argument that Mr. Mueller's appointment violates the appointments clause of the Constitution, essentially pointing out that he is operating as a principal officer, instead of an inferior officer, which does require presidential nomination and Senate confirmation.

Are you aware of these arguments, and do you have an opinion on them?

ROSENSTEIN:

Yes. I'm aware of the arguments. I believe they're wrong, but law professors are free to make whatever arguments they like. Defendants can make whatever arguments they like and have them adjudicated. I'm fairly confident that the argument is wrong.

ROTHFUS:

Question about the frustration that we've had with respect to documents and redactions. I think I've heard you say today that you want to help us with what you call "legitimate congressional oversight," that you would provide information that we need to fill -- fulfill our duties.

Who is the arbiter of what is legitimate and what you think we need, as opposed to us making that decision?

ROSENSTEIN:

I don't know that I used -- or I didn't intend to use "legitimate" in that context. All of what you're doing is legitimate. The question would be whether or not a particular document was withheld for a proper reason.

In my understanding, Congressman -- I know you aren't personally involved in these discussions; Mr. Lausch is -- my understanding is that we actually have a -- a fair amount of agreement with regard to...

ROTHFUS:

Understand where this is all coming from.

ROSENSTEIN:

Certainly (ph).

ROTHFUS:

Because we see things that are redacted that...

(CROSSTALK)

ROSENSTEIN:

Yes (ph).

ROTHFUS:

... shouldn't have (ph) been redacted; things that are redacted to protect somebody at the FBI, whether it has to do with relationship with Strzok and -- and the judge, or with respect to the credibility of a witness in the Flynn investigation -- they're redacted. They shouldn't have been. And that -- it just adds to our -- our skepticism...

(CROSSTALK)

ROSENSTEIN:

Yes, sir. That's...

ROTHFUS:

... And then -- and documents are withheld. And then you go out and say something about extortion. But -- and extortion (ph)...

(CROSSTALK)

ROSENSTEIN:

Well, I -- I wasn't (ph) referring just (ph) to the documents, sir.

ROTHFUS:

... elements -- well, I mean, other things (ph)...

(CROSSTALK)

ROSENSTEIN:

I was referring to other threats that have been made.

ROTHFUS:

... a crime -- I think you -- the word was "extortion." And I -- I mean, isn't there an element of -- of money or property of value in that? And, again, it adds to the -- the environment that has not been helpful as we look for the information, as we conduct our...

ROSENSTEIN:

Yes, sir.

ROTHFUS:

... our legitimate oversight.

ROSENSTEIN:

Yes, sir. I appreciate that. When -- I think what I said was something to the effect that the department will not be extorted. It wasn't an allegation of crime. It was a...

ROTHFUS:

Well, again, you have to...

ROSENSTEIN:

The point was...

ROTHFUS:

... you have to use your -- come on. You're a prosecutor.

ROSENSTEIN:

Yes, sir.

(CROSSTALK)

ROTHFUS:

You know that that term is -- is loaded.

ROSENSTEIN:

No. I -- I understand, Congressman. But I don't think anybody thought I was accusing anybody of a crime.

My point is that we have to do the right thing. People are going to make criticisms. People are going to make threats. We need to do the right thing.

And I think the American people need to be reassured, Congressman, that we're not going to respond to any improper demands, no matter who makes them. That was simply my point.

But I -- I do think -- what I would appreciate if some of you would keep in mind is the reason you know that those redactions were inappropriate is because, when we were asked about it, we turned over the unredacted documents. We weren't trying to hide anything.

Now, somebody may have made a mistake in the redaction process, and just...

(CROSSTALK)

ROTHFUS:

I -- I...

ROSENSTEIN:

... I acknowledge...

(CROSSTALK)

ROTHFUS:

... could follow up on that, but I see my time has expired, but...

ROSENSTEIN:

The FBI was following protocols for these redactions that we determined were wrong. And we changed them. So I think we've resolved that. And so I believe that we're acting in good faith.

I think the folks we're dealing with understand we're acting in good faith. I met personally, along with Director Wray, with Chairman Goodlatte and Chairman Nunes and Speaker Ryan. And -- and they brought to my attention some specific items, which we're addressing.

So I believe, Congressman, that we are complying with valid oversight requests, and we're going to provide you everything that's relevant and appropriate for us to provide.

GOODLATTE:

Chair recognizes the gentleman from Maryland.

RASKIN:

Mr. Chairman, thank you.

The chairman said, earlier this morning, that this was like a novel, but he didn't say which one it was. I've been experiencing something like "Alice in Wonderland," although the -- the early questioners reminded me a little bit more of the two-minute hate sessions in George Orwell's "1984."

I don't know whether either of you wanted to volunteer a literary analogy for us to understand what's taken place today. OK, no? All right. Well, if it occurs to you, let me know.

ROSENSTEIN:

Well, we'll have to think about that, Congressman.

RASKIN:

Our Republican colleagues seem really upset with the Department of Justice and the FBI, to the point of rudeness and incivility. But I can't quite figure out why.

Starting with personnel, Mr. Rosenstein, you are a distinguished law enforcement officer of 21 years' experience in law enforcement. I know that you were a Republican, appointed by a Republican president to be U.S. Attorney, and as far as I know you're still a Republican appointed by a Republican president, President Trump, to be the deputy attorney general.

Robert Mueller spent 28 years in law enforcement. He was a U.S. Attorney in two different states, a decorated war hero, again a lifelong Republican. And Mr. Wray, I understand you've spent at least eight or nine years in law enforcement.

You have been also a Republican -- a lifelong Republican who's given tens of thousands of dollars to Republicans and to your law firm's Political Action Committee, including to candidates like John McCain and Mitt Romney and so on.

Is there a Republican partisan conspiracy and witch hunt against a Republican president taking place, Mr. Wray?

WRAY:

Congressman, as I've said repeatedly, I do not believe Special Counsel Mueller is on any kind of witch hunt.

RASKIN:

OK. The special counsel has actually been remarkably productive in its work; 22 people and businesses have been charged with 75 criminal charges. There have already been five guilty pleas from Michael Flynn, Rick Gates, George Papadopoulos, Alex van der Zwaan and Richard Pinedo.

One person's already been sentenced, you can compare that to the Ken Starr Whitewater investigation, which lasted four years and produced nothing, or the seven congressional committees that went after the Benghazi holy grail and came back with nothing, including our beloved Mr. Gowdy.

That took more than three years, and yet in less than two years we've got 22 people and companies charged. Have there been any complaints about the guilty pleas or those criminal indictments from any members of Congress that you're aware of, Mr. Rosenstein?

ROSENSTEIN:

Sir, if I could just make two corrections. I spent 28 years in federal law enforcement, 29 years in the service of the government, I sometimes round up to 30. With regard to the Starr investigation, I would take issue with your suggestion that it produced nothing, because as you may be aware, I worked on that investigation.

I was involved in a trial that resulted in the conviction of three defendants for fraud. But the Starr investigation, as I discuss in my letter yesterday is somewhat different. Director Mueller understands that the goal here is to keep the investigation focused and to conclude it as expeditiously as possible.

RASKIN:

Well by -- and I appreciate that, and of course the purpose of any criminal investigation is justice ultimately, and we need to allow law enforcement to proceed on its own terms following the rules and the procedures of law enforcement in order to arrive at a just result.

But the whole suggestion here today is that there's some kind of partisan conspiracy afoot. And let me just ask you, just to be clear about it Mr. Rosenstein, is there a Republican partisan conspiracy within the highest ranks of law enforcement, the Department of Justice against a Republican president?

ROSENSTEIN:

No.

RASKIN:

OK. Do you believe that the complaints that are being directed at you today are because you're not doing your jobs or because you are doing your jobs? Starting with you Mr. Rosenstein.

ROSENSTEIN:

Well congressman, I'm reluctant to characterize what people's motivations are, but I can assure you that we are doing our jobs and we're doing them properly.

RASKIN:

OK. Mr. Gowdy said before that America is being torn apart, and of course we've seen in the last several weeks, thousands of families actually being torn apart in America and -- but I agree with Mr. Gowdy that America is being torn apart by these outrageous and incessant attacks on distinguished law enforcement personnel at the Department of Justice and law enforcement officers at the FBI for partisan purposes.

All of this presents a huge threat to the rule of law in America. One party controls the House of Representatives, as you've seen today, the United States Senate, the White House and the Supreme Court obviously, after the sandbagging of President Obama's nomination of Merrick Garland to the Supreme Court.

So they control the House, the Senate, the White House and the Supreme Court, and they seem to want to control the Department of Justice and the FBI. So I just want to ask you, can you restate what you think the role of law enforcement is in terms of upholding the rule of law against attempts at partisan interference and manipulation?

Mr. Wray, could I begin with you?

WRAY:

Congressman, our mission is to protect the American people and uphold the Constitution, and that is our only loyalty.

RASKIN:

OK, and Mr. Rosenstein?

ROSENSTEIN:

Congressman, the -- I understand the concerns about the controversial nature of this investigation and the things that are happening, it would have been better if Russian agents had not interfered with the election, it would have been better if folks who had acknowledged that they lied to the FBI had not lied to the FBI.

It would have been better if people had not made these mistakes and demonstrated this bias, but we're in a position where those things have happened. The best that we can do is to try do our jobs faithfully, to obey our oath and I believe, congressman, that ultimately the American people -- those who have lost will regain confidence, because they know they have Chris Wray running the FBI properly, they know the folks running the department are making decisions properly.

And my hope is that that will be the end result, but I recognize you know, people have legitimate reasons to be concerned.

RASKIN:

Thank you for your service. I yield back, Mr. Chairman.

GOODLATTE:

The chair recognizes the gentlewoman from Washington Ms. Jayapal for five minutes.

JAYAPAL:

Thank you Mr. Chairman and thank you both for your service, thank you to the men and women at the FBI and at the Department, we deeply appreciate it. And I want to just start by registering my -- I was trying to find the right word.

I had confusion here, that -- that wasn't quite -- quite right, then I had disgust, then I put outrage. Now I'm just going to say dissent and displeasure, that we are having a sham emergency hearing on this topic when we already held an all-day hearing with the Oversight Committee just last week when Peter Strzok was deposed for 11 hours in a closed session, where we discussed this in the context of the Meadows resolution of inquiry on Tuesday at markup and then again on the floor.

And I can only conclude that the only emergency really that requires the chairman to break committee rules and schedule a hearing at the last minute appears to be the majority's deep fear of the truth.

The truth of what the Special Counsel Mueller's investigation is yielding and will yield around the Trump campaign's collusion with a foreign government and other related matters. That has been the emergency that frankly, has transformed a committee that I was so excited to be on because it is a powerful committee.

The Judiciary Committee is a powerful committee with independent jurisdiction and the profound responsibility to hold our democracy to its highest ideals, and that has been transformed into a committee in my opinion with a singular, political, partisan focus and what I can only describe as a naked fervor to spend all its time and service to individuals including a president who continues to show extreme disregard for the very institutions that Republicans used to defend all the time and Democrats actually used to criticize, the institutions of democracy; the FBI, the Department of Justice, the media, the courts.

The chairman mentioned this -- this story is like a novel. What came to my mind is "The Handmaid's Tale" perhaps, a tale that leads up to the rights of citizens, the status of women, the pillars of justice and democracy being destroyed in service to authoritarian power.

The real emergency in my mind that we have not had a hearing on is the urgent humanitarian crisis occurring in our country at our border and in cities across the country that really does demand our immediate attention.

As our government risks the long-term health, well-being of thousands of young children who have been cruelly separated from their parents, who have been put into cages -- cages, on United States soil. While their parents -- who are, by the way, guaranteed the right to seek asylum in this country, guaranteed that right by our signatory to the International Convention of Refugees, and by our own due process laws, that they have been imprisoned.

That's the emergency that we have. And so I would like to start my questioning by asking Deputy Attorney General Rosenstein, are you aware of the letter written by 72 bipartisan

former U.S. attorneys who wrote to Attorney General Sessions to end the -- and the -- and this is their quote, "tragic and unsustainable", end of quote, family separations saying that they were, again, their word, in quotes, "horrified" by the policy?

Are you aware of that letter?

ROSENSTEIN:

I believe I read about the letter. I don't think I actually read the letter itself.

JAYAPAL:

Mr. Chairman, I ask unanimous consent to enter that letter into the record.

GOODLATTE:

Without objection, it'll be made a part of the record.

JAYAPAL:

Thank you.

Attorney General Rosenstein, are you aware that the spike in the number of migrant children in U.S. custody today has gone to over 10,000 children in detention centers?

ROSENSTEIN:

No, I'm not aware of the number in detention centers. I don't think that -- that may include children who've come across on their own without parents.

JAYAPAL:

It does?

ROSENSTEIN:

But I'm not aware of the number in detention centers.

JAYAPAL:

And are you aware that overall, over 2,700 children have been separated from their parents, including children as young as six months old?

ROSENSTEIN:

I do not know that for a fact, Congresswoman. I'll accept your representation.

JAYAPAL:

Thank you, Attorney General.

I actually went to visit women in a prison -- they're being held in a federal prison. I'm not exaggerating when I say they're -- they're being imprisoned. Asylum-seekers who are being imprisoned, mothers who told me their children had been stripped from them, one as young as

one year old. And Attorney General, I don't believe that the -- the administration knows even where these children are, who they belong to.

ROSENSTEIN:

Congresswoman, I appreciate you raising that. I met just the other day with Secretary Azar, and he was quite emphatic that is a false story. HHS does know exactly where every one of those children --

JAYAPAL:

Attorney General, let me just stop you for one second to tell you of my personal experience. And I was surrounded by the warden of the prison, as well as a number of employees who can clarify -- who can corroborate exactly what I'm saying to you.

A woman gave me a slip of paper that was given to her either by ICE or HHS, I'm not -- I'm not sure who gave it to her. It had her name, her A-number, her supposed children except they weren't her children. They were not her children.

Please do not believe when somebody tells you that they know where these children are, unless you can tell me in 10 days that they are actually going to be reunited with their parents.

This is happening on U.S. soil. And I have been very disturbed to hear of some of the other consequences on the Justice Department's ability to prosecute serious crimes, due to this zero tolerance, zero humanity prosecution policy.

A USA Today article said that an e-mail --

GOODLATTE:

The time of the gentlewoman has expired.

JAYAPAL:

An e-mail was obtained from a justice department supervisor. I will turn it over to you and I would love to hear what is happening to prosecution of drug smuggling cases, because prosecutors are being taken away to prosecute these individuals who are coming across seeking asylum.

ROSENSTEIN:

Congresswoman, I'd be very interested in that. And I would be shocked if it were true that a drug smuggling case was dropped because of an immigration case. But I'll be happy to look into it.

JAYAPAL:

Thank you. I'd appreciate that.

GOODLATTE:

Gentlemen, you have given us five and a half hours of your time and -- that's short by our standards here lately, actually. Inspector general was here for seven hours and Mr. Strzok was here for eleven hours yesterday.

But I want to just repeat the concern expressed by some of my -- our members and myself about the interview with Mr. Strzok.

We reached an agreement with him after we had issued a subpoena, because his earlier promise to voluntarily appear was not materializing, so we issued a subpoena. And then we later agreed to turn it back into a voluntary interview. And he came, and as is the prerogative, with a voluntary interview, the FBI was allowed to have counsel present as well.

We went through a lot of questions about a lot of things, for which we got answers, but we also were stymied time and time and time again because the FBI counsel instructed him not to answer because it was, as she called it, an ongoing investigation.

Now, we have an ongoing investigation here as well. And that investigation is based upon that book sitting between the two of you. It took a long time to get that done. And we have worked very hard for a long time before that. And we continue to work on that.

And Mr. Strzok was expected to answer questions regarding his involvement in both of these investigations, not from the standpoint of the substance of the investigation, but from the standpoint of what his role was in a contemporaneous time with some of the most unbelievably, outrageously biased, vulgar texts that he was exchanging, at the same time that he was being introduced into this investigation.

So questions, regarding his -- you know, has he ever communicated with Mr. Steele or with Glenn Simpson, who's a journalist, or other matters like this, to find out what his role was in the start of that investigation is critical to our investigation. And we need the answers to those questions. And we are now being blocked again by the FBI.

So I will -- I will say I completely agree with both of you. And actually I commend both of you for the efforts that you have made with regard to the document production.

I was dismayed to find out that someone in the department had made the determination that even though our correspondence had always said that we wanted all communications, that somehow that would exclude the communications within the Department of Justice related to these very same matters.

And I'm understanding now that Mr. Lausch is working on that and will -- will help us resolve that.

We also have the issue with regard to -- this is more the Intelligence Committee, but this -- a matter of a FISA investigation with the -- which the inspector general has now undertaken is

very much of interest to the judiciary committee, because both the FISA court and the FBI are under the oversight of the Judiciary Committee. But -- so we're as interested as others are in -- in the information regarding how that took place.

And I don't think that Congress should be expected to wait another six months or a year. That report was in the works for -- what? A year, a year and a half, maybe? Was many months overdue from when it was originally -- we were originally advised and expected to have it done. We understand that it takes a long time to do some of these things. But our investigation needs to proceed simultaneously.

And I have, and other members of this committee have -- Mr. Gowdy has on behalf of the Oversight Committee said we have no intention of interfering with the substantive investigation of Mr. Mueller.

We've been criticized -- in fact, from people on both sides of the aisle who want to dig into that whole matter. And we've stayed clear of that, but looking at the problems cited in that report which involve questions of improper procedures followed by the FBI and extreme bias demonstrated, and we can all draw our conclusions about how the bias affected the actions, but not if we can't ask the -- one of the central witnesses about that bias based upon his involvement in the outset (ph) case.

So we need to have that resolved and we will communicate with you further beyond right here to work on that. Finally, let me say ...

(UNKNOWN)

Mr. Chairman, can I -- have we open (ph) a second round of questions?

GOODLATTE:

No, I am making -- I'm not asking any questions. And we thank both of you. Mr. Wray, I think that you have done what a lot of people said needed to be done in terms of making the necessary personnel changes.

I -- I believe there's probably some more that need to happen. I think you have -- I liked what you had to say following the inspector general's report about the recommendations in the report. And Mr. Rosenstein, I absolutely agree with you that you are making an effort, a very serious effort to change what was earlier on a very slow process in terms of the production of documents.

It's been much, much, much, much better. I completely agree with that, but this is an ongoing investigation, we're going to have ongoing problems and we need to keep working on that because of these two new problems that have just -- just come up in the last day.

So ...

(UNKNOWN)

Mr. Chairman, just point of order? As the vice ranking member in the absence of the ranking member, I would just hope that our side would be included in any follow-up discussions that you have on the Russia investigation.

GOODLATTE:

We -- we will involve the appropriate parties at the appropriate time with regard to how we're going to get the cooperation to make sure that the witnesses are not -- instructed not to answer questions that are relevant to this investigation.

I thank both gentlemen for appearing here today and this hearing is adjourned.

List of Panel Members

REP. ROBERT W. GOODLATTE, R-VA., CHAIRMAN

REP. LAMAR SMITH, R-TEXAS

REP. JIM SENSENBRENNER, R-WIS.

REP. DARRELL ISSA, R-CALIF.

REP. STEVE KING, R-IOWA

REP. LOUIE GOHMERT, R-TEXAS

REP. JIM JORDAN, R-OHIO

REP. TED POE, R-TEXAS

REP. STEVE CHABOT, R-OHIO

REP. TOM MARINO, R-PA.

REP. TREY GOWDY, R-S.C.

REP. RAUL R. LABRADOR, R-IDAHO

REP. DOUG COLLINS, R-GA.

REP. RON DESANTIS, R-FLA.

REP. MIKE BISHOP, R-MICH.

REP. KEN BUCK, R-COLO.
REP. JOHN RATCLIFFE, R-TEXAS
REP. MIKE JOHNSON, R-LA.
REP. MARTHA ROBY, R-ALA.
REP. ANDY BIGGS, R-ARIZ.
REP. MATT GAETZ, R-FLA.
REP. KAREN HANDEL, R-GA.
REP. JOHN RUTHERFORD, R-FLA.
REP. JERROLD NADLER, D-N.Y., RANKING MEMBER
REP. ZOE LOFGREN, D-CALIF.
REP. SHEILA JACKSON LEE, D-TEXAS
REP. STEVE COHEN, D-TENN.
REP. HANK JOHNSON, D-GA.
REP. TED DEUTCH, D-FLA.
REP. LUIS V. GUTIERREZ, D-ILL.
REP. KAREN BASS, D-CALIF.
REP. CEDRIC L. RICHMOND, D-LA.
REP. HAKEEM JEFFRIES, D-N.Y.
REP. DAVID CICILLINE, D-R.I.
REP. PRAMILA JAYAPAL, D-WASH.
REP. TED LIEU, D-CALIF.
REP. JAMIE RASKIN, D-MD.

REP. ERIC SWALWELL, D-CALIF.

REP. BRAD SCHNEIDER, D-ILL.

REP. VAL B. DEMINGS, D-FLA.

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U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Fifteenth Congress

September 14, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
United States Department of Justice

Dear Deputy Attorney General Rosenstein,

The Committee on the Judiciary held a hearing on "Oversight of FBI and DOJ Actions Surrounding the 2016 Election," on Thursday, June 28, 2018 in room 2141 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 to the Committee by Friday, September 24, 2018 via email or postal mail to the Committee on the Judiciary, Attention: Alley Adcock, 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Alley Adcock on my staff at (b) (6) or by email:

(b) (6)

Thank you again for your participation in the hearing.

Sincerely,



Bob Goodlatte
Chairman

Enclosure

Questions for the record from Chairman Bob Goodlatte:

- 1) Deputy Attorney General Rosenstein, during the hearing you were asked whether you read the FISA application on Carter Page before signing it. You did not answer the question. What was the basis for refusing to answer this question? Are you now willing to answer the question and, if so, did you read the Carter Page FISA application before signing it?
- 2) Please provide the names of all individuals who were in the room when Hillary Clinton was interviewed by the FBI on July 2, 2016.
- 3) Did you have any knowledge that a high-level DOJ official, Bruce Ohr, was acting as a go-between for DOJ and FBI with Christopher Steele?
- 4) Did the topic of the extramarital affair between Mr. Strzok and Ms. Page come up in either of their polygraphs? Did any FBI supervisory official ever consider that the affair presented an opportunity for a foreign intelligence service to turn or recruit either official?
- 5) Who was responsible for writing the scope of the letter setting forth Special Counsel Robert Mueller's authorities?
- 6) You were asked questions regarding the status of a standing opinion issued by the Department of Justice's Office of Legal Counsel (OLC) during your testimony before the Committee. As you know, OLC prepares "the formal opinions of the Attorney General," and "OLC opinions are controlling on questions of law within the Executive Branch." In 2000, during the Clinton Administration, OLC reaffirmed decades-old policy, reaching back to an OLC opinion issued during the Nixon Administration, by concluding:

In 1973, the Department of Justice concluded that the indictment and criminal prosecution of a sitting President would unduly interfere with the ability of the executive branch to perform its constitutionally assigned duties, and would thus violate the constitutional separation of powers. No court has addressed this question directly, but the judicial precedents that bear on the continuing validity of our constitutional analysis are consistent with both the analytic approach taken and the conclusions reached. Our view remains that a sitting President is constitutionally immune from indictment and criminal prosecution.

A. Does this OLC opinion still accurately represent current Department policy or has the Department withdrawn this opinion? If the latter, please provide the Committee with a copy of any OLC opinion(s) or guidance that overrules or supersedes the above-referenced 2000 OLC opinion.

B. If the 2000 OLC opinion still represents Department policy, is Special Counsel Mueller bound by this OLC opinion? If not, please provide a copy of any OLC opinion(s) or other guidance relating to the applicability of DOJ rules, regulations, procedures, practices and policies to a Special Counsel.

O'Callaghan, Edward C. (ODAG)

From: O'Callaghan, Edward C. (ODAG)
Sent: Monday, November 5, 2018 7:36 PM
To: Rosenstein, Rod (ODAG)
Subject: FW: Draft Joint Press Release
Importance: High

Final statement as per today's meeting.

Edward C. O'Callaghan

(b) (6)

From: Raman, Sujit (ODAG)
Sent: Monday, November 5, 2018 7:16 PM
To: Harmon, Zachary J. (DO) (FB (b)(6), (b)(7)(C), (b)(7)(E) per FBI); Maguire, Jacqueline (BH) (FB (b)(6), (b)(7)(C), (b)(7)(E) per FBI); Gauhar, Tashina (ODAG) (b) (6); Groves, Brendan M. (ODAG) (b) (6); Hickey, Adam (NSD) (b) (6); Tucker, Rachael (OAG) (b) (6) (b)(6) per NSD (NSD) (b) (6); Wiegmann, Brad (NSD) (b) (6); Hulser, Raymond (CRM) (b) (6); Pilger, Richard (CRM) (b) (6); Tirol, AnnaLou (b) (6); Navas, Nicole (OPA (b) (6) (b)(6) per NSD (NSD) (b) (6); O'Callaghan, Edward C. (ODAG) (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI); Kupec, Kerri (OPA (b) (6))
Subject: FW: Draft Joint Press Release
Importance: High

Final, per below. Thanks to everyone for the contributions, esp on such short notice.

From: Taylor, Miles (b) (6) >
Sent: Monday, November 5, 2018 7:11 PM
To: O'Callaghan, Edward C. (ODAG) (b) (6); Harmon, Zachary J. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (b)(3) (50 USC s. 3024(m)(1)), (b)(6) per ODNI; Wales, Brandon (b) (6); (b)(6), (b)(7)(C), (b)(7)(E) per FBI
C (b)(6) Douglas Fears (b)(6) John Eisenberg (b)(6) Mark Harvey (b)(3), (b)(6) per ODNI (b)(3), (b)(6) per ODNI (b)(6) Garrett Marquis; Krebs, Christopher (b) (6); Hoffman, Jonathan (b) (6) (b)(6) Lauren Ehram;
(b)(6) Mercedes Schlapp (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Maguire, Jacqueline (BH) (FB (b)(6), (b)(7)(C), (b)(7)(E) per FBI); Gauhar, Tashina (ODAG) (b) (6); Groves, Brendan M. (ODAG) (b) (6) (b)(3), (b)(6) per ODNI
(b)(3), (b)(6) per ODNI; Raman, Sujit (ODAG) (b) (6) >
Subject: Re: Draft Joint Press Release

Final for dissemination, below (with hyperlinks included for your comms folks).

Thanks, all.

Miles Taylor
Deputy Chief of Staff
U.S. Department of Homeland Security
M (b) (6)

Joint Statement on Election Day Preparations

WASHINGTON The U.S. Department of Homeland Security (DHS), U.S. Department of Justice (DOJ), the Office of the Director of National Intelligence (DNI), and the Federal Bureau of Investigation (FBI) in coordination with federal, state, local, and private sector partners nationwide are continuing efforts to protect our elections. Today, DHS Secretary Kirstjen Nielsen, Attorney General Jeff Sessions, DNI Dan Coats, and FBI Director Christopher Wray released the following joint statement:

“Our agencies have been working in unprecedented ways to combat influence efforts and to support state and local officials in securing our elections, including efforts to harden election infrastructure against interference. Our goal is clear: ensure every vote is counted and counted correctly. At this time we have no indication of compromise of our nation’s election infrastructure that would prevent voting, change vote counts, or disrupt the ability to tally votes.”

“But Americans should be aware that foreign actors and Russia in particular continue to try to influence public sentiment and voter perceptions through actions intended to sow discord. They can do this by spreading false information about political processes and candidates, lying about their own interference activities, disseminating propaganda on social media, and through other tactics. The American public can mitigate these efforts by remaining informed, reporting suspicious activity, and being vigilant consumers of information, as discussed below.”

“The United States will not tolerate foreign interference in our elections from Russia, China, Iran, or other nations. As noted in a [joint statement](#) on October 19, 2018, such actions are a threat to our democracy, and identifying and preventing this interference is one of our highest priorities. On September 12, President Trump signed an [executive order](#) that makes clear the U.S. government will not hesitate to defend our electoral processes or punish those who attempt to undermine them.”

“Our agencies have been making preparations for nearly two years in advance of these elections and are closely engaged with officials on the ground to help them ensure the voting process is secure. Americans can rest assured that we will continue to stay focused on this mission long after polls have closed.”

To learn more about efforts to protect America’s elections please visit: <https://www.dhs.gov/topic/election-security> .

Voters can take a few simple steps to help secure our elections, including:

- Get Election Information Straight from the Source Your State or Local Election Office. Call them or check their website. They will have accurate information you can trust on the status of your voter registration, polling hours and location, identification requirements, and election results.
- Be Smart When Consuming or Sharing Election-Related Information: Know Your Source And Think Before You Link. Compare reporting from multiple sources to determine reliable information. Before sharing,

ask yourself, “Who wrote it? Who posted it? What are their sources?”

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From: Spolar, Ellen S. (ODAG)
Sent: Thursday, November 8, 2018 3:23 PM
To: Rosenstein, Rod (ODAG); Bacon, Antoinette T. (ODAG); Baughman, Matthew (ODAG); Catizone, Christopher (ODAG); Cook, Steven H. (ODAG); Daly, Mary (ODAG); Ellis, Corey F. (ODAG); Gauhar, Tashina (ODAG); Goldsmith, Andrew (ODAG); Groves, Brendan M. (ODAG); Harris, Stacie B. (ODAG); Hovakimian, Patrick (ODAG); Hunt, Ted (ODAG); Lan, Iris (ODAG); Leeman, Gabrielle (ODAG); Michalic, Mark (ODAG); O'Callaghan, Edward C. (ODAG); Perkins, Paul (ODAG); Peterson, Andrew (ODAG); Raman, Sujit (ODAG); Sheehan, Matthew (ODAG); Suero, Maya A. (ODAG); Thiemann, Robyn (ODAG); Weinsheimer, Bradley (ODAG); Wetmore, David H. (ODAG); Wu, Connie V. (ODAG); Harris, Stacie B. (ODAG); Moran, John S. (ODAG); Masling, Mark (ODAG)
Cc: Leeman, Gabrielle (ODAG); Powell, SeLena Y (ODAG); Suero, Maya A. (ODAG); Gamble, Nathaniel (ODAG)
Subject: FOIA Requests
Attachments: Notification of Records Search to be Conducted in Response to the FOIA, Marshall, OIP No. DOJ-2018-007582 (DAG), et. al.; Notification of Records Search to be Conducted in Response to the FOIA, Connell, OIP No. DOJ-2018-008089 (DAG) ; Notification of Records Search to be Conducted in Response to the FOIA, Musa, OIP No. DOJ-2018-007537 (DAG), et. al.; Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2018-008203 (DAG) ; Notification of Records Search to be Conducted in Response to the FOIA, Evers, OIP No. DOJ-2018-007678 (DAG), et. al.; Notification of Records Search to be Conducted in Response to the FOIA, Evers, OIP No. DOJ-2018-008184 (DAG), et. al.; Notification of Records Search to be Conducted in Response to the FOIA, Evers, OIP No. DOJ-2018-008184 (DAG), et. al.; Notification of Records Search to be Conducted in Response to the FOIA, Chawla, OIP Nos. DOJ-2018-008530 (DAG), et al. ; Notification of Records Search to be Conducted in Response to the FOIA, Anderson, OIP No. DOJ-2018-007950 (DAG); Notification of Records Search to be Conducted in Response to the FOIAs, Evers, OIP No. DOJ-2018-008730 (DAG), DOJ-2018-008731 (DAG), DOJ-2018-007948 (DAG), and DOJ-2018-007949 (DAG) ; Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2018-008548 (DAG) ; Notification of Records Search to be Conducted in Response to the FOIA, Evers, OIP No. DOJ-2019-000114 (DAG); Notification of Records Search to be Conducted in Response to the FOIA, Evers, OIP No. DOJ-2019-000166 (DAG); Notification of Records Search to be Conducted in Response to the FOIA, Evers, OIP No. DOJ-2019-000162 (DAG)

Hi all,

Over the past few weeks we've received the attached FOIA requests, which are also described below. Unless noted otherwise, the request will search the files of the DAG, all ODAG attorneys present during the relevant timeframe, SeLena, and Marcia or Maya. Please let me know if you have any questions.

The requester, William F Marshall of Judicial Watch, Inc., is seeking records pertaining to:

- Communications between officials in the Office of the Deputy Attorney General and employees or representatives of the Southern Poverty Law Center (SPLC)
- Timeframe: since August 1, 2016

The requester (b) (6), is seeking:

- Records about military commissions at Guantanamo Bay, Cuba, and regarding plea deals.

- Timeframe of the records sought is August 27, 2017 to February 3, 2018.

The requester, Jumana Musa of the National Association of Criminal Defense Lawyers, is seeking records of:

- guidance, directives, emails or other communications sent to any U.S. Attorneys' Offices regarding policies, practices, or procedures for requesting copies of inmates' attorney-client emails from BOP
- guidance, directives, emails or other communications sent to any U.S. Attorneys' Offices regarding policies, practices, or procedures for requesting copies of inmates' emails from BOP, including "non-attorney-client emails"
- legal or policy memoranda concerning any decision to enact or change DOJ policies, practices, or procedures for requesting inmates' emails from BOP, including any policies, practices, or procedures for requesting that BOP exclude from production any emails between an inmate and their attorney, as well as any policies, practices, or procedures concerning the circumstances under which the government does not request such exclusions
- Timeframe: since January 1, 2006

The requester, Jason Leopold of BuzzFeed News, is seeking records pertaining to:

- The July 25, 2018 articles of Impeachment resolution introduced in the House of Representatives to impeach Deputy Attorney General (DAG) Rod Rosenstein
- President Donald Trump's tweets mentioning the DAG

The requester, Austin Evers of American Oversight, is seeking records pertaining to:

- The following categories of records related to the decision to revise the National Crime Victimization Survey (NCVS) :
 1. All communications concerning the decision, its approval, or its rationale;
 2. Any communications with any person or entity outside the executive branch relating to NCVS questions concerning sexual orientation and gender identity;
 3. Any decision memoranda relating to the decision;
 4. Advice or analysis prepared in connection with the decision; and
 5. Any other record documenting the decision, its approval, or its rationale.
- Timeframe: January 1, 2018, through April 30, 2018

The requester, Austin Evers of American Oversight, is seeking records pertaining to:

- Records reflecting communications with or about Stephen Miller
- Records reflecting communications with or referencing the phone number "(202) 881-8641."
- All call logs showing incoming or outgoing calls to or from the phone number "(202) 881- 8641."
- Timeframe: since November 9, 2016

The requester (b) (6), is seeking:

- communications pertaining to the nomination of Gary Katzmann to the U.S. Court of International Trade between the Department and
 - Gary S. Katzmann,
 - The Attorney General of the Commonwealth of Massachusetts, or
 - The Massachusetts Court of Appeal

The requester (b) (6), is seeking records pertaining to:

- Communications regarding the articles of impeachment against Deputy Attorney General Rod Rosenstein introduced in the U.S. House of Representatives (H. Res. 1028) on July 25, 2018.
- Timeframe: Since July 20, 2018.

The requester, Austin Evers of American Oversight, is seeking records pertaining to:

- communications between the Offices of the Attorney General or Deputy Attorney General and the White House regarding the FBI headquarters consolidation project.
- communications of the Offices of the Attorney General and Deputy Attorney General

- with individuals associated with the Trump Organization, LLC or Trump Hotels, or
- containing variations of the terms “Trump Hotel,” “Trump International Hotel,” “TIH,” “Trump Org,” “Post Office,” or “OPO.”
- meeting notes, agendas, informational material, readouts, and follow-up conversation notes related to the FBI headquarters consolidation project from any White House meetings pertaining to that topic which occurred on January 24, 2018 or June 15, 2018.
- Timeframe of these requests is since January 20, 2017.

The requester, Jason Leopold of BuzzFeed News, is seeking records pertaining to:

- emails, memos, letters, or talking points pertaining to the President’s directive to declassify various records pertaining to the Special Counsel’s investigation,
- a copy of the President’s directive or other documentation of the President’s directive,
- damage assessments, reports, or other studies conducted regarding potential damage to national security resulting from the President’s directive.
- Timeframe - since September 1, 2018.

The requester, Austin Evers of American Oversight, is seeking records of:

- Communications between the Department and the Senate regarding the supplemental background investigation of Supreme Court nominee Brett Kavanaugh
- Communications between the Department of Justice and any person at the White House regarding the supplemental background investigation of Judge Brett Kavanaugh.
- Timeframe: since September 27, 2018

The requester, Austin Evers of American Oversight, is seeking records of:

- Records reflecting any written instructions, guidance, investigative parameters, or directives from the White House communicated to the Department of Justice related to the supplemental background investigation of Judge Brett Kavanaugh.
- Timeframe: Since September 27, 2018.

From: Hotchkiss, Eric (OIP)
Sent: Thursday, September 6, 2018 2:45 PM
To: Spolar, Ellen S. (ODAG)
Cc: Villanueva, Valeree A (OIP)
Subject: Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2018-008203 (DAG)
Attachments: 01. Initial Request (8.8.18).pdf

Good Afternoon,

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

The requester, Jason Leopold of BuzzFeed News, is seeking records pertaining to:

- The July 25, 2018 articles of Impeachment resolution introduced in the House of Representatives to impeach Deputy Attorney General (DAG) Rod Rosenstein
- President Donald Trump's tweets mentioning the DAG

The officials that will be searched for this request are:

- Deputy Attorney General Rod Rosenstein
- Antoinette Bacon
- Matthew Baughman
- Christopher Catizone
- Steven Cook
- Mary Daly
- Cory Ellis
- Michael Frank
- Tashina Gauhar
- John Giese
- Andrew Goldsmith
- Brendan Groves
- Patrick Hovakimian
- Ted Hunt
- Iris Lan
- Daniel Loveland
- Mark Michalic
- Michael Murray
- Edward O'Callaghan
- Paul Perkins
- Sujit Raman
- Matthew Sheehan
- Robyn Thiemann
- Bradley Weinsheimer
- David Wetmore

- Connie Wu

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. C or H drive) maintained by the officials listed above. We have also initiated a search in the Offices of the Attorney General, Associate Attorney General, Legislative Affairs, Public Affairs, as well as the Departmental Executive Secretariat.

To the extent officials within your office maintain other types of records, such as paper records or material maintained within a classified system that would be responsive to this request, but would not be located as a result of OIP's unclassified electronic search, please indicate so in response to this email as soon as possible. OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request and/or you can readily identify the officials, be they either current or former employees, who would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014, and [DOJ Policy Statement 0801.04](#) provide that government employees should not use a non-official account including, but not limited to, email, text, or instant message, for official business. However, should this occur, the communication must be fully captured in a DOJ recordkeeping system either by copying any such messages to one's official account or forwarding them to one's official account within twenty days. Should any records custodians have official records responsive to this FOIA request, which are maintained only in a non-official account, and not copied into an official account, then those records should be provided to OIP.

If you have any questions concerning this matter, please feel free to call me at 202-616-5456 or reply to this email.

Eric Hotchkiss
Government Information Specialist
Office of Information Policy

(b) (6)

Requester Information			
Requester	Mr. Jason Leopold	Tracking Number	DOJ-2018-007515
Organization	Investigative Reporter	Submitted Date	08/08/2018
Requester Has Account	No	Received Date	08/08/2018
Email Address	(b) (6)	Perfected Date	08/08/2018
Phone Number	(b) (6)	Last Assigned Date	08/08/2018
Fax Number		Assigned To	Eric Hotchkiss (Department of Justice - Office of Information Policy)
Address	(b) (6)	Last Assigned By	Valeree Villanueva (Department of Justice - Office of Information Policy)
City		Request Track	Complex
State/Province		Fee Limit	\$25.00
Zip Code/Postal Code			

Request Handling			
Request Info Available to the Public?	No	Request Type	FOIA
Request Track	Complex	Request Perfected	Yes
Fee Category	N/A	Perfected Date	08/08/2018
Fee Waiver Requested	Yes	Acknowledgement Sent Date	
Fee Waiver Status	Pending	Unusual Circumstances	No
Expedited Processing Requested	No	Litigation	No
Expedited Processing Status		Court Docket Number	
		5 Day Notifications?	No

Description	
Long Description	I request disclosure from the Department of Justice Office of the Attorney General, Office of Public Affairs, Office of Congressional Affairs and Office of the Associate Attorney General, Deputy Attorney General the following records: 1. All records, which includes, letters, emails, memos, talking points, mentioning or referring to a July 25 Articles of Impeachment resolution introduced by House Republicans to impeach Deputy Attorney General Rod Rosenstein. 2. Records mentioning or referring to Donald Trump tweets in which he names Rod Rosenstein. 3. Letters exchanged between DOJ Office of Congressional/Legislative Affairs and individual members of Congress and congressional committees mentioning or referring Rod Rosentstein, attempts to fire him or impeach him. Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)): (A) An agency shall— (i) withhold information under this section only if— (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) disclosure is prohibited by law; and (ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information. . . . DOJ and its components should not fail to meet the requirements of Section 552(a)(8) when processing my request and release responsive records to me in full or at least in part.
Has Description Been Modified?	No
Description Available to the Public?	No
Short Description	Records pertaining to DAG Rosenstein/impeachment (AG, DAG, ASG, PAO, OLA)

Additional Information	
Litigation Counsel Name	N/A
Litigation Case Number	N/A
Litigation Contact Information	N/A
Sub-Office - IR	Office of the Attorney General
Clearwell Number	N/A
Subject to Litigation?	N/A
On Kill List?	N/A
Need SCO Coordination?	N/A

Attached Supporting Files		
Attachments Available to the Public?	No	
Attached File Name	Size (MB)	File Type
No supporting files have been uploaded.		

Appeals

Tracking Number	Appeal Date	Appellant	Phase	Notification
No appeals have been created.				

Consultations

Tracking Number	Consulted Agency	Created By	Consultation Date	Due Date	Phase
No consultations have been created.					

Correspondence to Requester

Subject	From	To	Date
FOIA Request DOJ-2018-007515 Submitted	System	Mr. Jason Leopold	08/08/2018
<p><p> This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows: <p> Tracking Number: DOJ-2018-007515 Requester Name: Mr. Jason Leopold Date Submitted: 08/08/2018 Request Status: Submitted Description: I request disclosure from the Department of Justice Office of the Attorney General, Office of Public Affairs, Office of Congressional Affairs and Office of the Associate Attorney General, Deputy Attorney General the following records:

1. All records, which includes, letters, emails, memos, talking points, mentioning or referring to a July 25 Articles of Impeachment resolution introduced by House Republicans to impeach Deputy Attorney General Rod Rosenstein.

2. Records mentioning or referring to Donald Trump tweets in which he names Rod Rosenstein.

3. Letters exchanged between DOJ Office of Congressional/Legislative Affairs and individual members of Congress and congressional committees mentioning or referring Rod Rosentstein, attempts to fire him or impeach him.

Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)):

(A) An agency shall—
(i) withhold information under this section only if—
(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or
(II) disclosure is prohibited by law; and
(ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and
(II) take reasonable steps necessary to segregate and release nonexempt information. . .

DOJ and its components should not fail to meet the requirements of Section 552(a)(8) when processing my request and release responsive records to me in full or at least in part.
 </p>			

Other Correspondence

Attached File

File Type

Size (MB)

No correspondence has been created.

Fee Estimates

Current Estimate Total \$0
Date Estimate Sent to Requester N/A
Estimate Required for Payment N/A

Invoices

Sent

Title

Invoice Date

Amount

No invoices have been created.

**Total Amount Billed Which Has
Been Sent To Requester** \$0.00

Payments

Date

Amount

Type

Total Amount Paid

\$0.00

Total Amount Owed

\$0.00

No payments have been added.

Case Responsive Records

Publish Options:

UU - Unredacted - Unreleaseable

RU - Redacted - Unreleasable

UR - Unredacted - Releaseable to the General Public

RR - Redacted - Releaseable to the General Public

REQ - Release to Requester Only

Release Type	Title	User	Date/Time	Exemptions	Release Date
---------------------	--------------	-------------	------------------	-------------------	---------------------

No records have been uploaded.

Restricted Materials

Attached File Name	Size (MB)	File Type	User	Actual Agency	Date/Time
---------------------------	------------------	------------------	-------------	----------------------	------------------

No restricted materials have been added.

Existing Admin Costs

Date	User Name	Charge Type	Hours/Quantity	Rate	Billable?	Total
No cost entries have been added.						

Fee Category: N/A

Total: \$0.00

Invoice Amount: \$0.00

Assigned Tasks

Outcome	Task Type	Assigned To	Assigned By	Submitted Date	Due Date	Closed Date	Notification	Justification
Pending	Fee Waiver	Eric Hotchkiss	Valeree Villanueva	08/08/2018	08/08/2018		No	

Requester
Justification

I am the senior investigative reporter for BuzzFeed News and formerly senior investigative reporter and on-air correspondent for VICE News. Additionally, my reporting has been published in The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.

I request a complete waiver of all search and duplication fees. If my request for a waiver is denied, I request that I be considered a member of the news media for fee purposes.

Under 5 U.S.C. §552(a)(4)(A)(iii), "Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Disclosure in this case meets the statutory criteria, as the records sought detail the operations and activities of government. This request is also not primarily in my commercial request, as I am seeking the records as a journalist to analyze and freely release to members of the public.

If I am not granted a complete fee waiver, I request to be considered a member of the news media for fee purposes. I am willing to pay all reasonable duplication expenses incurred in processing this FOIA request.

I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

Existing Comments (1)

Date/Time	User Name
08/15/2018 05:35 PM	Valeree Villanueva
Comment	Due 9/6/18 - Processing on behalf of OAG - Need to open #s for ODAG, OASG, OPAO, OLA - For searching we can start with office notifications; however, if you have other thoughts for how to proceed let me know.

Assigned Reviewers

Review Order	Review Outcome	Assigned Reviewer	Review Date
No reviewers have been assigned.			

From: Hotchkiss, Eric (OIP)
Sent: Thursday, October 4, 2018 3:38 PM
To: Spolar, Ellen S. (ODAG)
Cc: Villanueva, Valeree A (OIP)
Subject: Notification of Records Search to be Conducted in Response to the FOIA, Leopold, OIP No. DOJ-2018-008548 (DAG)
Attachments: 01. Initial Request (9.24.18).pdf

Good Afternoon,

The purpose of this email is to notify you that the records of the below-listed officials will be searched in response to the attached Freedom of Information Act (FOIA) request.

The requester, Jason Leopold of BuzzFeed News, is seeking records pertaining to:

- emails, memos, letters, or talking points pertaining to the President's directive to declassify various records pertaining to the Special Counsel's investigation,
- a copy of the President's directive or other documentation of the President's directive,
- damage assessments, reports, or other studies conducted regarding potential damage to national security resulting from the President's directive.
- Timeframe - since September 1, 2018.

The officials that will be searched for this request are:

- Deputy Attorney General Rod Rosenstein
- Antoinette Bacon
- Matthew Baughman
- Christopher Catizone
- Steven Cook
- Mary Daly
- Cory Ellis
- Michael Frank
- Tashina Gauhar
- John Giese
- Andrew Goldsmith
- Brendan Groves
- Patrick Hovakimian
- Ted Hunt
- Iris Lan
- Daniel Loveland
- Mark Michalic
- Michael Murray
- Edward O'Callaghan
- Paul Perkins
- Sujit Raman
- Matthew Sheehan
- Robyn Thiemann

- Bradley Weinsheimer
- David Wetmore
- Connie Wu

The FOIA requires agencies to conduct a reasonable search in response to FOIA requests. For your information, this search will encompass the email and computer files (e.g. C or H drive) maintained by the officials listed above. We have also initiated a search in the Offices of the Attorney General, Associate Attorney General, Legal Policy, Legislative Affairs, and Public Affairs, as well as the Departmental Executive Secretariat.

To the extent officials within your office maintain other types of records, such as paper records or material maintained within a classified system that would be responsive to this request, but would not be located as a result of OIP's unclassified electronic search, please indicate so in response to this email as soon as possible. OIP staff will make arrangements to conduct those searches as necessary. Similarly, if your office would not maintain any records responsive to this request and/or you can readily identify the officials, be they either current or former employees, who would maintain records responsive to this request, you may indicate so in response to this email.

Please note that the Federal Records Act, as amended in 2014, and [DOJ Policy Statement 0801.04](#) provide that government employees should not use a non-official account including, but not limited to, email, text, or instant message, for official business. However, should this occur, the communication must be fully captured in a DOJ recordkeeping system either by copying any such messages to one's official account or forwarding them to one's official account within twenty days. Should any records custodians have official records responsive to this FOIA request, which are maintained only in a non-official account, and not copied into an official account, then those records should be provided to OIP.

If you have any questions concerning this matter, please feel free to call me at 202-616-5456 or reply to this email.

Eric Hotchkiss
Government Information Specialist
Office of Information Policy

(b) (6)

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

REQUESTER INFORMATION

Name: Jason Leopold

Affiliation: Senior Investigative Reporter/BuzzFeed News

Address (b) (6)

(b) (6)

Email (b) (6)

Phone (b) (6)

RECORDS SOUGHT

On September 17, 2018, the White House issued the following press release: <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-34/>

At the request of a number of committees of Congress, and for reasons of transparency, the President has directed the Office of the Director of National Intelligence and the Department of Justice (including the FBI) to provide for the immediate declassification of the following materials: (1) pages 10-12 and 17-34 of the June 2017 application to the FISA court in the matter of Carter W. Page; (2) all FBI reports of interviews with Bruce G. Ohr prepared in connection with the Russia investigation; and (3) all FBI reports of interviews prepared in connection with all Carter Page FISA applications.

In addition, President Donald J. Trump has directed the Department of Justice (including the FBI) to publicly release all text messages relating to the Russia investigation, without redaction, of James Comey, Andrew McCabe, Peter Strzok, Lisa Page, and Bruce Ohr.

I request disclosure from the Department of Justice the following records:

1. Emails, memos, letters, talking points, mentioning or referring to this directive by President Donald Trump as disseminated by the White House. Please be sure the search for responsive records includes any from EOP.gov in possession of ODNI

2. A copy of the directive or any other document the White House sent to DOJ to carry out this instruction.

3. DAMAGE ASSESSMENTS, reports and or studies of DAMAGE to NATIONAL SECURITY or POTENTIAL DAMAGE to NATIONAL SECURITY that would result from the declassification of said records.

The timeframe for the search is September 1, 2018 through the date the search for responsive records is conducted.

Reasonably Foreseeable Harm. The FOIA Improvement Act of 2016 amended the FOIA as follows (5 USC 552(a)(8)):

(A) An agency shall

(i) withhold information under this section only if

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law; and

(ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information. .

..

DOJ should not fail to meet the requirements of Section 552(a)(8) when processing my request and release responsive records to me in full or at least in part.

REQUEST FOR EXPEDITED PROCESSING

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(e)(1)(ii), (iv), I request that the DIA expedite the processing of this request. I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions concerning the possible threat to national security resulting from the President's public and private disclosures. The information sought in this request will meaningfully further public discourse on this issue of national concern.

INSTRUCTIONS REGARDING SEARCH

1. Request for Public Records:

Please search for any records even if they are already publicly available.

2. Request for Electronic and Paper/Manual Searches:

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. I further request that the agencies conduct a search of its "soft files" as well as files in its locked cabinets.

3. Request regarding Photographs and other Visual Materials:

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the agencies maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

4. Request for Duplicate Pages:

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

5. Request to Search Emails:

Please search for emails relating to the subject matter of my request.

6. Request for Search of Records Transferred to Other Agencies:

I request that in conducting its search, the agencies disclose releasable records even if they are available publicly through other sources outside the agencies, such as NARA.

FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am the senior investigative reporter for BuzzFeed News and formerly senior investigative reporter and on-air correspondent for VICE News. Additionally, my reporting has been published in The Guardian, The Wall Street Journal, The Financial Times, Salon, CBS Marketwatch, The Los Angeles Times, The Nation, Truthout, Al Jazeera English and Al Jazeera America.

I request a complete waiver of all search and duplication fees. If my request for a waiver is denied, I request that I be considered a member of the news media for fee purposes.

Under 5 U.S.C. §552(a)(4)(A)(iii), "Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Disclosure in this case meets the statutory criteria, as the records sought detail the operations and activities of government. This request is also not primarily in my commercial request, as I am seeking the records as a journalist to analyze and freely release to members of the public.

If I am not granted a complete fee waiver, I request to be considered a member of the news media for fee purposes. I am willing to pay all reasonable duplication expenses incurred in processing this FOIA request.

I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

From: O'Callaghan, Edward C. (ODAG)
Sent: Thursday, November 15, 2018 11:26 AM
To: Rosenstein, Rod (ODAG); Flores, Sarah Isgur (OPA)
Subject: FW: Order and memorandum opinion denying motion to dismiss (Concord)
Attachments: Order.pdf; Opinion.pdf

District court denied motion to dismiss arguments on the conspiracy theory in the DDC case referred from SCO.

From: Gauhar, Tashina (ODAG)
Sent: Thursday, November 15, 2018 11:14 AM
To: O'Callaghan, Edward C. (ODAG) (b) (6) >
Subject: FW: Order and memorandum opinion denying motion to dismiss (Concord)

Just received denying Concord's motion to dismiss the indictment.

From: Hickey, Adam (NSD)
Sent: Thursday, November 15, 2018 11:12 AM
To: Demers, John C. (NSD) (b) (6) >
Cc: Burns, David P. (NSD) (b) (6) >; Gauhar, Tashina (ODAG) (b) (6) >; Groves, Brendan M. (ODAG) (b) (6) >
Subject: FW: Order and memorandum opinion denying motion to dismiss (Concord)

From: Bratt, Jay (NSD)
Sent: Thursday, November 15, 2018 10:41 AM
To: Hickey, Adam (NSD) (b) (6) >
Subject: FW: Order and memorandum opinion denying motion to dismiss (Concord)

Just got this haven't read it yet.

From: (b)(6) per NSD (NSD)
Sent: Thursday, November 15, 2018 10:36 AM
To: Bratt, Jay (NSD) (b) (6) > (b)(6) per NSD (NSD) (b) (6) >
Cc: (b)(6) per NSD (NSD) (b) (6) >
Subject: Order and memorandum opinion denying motion to dismiss (Concord)

See attached.

(b)(6) per NSD
Trial Attorney
U.S. Department of Justice, National Security Division
Counterintelligence and Export Control Section
(b) (6)
(b) (6) (office)
(b) (6) (cell)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

CONCORD MANAGEMENT &
CONSULTING LLC,

Defendant.

Criminal Action No. 18-cr-32-2 (DLF)

MEMORANDUM OPINION

Concord Management and Consulting LLC moves to dismiss count I of the indictment brought under the conspiracy statute, 18 U.S.C. § 371 on the grounds that it (1) fails to allege a defraud conspiracy under § 371 that interferes with a lawful government function; (2) fails to allege a mens rea of “willfulness”; (3) applies § 371’s conspiracy-to-defraud clause to Concord in an unconstitutionally vague manner; and (4) fails to allege the deprivation of government property. For the reasons that follow, the Court will deny Concord’s motion.

I. BACKGROUND

On February 16, 2018, the grand jury returned an eight-count indictment against thirteen individuals and three corporate entities, including defendant Concord Management and Consulting LLC. Indictment, Dkt. 1.¹ Count I of the indictment the sole count against Concord charges that Concord and others “knowingly and intentionally conspired to defraud the United States by impairing, obstructing, and defeating the lawful functions of the Federal Election Commission, the U.S. Department of Justice, and the U.S. Department of State in

¹ The Court has previously summarized the procedural history of this case. *See United States v. Concord Mgmt. & Consulting LLC*, 317 F. Supp. 3d 598, 605–06 (D.D.C. 2018). It repeats that history here only to the extent it relates to the instant motion.

administering federal requirements for disclosure of foreign involvement in certain domestic activities.” *Id.* ¶ 9. The indictment explains that U.S. law “bans foreign nationals from making certain expenditures or financial disbursements for the purpose of influencing federal elections[,] . . . bars agents of any foreign entity from engaging in political activities within the United States without first registering with the Attorney General,” and “requires certain foreign nationals seeking entry to the United States to obtain a visa by providing truthful and accurate information to the government.” *Id.* ¶ 1. The indictment further states that “[v]arious federal agencies, including [the FEC, DOJ, and DOS], are charged with enforcing these laws.” *Id.*

According to the indictment, Concord or its co-conspirators “interfere[d] with the U.S. political system” by, among other things, “posing as U.S. persons and creating false U.S. personas,” “operat[ing] social media pages and groups” that “falsely claimed to be controlled by U.S. activists,” “us[ing] the stolen identities of real U.S. persons to post” on social media, *id.* ¶ 4, “travel[ing] to the United States under false pretenses for the purpose of collecting intelligence,” “procur[ing] and us[ing] computer infrastructure . . . to hide the Russian origin of their activities and to avoid detection by U.S. regulators and law enforcement,” *id.* ¶ 5, “buying political advertisements on social media in the names of U.S. persons and entities,” and “solicit[ing] and compensat[ing] real U.S. persons” while “posing as U.S. grassroots entities and U.S. persons,” *id.* ¶ 6.

To do all of this “without detection of their Russian affiliation,” the defendants jointly “conspired to obstruct the lawful functions of the United States government through fraud and deceit, including by making expenditures in connection with the 2016 U.S. presidential election without proper regulatory disclosure; failing to register as foreign agents carrying out political

activities within the United States; and obtaining visas through false and fraudulent statements.”

Id. ¶ 7.

Concord allegedly contributed to this conspiracy by “spen[ding] significant sums,” *id.* ¶ 3, “control[ling] funding,” “recommend[ing] personnel,” and “overs[eeing] [a co-defendant organization’s] activities through reporting and interaction with [that organization’s] management,” *id.* ¶ 11.

Concord previously moved to dismiss the indictment based on Special Counsel Robert Mueller’s “unlawful appointment and lack of authority.” Dkt. 36. The Court held a hearing on the motion and denied it. *See Concord*, 317 F. Supp. 3d at 626. Concord now moves to dismiss count I on the merits. Dkt. 46. The Court held a hearing on October 15, 2018, requested supplemental briefing on October 18, 2018, Dkt. 68, and now resolves the motion.

II. LEGAL STANDARD

Under Rule 12(b)(1) of the Federal Rules of Criminal Procedure, a party “may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits.” Fed. R. Crim. P. 12(b)(1). That includes “a defect in the indictment or information” such as a “lack of specificity” or a “failure to state an offense.” *Id.* 12(b)(3)(B)(iii), (v).

“When considering a motion to dismiss for failure to state an offense, the court is limited to reviewing the face of the indictment and, more specifically, the language used to charge the crimes.” *United States v. Hillie*, 289 F. Supp. 3d 188, 193 (D.D.C. 2018) (internal quotation marks omitted). “Adherence to the language of the indictment is essential because the Fifth Amendment requires that criminal prosecutions be limited to the unique allegations of the indictments returned by the grand jury.” *United States v. Hitt*, 249 F.3d 1010, 1016 (D.C. Cir. 2001). The government “cannot cure a defective indictment” by clarifying the charges in “a bill

of particulars” or at “oral argument.” *United States v. Conlon*, 628 F.2d 150, 156 (D.C. Cir. 1980). However, the “court must presume the allegations of the indictment to be true, and may not dismiss an indictment on a determination of facts that should have been developed at trial.” *Hillie*, 289 F. Supp. 3d at 193 (internal quotation marks omitted).

“[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *Hamling v. United States*, 418 U.S. 87, 117 (1974). Sufficiency “is not a question of whether [the indictment] could have been more definite and certain,” *United States v. Debrow*, 346 U.S. 374, 378 (1953), but of “whether it is fair to require the accused to defend himself on the basis of the charge as stated,” *Conlon*, 628 F.2d at 155.

When pleading a conspiracy charge, the government “cannot simply charge [the] offense by using the general language of the statute or the common law, but must accompany the generic language ‘with such a statement of the facts and circumstances as will inform the accused of the specific offense[] coming under the general description.’” *United States v. Treadwell*, 760 F.2d 327, 337 (D.C. Cir. 1985) (quoting *Hamling*, 418 U.S. at 117–18).

III. ANALYSIS

To address Concord’s challenges to the indictment, it is necessary to first identify the “lawful government functions” that the defendants allegedly conspired to impair. In doing so, the Court “must construe the indictment in light of its principal purposes of clarity and notice” and will “adhere to the indictment’s plain language” even if some “language on which the government relies may point to possible ambiguities.” *Hitt*, 249 F.3d at 1019–20. The government has at times described the relevant function broadly, as “regulat[ing] and

monitor[ing] the participation of foreign nationals in the American electoral process,” Hr’g Tr. at 29; *see also id.* at 31, 33, 35–36, 42, or “promot[ing] transparency in the American political and electoral process,” Hr’g Tr. at 49. Likewise, Concord has described the relevant function to the extent one exists as “electoral processes,” Def.’s Reply at 23, Dkt. 62, or “administering an election,” Def.’s Mot. to Dismiss at 2.

The text and structure of the indictment, however, point to a narrower set of functions. The indictment specifies the lawful government functions targeted by the conspiracy in two places: paragraph 9 and paragraphs 25 to 27.

Paragraph 9 serves as a capsule summary that distills the essence of the conspiracy and frames the allegations that follow. *See* Indictment ¶ 9. That paragraph is the heart of the conspiracy charge and alleges a conspiracy to impair three specific lawful functions of three specific agencies. *Id.* It alleges that the defendants conspired to impair the functions of the FEC, DOJ, and DOS “in *administering federal requirements for disclosure* of foreign involvement in certain domestic activities.” *Id.* (emphasis added).

Later, in a subsection entitled “Federal Regulatory Agencies,” the indictment describes the relevant disclosure requirements in more detail. *See id.* ¶¶ 25–27. First, paragraph 25 explains that the FEC “administers the Federal Election Campaign Act (‘FECA’),” which requires the reporting of certain independent expenditures. *Id.* ¶ 25. Although this paragraph also mentions FECA’s ban on foreign expenditures, it focuses on FEC’s administration of FECA’s “reporting requirements,” which, when followed, “permit [the FEC] to fulfill its statutory duties of providing the American public with accurate data about the financial activities of individuals and entities supporting federal candidates, and enforcing FECA’s limits and prohibitions, including the ban on foreign expenditures.” *Id.* Second, paragraph 26 explains that

DOJ “administers the Foreign Agent Registration Act (‘FARA’),” which “establishes a registration, reporting, and disclosure regime for agents of foreign principals.” *Id.* ¶ 26. Finally, paragraph 27 explains that DOS issues “non-immigrant visas” to certain foreign nationals entering the United States and requires visa applicants to “provide truthful information in response to questions on the visa application form.” *Id.* ¶ 27.

Portions of the indictment arguably support a broader reading. For example, an introductory paragraph refers generally to the ban on certain foreign expenditures and the United States’ interest in “prevent[ing], disclos[ing], and counteract[ing] improper foreign influence on U.S. elections.” *Id.* ¶ 1. The indictment also contains allegations of conduct designed to “avoid detection by U.S. regulators and law enforcement.” Indictment ¶ 5; *see also id.* ¶ 58. But this language cannot be fairly read to allege the impairment of government functions distinct from or broader than the disclosure regimes delineated in paragraphs 9 and 25 to 27.

In sum, the text and structure of the indictment reveal that the government functions targeted by the conspiracy are alleged solely to be the “administ[r]ation” of “federal requirements for disclosure.” *Id.* ¶ 9. The Court will now consider Concord’s challenges to the indictment based on that understanding.

A. Failure to State an Offense Under § 371

Section 371 prohibits two distinct types of conspiracies: (1) conspiracies “to commit any offense against the United States” and (2) conspiracies “to defraud the United States, or any agency thereof[,] in any manner or for any purpose.” 18 U.S.C. § 371. The Supreme Court has “stated repeatedly” that the “defraud” clause of § 371 is not limited to common-law fraud but “reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.” *Tanner v. United States*, 483 U.S. 107, 128 (1987) (internal quotation marks omitted) (collecting cases). A conspiracy to impede the functions of a

government agency “need not aim to deprive the government of property” or “involve any detrimental reliance.” *United States v. Caldwell*, 989 F.2d 1056, 1059 (9th Cir. 1993), *overruled on other grounds by Neder v. United States*, 527 U.S. 1, 8–9, (1999). Nor must “the conspiracy’s goal” or “the means used to achieve it” be “independently illegal.” *Id.* As long as the conspiracy aims to obstruct the lawful functions of a government agency through some form of “deceit, craft or trickery, or at least by means that are dishonest,” *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924), it falls within § 371’s reach.

In short, a defraud-clause conspiracy requires four elements: “that (1) [the defendants] entered into an agreement, (2) to obstruct a lawful function of the government or an agency of the government, (3) by deceitful or dishonest means, and (4) at least one overt act was taken in furtherance of that conspiracy.” *United States v. Kanchanalak*, 41 F. Supp. 2d 1, 9 (D.D.C. 1999), *rev’d on other grounds*, 192 F.3d 1037 (D.C. Cir. 1999).

1. Obstruction of a Lawful Government Function

Concord argues that the indictment fails at the second element—the obstruction of a lawful government function—because it does not explain “what is meant *under statute or regulation* by a ‘lawful government function’” with respect to the FEC or DOJ.² Def.’s Mot. to Dismiss at 13–14 (emphasis added). Although the indictment invokes FECA’s disclosure requirements, *see* Indictment ¶¶ 7, 9, 25, and FARA’s registration requirements, *see id.* ¶¶ 1, 7,

² With respect to DOS, Concord argues that it is not alleged to have known about the visa-related misrepresentations by its co-defendants and was therefore not a party to any conspiracy to impair the functions of DOS. *See* Def.’s Mot. to Dismiss at 4 n.3; Hr’g Tr. at 8. But the indictment expressly alleges that the “defendants” including Concord “knowingly and intentionally conspired” to impair the functions of DOS, Indictment ¶ 9, by “obtaining visas through false and fraudulent statements,” *id.* ¶ 7. At this stage, those allegations must be presumed true. *Hillie*, 289 F. Supp. 3d at 193.

9, 26, it does not according to Concord allege that Concord “actually violated” or agreed to violate those requirements, Def.’s Mot. to Dismiss at 15. In Concord’s view, that omission is dispositive: the indictment cannot accuse Concord of conspiring to obstruct lawful government functions “without any identified or recognized statutory offense” because a conspiracy conviction cannot be “based strictly on lawful conduct” even if that conduct is “concealed from the government.” *Id.* (emphasis omitted).

Concord is correct that the indictment must identify the lawful government functions at issue with some specificity. And it does. *See* Indictment ¶¶ 9, 25–27. A defraud-clause conspiracy need not, however, allege an agreement to violate some statutory or regulatory provision independent of § 371.³

Unlike the offense clause, which covers only “conspiracies to commit an offense specifically defined elsewhere in the federal criminal code,” *Kanchanalak*, 41 F. Supp. 2d at 9, the defraud clause covers all conspiracies to defraud the United States “in any manner or for any purpose,” § 371. Thus, courts have repeatedly acknowledged that a conspiracy to impair or obstruct a lawful government function under § 371 need not involve the violation of any substantive provision other than § 371 itself. *See, e.g., United States v. Cueto*, 151 F.3d 620 (7th Cir. 1998) (observing that “neither the conspiracy’s goal nor the means used to achieve it need to

³ Concord insists that it does *not* argue that a § 371 defraud-clause conspiracy requires an independent legal violation. Hr’g Tr. at 4 (“We never said that a conspiracy to defraud has to allege other underlying crimes. We understand it doesn’t.”). Yet Concord faults the indictment for “charg[ing] conspiring to interfere with an election” when “[t]here is no statute of interfering with an election.” *Id.* at 4; *see also id.* at 6 (arguing there is “no such crime” as “interfer[ing] in a U.S. election”). And it argues that “this Court should dismiss the Special Counsel’s charge because the transactions on which it is based do not violate FECA, FARA, or any other statute or regulation.” Def.’s Reply at 18 (alterations and internal quotation marks omitted). These arguments make it necessary to clarify the role potential legal violations play in assessing the sufficiency of the indictment.

be independently illegal,” *id.* at 635, and that “[a]cts which are themselves legal lose their legal character when they become constituent elements of an unlawful scheme” under § 371, *id.* at 636) (internal quotation marks omitted); *United States v. Barker Steel Co., Inc.*, 985 F.2d 1123, 1131 (1st Cir. 1993); *United States v. Vogt*, 910 F.2d 1184, 1200 (4th Cir. 1990); *United States v. Rosengarten*, 857 F.2d 76, 78 (2d Cir. 1988); *United States v. Vazquez*, 319 F.2d 381, 384 (3d Cir. 1963). Put simply, conspiracies to defraud the government by interfering with its agencies’ lawful functions are illegal because § 371 *makes* them illegal, not because they happen to overlap with substantive prohibitions found in other statutes.

In *Kanchanalak*, the court illustrated § 371’s self-sufficiency in the context of a conspiracy to impede the lawful functions of the FEC. There, the defendants argued that “because they had no obligation to report their identity to the FEC . . . as a matter of law they could not have impaired or impeded any function of the FEC.” 41 F. Supp. 2d at 9. However, the Court rejected that argument because the indictment “d[id] not charge the defendants with a conspiracy to fail to reveal their names” but with a “conspiratorial agreement to use deceptive or deceitful means to prevent the FEC from performing its lawful reporting function.” *Id.* The court emphasized that the government would still have to prove beyond a reasonable doubt “that the defendants used deceitful or dishonest means,” but it dismissed as “incorrect” the idea that the defendants could be guilty of conspiring to impair or impede the FEC’s functions only if they violated an independent reporting requirement. *Id.*

As in *Kanchanalak*, the indictment does not charge Concord with a conspiracy to fail to disclose independent expenditures to the FEC under FECA, or to fail to register as a foreign agent with DOJ under FARA, or even to submit false statements on visa applications to DOS. Rather, it charges Concord with conspiring to impede the functions of the FEC, DOJ, and DOS

through a myriad of deceptive means. *See* Indictment ¶¶ 4, 7, 9, 28, 30, 32, 36, 38, 41, 43, 45, 47, 49, 51, 52, 56, 57. The key question, then, is not whether the defendants' agreed-upon conduct violated FECA or FARA or any other statute but whether it was *deceptive* and intended to frustrate the lawful government functions of the FEC, DOJ, or DOS.

2. Deceitful or Dishonest Means

Although the indictment need not allege the violation of a statute other than § 371, the reporting requirements of FECA and FARA might still be relevant to establishing deception. Section 371 does not “make it a federal crime to do *anything* . . . with the goal of making the government's job more difficult.” *Caldwell*, 989 F.2d at 1060. It covers only agreements to obstruct government functions by “deceit, craft or trickery, or . . . means that are dishonest.” *Hammerschmidt*, 265 U.S. at 188. Of relevance here, a failure to disclose information can only be deceptive and thus serve as the basis for a § 371 violation if there is a legal duty to disclose the information in the first place. *See United States v. Murphy*, 809 F.2d 1427, 1431 (9th Cir. 1987) (“Where the regulations implementing the Act [administered by the agency] do not impose a duty to disclose information, failure to disclose is not conspiracy to defraud the government.”). In the government's words, “when the only deceptive acts the government has alleged are a failure to disclose or a failure to report, well, then, you are going to have to show a duty to disclose or a duty to report. Otherwise, the failure to do it isn't deceptive. It's just complying with the law.” Hr'g Tr. at 47–48.

This need to establish deception explains the D.C. Circuit's decision in *In re Sealed Case*, 223 F.3d 775 (D.C. Cir. 2000), on which Concord relies. There, the only possible basis for § 371 liability was a loan repayment that allegedly violated a ban on foreign contributions and required disclosure. *Id.* at 777, 779. The court noted that legal impossibility was clearly a defense to

conspiracy “in this context” and concluded that “[b]ecause the transaction described by the government d[id] not violate FECA, there c[ould] be no finding of conspiracy” under either the offense clause or the defraud clause of § 371. *Id.* at 779. Just as the government could not charge “conspiracy to shoot a deer” if “the law d[id] not prohibit shooting deer in the first place,” the government could not charge a conspiracy based on payments that no law including § 371 prohibited. *Id.* But *In re Sealed Case* did not question the longstanding consensus of other circuits that § 371 independently prohibits agreements to employ acts of deceit, craft, or trickery to interfere with an agency’s lawful function. It merely reflected the fact that lawful payments that do not deceive the government or anyone else do not implicate that prohibition. *Cf. United States v. Jackson*, 33 F.3d 866, 870 (7th Cir. 1994) (“[T]he government may allege the violation of [a] specific statute to demonstrate a conspiracy to defraud the United States; but such an allegation is only a way of consummating the conspiracy which, like the use of a gun to effect a conspiracy to murder, is purely ancillary to the substantive offense.”) (alteration and internal quotation marks omitted)).

Here, the indictment alleges several forms of deceit, including both (1) failures to disclose information in violation of a legal duty and (2) affirmative misrepresentations and deceptive conduct. Contrary to Concord’s suggestion, *see* Def.’s Mot. to Dismiss at 6 7 & nn.4 5, the indictment *does* allege that the defendants agreed to violate a legal duty to make “proper regulatory disclosure[s]” to FEC and to “register as foreign agents” with DOJ, Indictment ¶ 7; *see also id.* ¶¶ 25 26, 48, 51. As the indictment explains, FECA “requires that individuals or entities who make certain independent expenditures in federal elections report those expenditures

to the Federal Election Commission.” *Id.* ¶ 25.⁴ In particular, FECA requires “[e]very person . . . who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year” to “file a statement” with the FEC. 52 U.S.C. § 30104(c). And it defines “independent expenditure[s]” to include “an expenditure by a person . . . expressly advocating the election or defeat of a clearly identified candidate.” *Id.* § 30101(17).

The indictment also explains that FARA requires “agents of foreign principals” to “submit periodic registration statements containing truthful information about their activities and the income earned from them.” Indictment ¶ 26. Specifically, FARA prohibits any person from “act[ing] as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement” that discloses any “political activity” performed on behalf of the foreign principal. 22 U.S.C. § 612(a). FARA defines “foreign principal” broadly to include any entity “organized under the laws of or having its principal place of business in a foreign country,” *id.* § 611(b)(3), and it defines “political activities” to include “any activity” believed or intended to “in any way influence . . . any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States.” *Id.* § 611(o).

⁴ The indictment also alleges that FECA prohibits foreign nationals from making “independent expenditures.” Indictment ¶ 25; *see also* 52 U.S.C. § 30121(a); 52 U.S.C. § 30101(17) (defining independent expenditures to include “an expenditure” that “expressly advocate[es] the election or defeat of a clearly identified candidate”); *Bluman v. FEC*, 800 F. Supp. 2d 281, 285 (D.D.C. 2011) (applying FECA’s ban on foreign independent expenditures to a plaintiff who wanted to “print flyers supporting President Obama’s reelection” and “distribute them in Central Park”). Despite this prohibition, the defendants allegedly purchased social media advertisements explicitly promoting candidate Donald Trump and denigrating candidate Hillary Clinton. *See* Indictment ¶¶ 48, 50. That these alleged purchases may have violated FECA’s ban on foreign independent expenditures could be relevant to establishing the defendants’ motive for failing to submit reports as required. *See id.* ¶¶ 7, 48.

Despite these disclosure requirements, Concord or its co-conspirators allegedly “produce[d], purchase[d], and post[ed] advertisements on U.S. social media and other online sites expressly advocating for the election of then-candidate Trump or expressly opposing Clinton” and “did not report their expenditures to the [FEC], or register as foreign agents with [DOJ].” Indictment ¶ 48; *see also id.* ¶ 35 (defendants “spen[t] thousands of U.S. dollars every month” on “advertisements on online social media sites” and included those expenditures in budgets submitted to Concord). Further, the defendants allegedly “organized and coordinated political rallies in the United States” and “did not register as foreign agents with [DOJ].” *Id.* ¶ 51. This failure to disclose information to the United States in the face of a legal obligation to do so qualifies as “deceit, craft or trickery,” *Hammerschmidt*, 265 U.S. at 188, regardless of whether it could be criminally prosecuted as a standalone offense.

Concord argues that the alleged failures to report or register cannot be considered, either because they are not identified with enough specificity in the indictment, Def.’s Mot. to Dismiss at 6–7; Def.’s Resp. to Gov’t’s Supp. Br. at 2–4, Dkt. 71, or because they would ordinarily only support criminal penalties if done “willfully,” Def.’s Resp. to Gov’t’s Supp. Br. at 4. Both arguments are unpersuasive. First, the indictment need not provide a detailed account of the manner and means the defendants used in accomplishing the object of the conspiracy. *See Glasser v. United States*, 315 U.S. 60, 66 (1942). The indictment alleges that the defendants agreed to a course of conduct that would violate FECA and FARA’s disclosure requirements, *see* Indictment ¶¶ 7, 25–27, 48, 51, and provides specific examples of the kinds of expenditures and activities that required disclosure, *see id.* ¶¶ 48–57. At this stage, that is more than enough. Second, the question is not whether the defendants’ failure to report was *criminal* but whether it violated a legal duty and was therefore *deceptive*. Those questions are analytically distinct. The

substantive FECA and FARA provisions that require disclosure are separate from FECA and FARA's enforcement provisions. *Compare* 52 U.S.C. § 30104(c), *and* 22 U.S.C. § 612(a) (requiring disclosure), *with* 52 U.S.C. § 30109(d), *and* 22 U.S.C. § 618(a) (establishing criminal penalties for certain willful violations of disclosure requirements). Further, FECA's enforcement provisions impose civil penalties for even non-willful failures to report, *see FEC v. California Medical Ass'n*, 502 F. Supp. 196, 203 (N.D. Cal. 1980); thus, describing such failures as "lawful" is as inaccurate as it is irrelevant.

In addition to non-disclosure, the indictment alleges that the defendants made affirmative misrepresentations by submitting false statements on visa applications to DOS.⁵ *See id.* ¶¶ 5, 7, 30. The indictment further alleges that the defendants destroyed evidence "to avoid detection and impede investigation by U.S. authorities," *id.* ¶ 58, and used "computer infrastructure" to "hide the Russian origin of their activities" and "avoid detection by U.S. regulators and law enforcement," *id.* ¶ 5; *see also id.* ¶ 39. This affirmative conduct also qualifies as deception that, together with the defendants' evasion of legal reporting requirements, was allegedly calculated

⁵ Concord argues that the false statements to DOS were not "material" and thus could not have constituted visa fraud if charged under 18 U.S.C. § 1546(a). *See Hr'g Tr.* at 9-10. But even if that is the case, it does not make a difference. Because the indictment charges a defraud-clause conspiracy and not an offense-based conspiracy, the government does not need to prove materiality. The false statements alleged are not relevant because they violate another criminal statute but because they are *deceptive* and intended to impair DOS's lawful function of "administering federal requirements for disclosure of foreign involvement in certain domestic activities." Indictment ¶ 9. As visa applicants, the defendants were expressly required to "certif[y]" that their "answers [we]re true and correct to the best of [their] knowledge and belief," and they were instructed that "[a]ll declarations made in [their] application[s] [we]re unsworn declarations made under penalty of perjury." U.S. Dep't of State, Consular Elec. Application Ctr., Online Nonimmigrant Visa Application (DS-160) (accessed November 5, 2018), [https://travel.state.gov/content/dam/visas/PDF-other/DS-160 Example.pdf](https://travel.state.gov/content/dam/visas/PDF-other/DS-160%20Example.pdf). To submit false answers to direct questions in the face of these instructions qualifies as deception designed to impair DOS's information-gathering function, which is precisely the sort of fraud § 371 prohibits.

“to obstruct the lawful functions of the United States government” and thereby enable the defendants “to carry out their activities to interfere in U.S. political and electoral processes without detection of their Russian affiliation.” *Id.* ¶ 7; *see also id.* ¶ 28.

The government insists that, at trial, it will not have to prove that any defendant had a legal duty to file reports with the FEC or to register with DOJ. *See* Hr’g Tr. at 31–33; Gov’t’s Supp. Br. at 4. The government acknowledges that it would “have to show a duty to disclose or a duty to report” if “the *only* deceptive acts” alleged in the indictment were “a failure to disclose or a failure to report.” Hr’g Tr. at 47–48 (emphasis added). But it argues that the various other forms of deception alleged—namely, impersonating U.S. persons and entities online, using stolen identities to hide the source of online payments, using computer infrastructure to evade detection, and destroying evidence—make it unnecessary to establish deceit through a failure to report or disclose. *Id.* at 31–33; Gov’t’s Supp. Br. at 3–4;.

In theory, the government is correct. The difficulty for the government, however, is not *identifying* deceit—of which there is plenty—but *connecting* that deceit to the lawful government function of “administering federal requirements for disclosure,” which the defendants allegedly conspired to impair. When coupled with a duty to report, the various acts of deception immediately directed at private parties become relevant as a way to avoid detection for failing to comply. But it is difficult to see how the defendants’ deception would impair agencies’ ability to “administer” disclosure requirements if those requirements did not apply to the defendants’ conduct. To be sure, not *all* conspiracies to defraud the United States by impairing the lawful functions of the FEC and DOJ must allege a legal duty to report or register. But because this indictment alleges a conspiracy to impair those agencies’ functions of “administering federal requirements for disclosure,” Indictment ¶ 9, the government may ultimately have to prove that

the defendants agreed to a course of conduct that, if carried out, would require disclosure to the FEC or DOJ.⁶

At bottom, Concord's concerns amount to a single attack: that the government has charged Concord based on conduct that is *not illegal*. See Def.'s Mot. to Dismiss at 15, 17. If that were true, Concord would of course prevail. "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."

Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978). And "[p]ure legal impossibility is always a defense" to conspiracy. *In re Sealed Case*, 223 F.3d at 779 (internal quotation marks omitted).

But Concord cannot escape the fact that the course of deceptive conduct alleged *is illegal*

because § 371 makes it illegal. The indictment need not allege a violation of any other statute.

B. Mens Rea

1. Whether § 371 Requires Willfulness in this Case

Section 371 does not contain an express mens rea requirement. But "[s]ection 371's use of the term 'conspire' incorporates long-recognized principles of conspiracy law." *Ocasio v. United States*, 136 S. Ct. 1423, 1429 (2016). "In a conspiracy, two different types of intent are generally required—the basic intent to agree, which is necessary to establish the existence of the conspiracy, and the more traditional intent to effectuate the object of the conspiracy." *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 433 n.20 (1978); see also *United States v. Haldeman*, 559 F.2d 31, 112 (D.C. Cir. 1976) ("[T]he specific intent required for the crime of conspiracy is . . . the intent to advance or further the unlawful object of the conspiracy."). Where the unlawful object of the conspiracy is to defraud the United States, the mens rea logically required is that

⁶ The same analysis does not apply to the allegations relating to DOS because they do not involve a failure to disclose information but rather affirmative misrepresentations to DOS.

“the defendant knowingly participated in the conspiracy with the intent . . . to defraud the United States.” *Treadwell*, 760 F.2d at 333. And where the fraud is in turn premised on the interference with lawful government functions, as here, the mens rea required is that the defendant “knowingly agreed” with another “to deceptively interfere with the lawful functions of the [targeted agency].” *United States v. Davis*, 863 F.3d 894, 901 (D.C. Cir. 2017).

Concord resists this conclusion, arguing that at least in cases like this one where First Amendment concerns are implicated, where the government functions allegedly obstructed are rooted in complex statutory schemes, and where the course of conduct agreed to relates to statutory offenses that would require willfulness if charged a higher mens rea is required. *See* Mot. to Dismiss at 17–19. Specifically, Concord argues that a “willfulness” standard applies and requires the government to allege the defendant’s “knowledge of the law[s]” that define the government functions targeted by the conspiracy. *Id.* at 19.

To support that standard, Concord relies first on two Supreme Court cases that interpreted statutes that unlike § 371 contained an express “willfulness” requirement. *See Cheek v. United States*, 498 U.S. 192, 193, 201 (1991) (interpreting “willfully” in a criminal tax provision to require knowledge of the law); *Ratzlaf v. United States*, 510 U.S. 135, 149 (1994) (interpreting “willfully” in a criminal antistructuring provision to require the government to show that the defendant “knew the structuring in which he engaged was unlawful”). But these decisions were not meant to “dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge.” *Ratzlaf*, 510 U.S. at 149; *see also Cheek*, 498 U.S. at 609 (affirming that “[t]he general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system” and observing that “[t]his common-law rule has been applied by the Court in numerous cases construing criminal statutes”). These

decisions merely acknowledged that, “[i]n particular contexts, . . . *Congress* may decree otherwise.” *Ratzlaf*, 510 U.S. at 149 (emphasis added); *see also Cheek*, 498 U.S. at 609 (noting that “*Congress* has . . . softened the impact of the common-law presumption [that every person knows the law] by making specific intent to violate the law an element of certain federal criminal tax offenses” and describing the use of “the statutory term ‘willfully’” as “carving out an exception to the traditional rule” (emphasis added)). Indeed, the Court in *Ratzlaf* cautioned that even the express use of the word “[w]ilful” does not necessarily require knowledge of the law, as that word “is a word of many meanings, and its construction is often influenced by its context.” 510 U.S. at 141 (alterations and internal quotation marks omitted). Instead of reflexively assuming that willfulness required knowledge of the law, the Court proceeded to examine the relevant statutory structure and to consider whether the prohibition was limited to inherently nefarious activity or captured otherwise-innocent conduct. *Id.* at 142–46.

Concord focuses on the complexity of FECA and FARA and the fact that their criminal enforcement provisions require willfulness. *See* Def.’s Mot. to Dismiss at 20, 25–26. But the government has not charged Concord with violating FECA or FARA, but with violating § 371. The difference matters. Unlike FECA, FARA, and the tax and structuring statutes interpreted in *Cheek* and *Ratzlaf*, § 371 does not contain an express willfulness requirement. And because every defraud-clause conviction requires the use of “deceit, craft or trickery, or . . . means that are dishonest,” *Hammerschmidt*, 265 U.S. at 188, “[t]he danger of convicting individuals engaged in apparently innocent activity that motivated [the Supreme Court’s] decisions in the tax cases and *Ratzlaf*” is either not present or seriously diminished, *Bryan v. United States*, 524 U.S. 184, 195 (1998).

It is no surprise, then, that other circuits have refused to graft a willfulness requirement onto § 371. See *United States v. Khalife*, 106 F.3d 1300, 1303 (6th Cir. 1997); *United States v. Jackson*, 33 F.3d 866, 871 (7th Cir. 1994); *United States v. Derezinski*, 945 F.2d 1006, 1012 (8th Cir. 1991). Indeed, courts have repeatedly rejected requests, like Concord’s, to borrow willfulness requirements from related substantive statutes even when the defraud conspiracy is premised on interfering with an agency’s administration of those statutes.

In *Derezinski*, for example, the defendant argued that his conviction for conspiring to interfere with the IRS’s lawful function of assessing and collecting taxes could not stand because the government had not proven that he had intentionally violated a known legal duty, as the substantive criminal tax statutes would have required. See 945 F.2d at 1012. But the Eighth Circuit rejected that argument, holding that “*Cheek* d[id] not apply . . . because the Government prosecuted [the defendant] under a general conspiracy statute, not a criminal tax statute, and because ‘willfulness’ is not an express element of section 371.” *Id.*

Likewise, in *Jackson*, the defendants argued that their “§ 371 conspiracy convictions were dependent on violations of the antistructuring laws” and thus required a showing of willfulness under *Ratzlaf*. 33 F.3d at 869. But the Seventh Circuit found that contention “misplaced because the government did not have to demonstrate that the defendants violated the antistructuring laws” and “*Ratzlaf*’s holding concerning the meaning of ‘willfully violating’ in the antistructuring laws . . . ha[d] no bearing on the defendants’ § 371 convictions.” *Id.* at 871.

So too, in *Khalife*, the Sixth Circuit dismissed the argument “that the *Ratzlaf* intent requirement applies to a § 371 conspiracy to defraud based upon structuring activities.” 106 F.3d at 1302. The court reasoned that “because there is no ‘substantive’ offense underlying a § 371 conspiracy to defraud,” it was “unnecessary to refer to any substantive offense when

charging a § 371 conspiracy to defraud” and equally “unnecessary to prove the elements of a related substantive offense.” *Id.*⁷

Concord points to two circuits—the First and the Third—that have arguably bucked this trend. *See* Def.’s Mot. to Dismiss at 27–29.⁸ But the First Circuit cases cited did not actually reach whether the government was required to show willfulness. They merely considered—and rejected—the argument that a jury instruction that *included* a willfulness charge had to go even further and explain that a conviction would specifically require the violation of a known legal duty. *See United States v. Morosco*, 822 F.3d 1, 19–21 (1st Cir. 2016), *cert. denied*, 137 S. Ct. 251 (2016); *United States v. Monteiro*, 871 F.2d 204, 208 (1st Cir. 1989). In *Morosco*, the court was particularly transparent about the limits of its holding. There, the government argued that the willfulness instruction given at trial “actually required prosecutors to prove a level of mens rea higher than what [§ 371] demands.” 822 F.3d at 20 (internal quotation marks omitted).

⁷ The court went on to assess and approve the government’s decision to bring a defraud-clause conspiracy even though the defendants’ conduct was covered by a specific offense defined by Congress. *Id.* at 1303–06. Concord has not (quite) argued that the government should have brought an offense-clause conspiracy or individual substantive charges instead of a defraud-clause conspiracy. But it does accuse the government of “try[ing] to evade the willfulness standard that must be met to show violations of the FECA and FARA provisions referenced” in a way that “would permit offense-clause causes to be routinely charged as defraud-clause cases” and cause one clause to “potentially swallow up the other.” Def.’s Mot. to Dismiss at 25. The Supreme Court, however, has rejected similar arguments, reasoning that “[t]he fact that the [alleged] events include” conduct that violates another criminal statute “does not, in and of itself, make the conspiracy-to-defraud clause of § 371 unavailable to the prosecution.” *Dennis v. United States*, 384 U.S. 855, 862–63 (1966); *see also United States v. Batchelder*, 442 U.S. 114, 124–25 (1979) (“[The Supreme Court] has long recognized that when an act violates more than one criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants.”).

⁸ Concord also describes the Ninth Circuit’s decision in *United States v. Licciardi*, 30 F.3d 1127 (9th Cir. 1994), as applying a willfulness standard, *see* Def.’s Mot. to Dismiss at 30, but that decision held only that the government failed to prove the defendant’s specific intent to defraud the United States, *see* 30 F.3d at 1132, and is therefore addressed below, *infra* III.B.2.

While the court found that argument “[i]nteresting,” it had no occasion to consider it since “the only mens-rea issue relevant” was “the one [the defendant] raise[d]” “that the judge should have said more than he did.” *Id.* at 20–21. Because the court rejected that claim, it did not reach whether the willfulness instruction was overkill, as the government argued, or necessary.

It is true that the Third Circuit has required willfulness in a defraud-clause conspiracy based on interference with the FEC. In *United States v. Curran*, the defendant arranged for his employees to make donations to various political candidates in their own names and promised to reimburse them. 20 F.3d 560, 562–63 (3d Cir. 1994). The government charged the defendant with two different offenses. First, it charged him with violating a combination of 18 U.S.C. § 1001, which prohibits the making of false statements to the government, and 18 U.S.C. § 2(b), which prohibits willfully causing another to commit a criminal act, on the theory that he willfully caused his employees to conceal their identities from campaign treasurers, who in turn falsely reported the source of those contributions to the FEC. *Id.* at 556–67. Second, it charged him with a defraud-clause conspiracy based on “impeding the [FEC]’s performance through obstruction and interference with the Commission’s reporting requirements, and by causing fictitious statements to be made on reports required to be sent to the commission.” *Id.* at 571. In addressing the first set of charges, the court found that the overlay of the aiding-and-abetting statute and the false-statement statute required the government to prove that the defendant “knew that the campaign treasurers were bound by the law to accurately report the actual source of the contributions” and that “the defendant knew that his actions were unlawful.” *Id.* at 570–71. Later, in addressing the conspiracy charge, the court summarily stated that “[t]he comments we have previously made . . . on intent apply to the conspiracy count as well” because, “[i]n order to prove a conspiracy, the government must show an agreement to commit an unlawful act

combined with intent to commit the underlying offense.” *Id.* (internal quotation marks omitted). The court apparently assumed that the defraud-clause conspiracy turned on the fate of the §§ 1001-plus-2(b) charge and required the same level of “willfulness” as a result. *See United States v. Trie*, 21 F. Supp. 2d 7, 16 n.6 (D.D.C. 1998) (“The Section 371 conspiracy count in *Curran* was apparently also based on Sections 2(b) and 1001.”). But, in doing so, the court essentially treated the defraud-clause conspiracy as if it were an offense-clause conspiracy a practice roundly rejected by other courts. In any event, *Curran* is not binding, nor is it persuasive in light of contrary authority from other circuits.

Concord highlights another decision from a judge on this court that arguably required the government to prove willfulness in a conspiracy to interfere with the FEC. *See Trie*, 21 F. Supp. 2d 7. But like *Curran*, that case involved a tandem §§ 1001 and 2(b) charge as well as a defraud-clause conspiracy charge, *id.* at 13, and it is difficult to discern where the court’s §§ 1001 and 2(b) analysis ends and its § 371 analysis begins, *see id.* at 14–15 (mentioning conspiracy count in the relevant section heading and introductory paragraph but subsequently focusing on §§ 1001 and 2(b)). In a footnote, the court explained that, “[t]o the extent that the [defraud-clause conspiracy] [wa]s based on . . . a variant of the aiding and abetting theory, the government would be required to prove the same degree of intent as it does for the substantive offense itself.” *Id.* at 15 n.6. However, since the court denied the defendant’s motion to dismiss, it left the door open for the government to prove alternative theories of conspiratorial liability at trial, *id.* at 15 & n.6. The decision is therefore of little help to Concord.

Concord also points to longstanding DOJ Guidelines taking the position that a conspiracy to thwart the functions of the FEC under § 371 requires *both* “that the defendant was aware of the substantive FECA requirement he or she violated, and that he or she violated it

notwithstanding this active awareness of wrongdoing” and “also . . . that the defendant intended to disrupt and impede the lawful functioning of the FEC.” Def.’s Mot. to Dismiss Ex. A. at 4, Dkt. 46-1 (emphasis added); *see also id.* (explaining that the “intent on the part of the defendant to thwart the FEC” is “a higher factual burden than is required under 18 U.S.C. § 1001”). These Guidelines appear to assume that conspiracies to impair the lawful functions of the FEC require willfulness. But the parties agree that the DOJ Guidelines are not entitled to legal deference, *see Gov’t’s Opp’n* at 29; Def.’s Reply at 6 n.6, and the view expressed in the Guidelines appears to contradict the government’s frequent litigating position, *see Gov’t’s Opp’n* at 29 & n.12 (citing briefs filed in various courts from 1995 to 2016). Although the Court is unmoved by the DOJ’s decision to “clarify[y]” the Guidelines in the middle of briefing on this motion, *see Gov’t’s Opp’n App’x A.*, Dkt. 56-1, it is equally unmoved by the position originally expressed.

Concord’s remaining argument that the indictment implicates protected speech fares no better. There is no doubt that speech is of “primary importance . . . to the integrity of the election process,” *Citizens United*, 558 U.S. 310, 334 (2010), or that political speech “occupies the highest rung of the hierarchy of First Amendment values,” *Janus v. Am. Fed’n of State, Cnty. and Mun. Emps., Counsel 31*, 138 S. Ct. 2448, 2476 (2018) (internal quotation marks omitted). However, the indictment does not focus on the defendants’ speech, or its content, but on a course of deceptive conduct. *See, e.g.*, Indictment ¶¶ 4, 7, 30, 32, 36, 39, 41, 43, 48, 51. Although the Supreme Court made clear in *United States v. Alvarez* that “false statements” are not automatically unprotected, 567 U.S. 709, 717–22 (2012) (plurality opinion), it distinguished such statements from “fraud,” which involves “legally cognizable harm,” *id.* at 719, and remains one of the few historical categories of unprotected speech, *id.* at 717. Indeed, the Court approved of statutes prohibiting false statements to government officials, perjury, impersonating an officer,

and pretending to speak on behalf of the government because such statutes “implicate fraud or speech integral to criminal conduct.” *Id.* at 721. Consistent with these principles, the Fifth Circuit in *United States v. Daly* rejected a claim that a conspiracy to defraud the United States by impeding and impairing the lawful functions of the IRS implicated the First Amendment. 756 F.2d 1076, 1082 (5th Cir. 1985). It explained that § 371 “punish[es] actions, not speech,” and “an illegal course of conduct is not protected by the First Amendment merely because the conduct was in part initiated, evidenced, or carried out by means of language.” *Id.* The same is true here. The conspiracy to defraud does not implicate the First Amendment merely because it involved deceptive statements like claiming to represent U.S. entities, claiming to be U.S. persons, and providing false statements on visa applications.⁹

Although the § 371 conspiracy alleged does not require willfulness, the parties’ disagreement may be narrower than it first appears. The government concedes that § 371 requires the specific intent to carry out the unlawful object of the agreement in this case, the obstruction of lawful government functions. Gov’t’s Opp’n at 16 (“Because Concord is charged with conspiring to defraud the United States, . . . the requisite mental state is the intent of impairing, obstructing, or defeating the lawful function of any department of government through deception.” (internal quotation marks omitted)). Further, the government agrees that to form the intent to impair or obstruct a government function, one must first be aware of that function. *See* Hr’g Tr. at 40 (“[Y]ou can’t act with an intent to impair a lawful government function if you don’t know about the lawful government function.”). Thus, Concord is correct

⁹ Even if the indictment did implicate protected speech, the United States’ “compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process,” *Bluman*, 800 F. Supp. 2d at 288, might well sustain the charge against Concord.

and the government does not dispute that the government “must, at a minimum, show that Concord knew what ‘lawful governmental functions’ it was allegedly impeding or obstructing.” Def.’s Mot. to Dismiss at 22; Def.’s Reply at 5. Here, as alleged in the indictment, the government must show that Concord knew that it was impairing the “lawful functions” of FEC, DOJ, or DOS “in administering federal requirements for disclosure of foreign involvement in certain domestic activities.” Indictment ¶ 9. But Concord goes too far in asserting that the Special Counsel must *also* show that Concord knew with specificity “how the relevant laws described those functions.” Def.’s Mot. to Dismiss at 22; Def.’s Reply at 5. A general knowledge that U.S. agencies are tasked with collecting the kinds of information the defendants agreed to withhold and conceal would suffice. Concord will have further opportunities with jury instructions and in trial and post-trial motions, if any to ensure that the government proves enough knowledge to support a specific intent to thwart at least one of the three government functions alleged in the indictment. *See* Indictment ¶ 9. But at this stage, the government has alleged the requisite intent, *see id.* ¶¶ 2, 7, 9, 28, and no more is required.

2. Whether the Indictment Adequately Alleges a Conspiracy “Targeting” the United States Under *Tanner*

Concord argues that, even if willfulness is not required, the indictment must still be dismissed because it fails to allege a specific intent to target the United States, as opposed to private parties. In *Tanner*, the Supreme Court explained that the defraud-clause conspiracies “criminalized by § 371 are defined not only by the nature of the injury intended by the conspiracy, and the method used to effectuate the conspiracy, but also and most importantly by the *target* of the conspiracy,” which must be the United States. 483 U.S. at 130. Where the fraud is premised on the impairment of lawful government functions, “an agreed-upon objective must be to impede the [government agency].” *United States v. Gricco*, 277 F.3d 339, 348 (3d

Cir. 2002), *overruled on other grounds*, *United States v. Cesare*, 581 F.3d 206 (3d Cir. 2009).

Impeding the government agency, however, “need not be the sole or even a major objective of the conspiracy” or “an objective that is sought as an end in itself.” *Id.* And “the objectives of the conspiracy may sometimes be inferred from the conduct of the participants,” so long as the evidence is “sufficient to prove beyond a reasonable doubt that impeding the [agency] was one of the conspiracy’s objects and not merely a foreseeable consequence or collateral effect.” *Id.*

Here, the indictment alleges that Concord and its co-defendants “knowingly and intentionally conspired with each other . . . to defraud the United States by impairing, obstructing, and defeating the lawful functions of the government . . . for the purpose of interfering with the U.S. political and electoral processes.” Indictment ¶ 2; *see also id.* ¶ 28. The indictment further alleges that

[i]n order to carry out their activities to interfere in U.S. political and electoral processes without detection of their Russian affiliation, Defendants conspired to obstruct the lawful functions of the United States government through fraud and deceit, including by making expenditures in connection with the 2016 U.S. presidential election without proper regulatory disclosure; failing to register as foreign agents carrying out political activities within the United States; and obtaining visas through false and fraudulent statements.

Id. ¶ 7. The indictment therefore alleges that at least *one* of the defendants’ objectives was to obstruct the lawful functions of the government. That this objective served the more ultimate goal of impacting voters and influencing U.S. elections did not make the United States any less of a “target.”

The authorities cited by Concord are not to the contrary. Each involved a challenge to the sufficiency of the evidence not the allegations in the indictment. *See United States v. Mendez*, 528 F.3d 811 (11th Cir. 2008) (per curiam) (challenge to sufficiency of the evidence on appeal); *Licciardi*, 30 F.3d 1127 (same); *United States v. Pappathanasi*, 383 F. Supp. 2d 289,

290 (D. Mass. 2005) (post-trial Rule 29 motion). And in each case, the court found that the government had shown only that the incidental *effect* of the defendants' conduct was to impair lawful government functions but had failed to prove that the defendants had the *intent* to impair those functions.

In *Licciardi*, the defendants set up a scheme to pass off certain wine grapes as similar-looking but more-expensive varieties. 30 F.3d at 1129–30. The government brought a defraud-clause conspiracy on the theory that the vineyards that purchased the second-tier grapes would then submit false reports to the Bureau of Alcohol, Tobacco, and Firearms based on the defendants' misrepresentations. *Id.* at 1331. But while impairing the agency's function in enforcing reporting and labeling requirements may have been the "incidental effect[]" of the defendant's actions, the government did not offer any proof that the defendant had the "mens rea of accomplishing that object." *Id.* at 1332. The court noted that "[i]t might have been easy for the government to establish that [the defendant] was familiar with the federal regulations on the labeling of wine and that it was a necessary part of his plan of deceit that [the buyer] provide information to the government that would frustrate these regulations," but the court could not "speculate as to what the government might have proved when it did not make the effort." *Id.* *Licciard* did not hold that familiarity with the labeling regulations was the *only* way to prove an intent to frustrate the agency's functions; it merely applied *Tanner*'s holding that a defraud-clause conspiracy premised on deceiving an intermediary must still show the "mens rea of defrauding the United States." *Id.* And it observed that one relatively straightforward way of making that showing would have been to introduce evidence that the defendant was aware of certain laws that made the transmission of false statements to the government inevitable.

Similarly, in *Mendez*, the defendant used a fraudulent record to obtain a commercial driver's license from Florida. 528 F.3d at 813–14. The defendant's fraud had the effect of impairing the United States Department of Transportation, which set the minimum requirements for obtaining a commercial driver's license. *See id.* at 815. However, the government did not produce any "evidence that [the defendant] even knew of any connection between a Florida [commercial driver's license] and the federal government," much less "that the United States was the ultimate intended target of [the defendant's] conduct." *Id.* Applying *Tanner* and *Licciardi*, the court reversed the conviction. *Id.* at 815–18. Again, the court did not hold that the government had to allege familiarity with any particular law in the indictment; it merely concluded that the government failed to prove that the defendant had any idea that his actions would mislead the federal government.

Finally, in *Pappathanasi*, the defendant was "accused of conspiring with Dunkin' Donuts franchisees" to overstate expenses, conceal taxable income, and ultimately defraud the IRS. 383 F. Supp. 2d at 291. The government was required to "prove that a purpose of the conspiracy was to interfere with the proper functioning of the IRS and that any fraud was not merely a foreseeable consequence of [the] conspiratorial agreement." *Id.* But after reviewing the evidence, the court concluded that the government failed to meet its burden at trial. *Id.* at 296. In reaching that conclusion, the court carefully reviewed, and found no fault with, the grand jury's allegations in the superseding indictment;¹⁰ it merely found that the government failed to prove those allegations at trial. *See id.* at 292–300.

¹⁰ Indeed, the court denied two pre-trial motions to dismiss the indictment. *Pappathanasi*, 383 F. Supp. 2d at 290.

These cases establish only that the government will have to show through direct or circumstantial evidence that Concord had the intent to impair one of the three specific lawful functions alleged in the indictment. *See* Indictment ¶ 9. Whether it can do so successfully or not, the indictment has alleged that intent, and no more is required at this stage.

C. Vagueness

The Due Process Clause prevents the enforcement of a criminal statute that “fails to give ordinary people fair notice of the conduct it punishes” or is “so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2016). But the Supreme Court has stressed that the void-for-vagueness doctrine “does not invalidate every statute which a reviewing court believes could have been drafted with greater precision,” *Rose v. Locke*, 423 U.S. 48, 49 (1975) (per curiam), and “clarity at the requisite level may be supplied by judicial gloss on an otherwise uncertain statute,” *United States v. Lanier*, 520 U.S. 259, 266 (1997).

The charge against Concord falls well within § 371’s prohibition recognized and reaffirmed by the Supreme Court since at least 1924 on conspiracies to impair the lawful government functions of the United States through “deceit, craft or trickery.” *Hammerschmidt*, 265 U.S. at 188; *see also Tanner*, 483 U.S. at 128 (collecting cases). Thus, Concord had “fair notice” that § 371 and its judicial gloss would punish a conspiracy to impair the lawful functions of the FEC, DOJ, and DOS.

Indeed, courts have repeatedly rejected vagueness challenges to § 371 as applied to conspiracies, like this one, to impair lawful government functions. *See Morosco*, 822 F.3d at 5-7 (§ 371 not unconstitutionally vague as applied to conspiracy to obstruct the Department of Housing and Urban Development’s inspection function); *Cueto*, 151 F.3d at 635-36 (§ 371 not unconstitutionally vague as applied to conspiracy to impair the FBI’s investigation function, the

grand jury’s indictment function, and the federal district court’s judicial function); *United States v. Middendorf*, 2018 WL 3443117, at *6 (S.D.N.Y. July 17, 2018) (§ 371 not unconstitutionally vague as applied to conspiracy to obstruct the SEC’s “regulatory and enforcement functions”). Concord attempts to distinguish these authorities on the ground that the government functions involved were more “concrete” than those involved here. *See* Def.’s Reply at 23. But in doing so, Concord challenges the broad straw-man function of “electoral processes,” *id.*, and ignores the specific regulatory functions alleged in the indictment, Indictment ¶ 9 (the defendants conspired to impair the FEC’s, DOJ’s, and DOS’s functions in “administering” certain “federal requirements for disclosure”); *see also id.* ¶ 25 (FEC administers FECA’s “reporting requirements”); *id.* ¶ 26 (DOJ administers FARA, which requires the submission of “periodic registration statements”); *id.* ¶ 27 (DOS is “responsible for the issuance of non-immigration visas to foreign individuals”). These functions are no different in kind from those that have previously passed constitutional muster. And for the reasons already stated, Concord is not aided by invoking the First Amendment, since the charges against it do not implicate speech, but rather a course of fraudulent conduct that merely *used* speech to defraud the United States.

Two further reasons counsel against finding § 371 unconstitutionally vague. First, the state of mind required — an intent to defraud the United States by impairing its lawful government functions — “alleviates vagueness concerns, narrows the scope of [the statute’s] prohibition, and limits prosecutorial discretion.” *McFadden v. United States*, 135 S. Ct. 2298, 2307 (2015) (alterations and internal quotation marks omitted); *see also United States v. Franklin-El*, 554 F.3d 903, 911 (10th Cir. 2009) (upholding the constitutionality of a health-care fraud statute in part because it “requires a specific intent to defraud or misrepresent,” and observing that “[t]he constitutionality of an arguably vague statutory standard is closely related

to whether that standard incorporates a mens rea requirement”). Second, the requirement that the defendants employ some “deceit, craft or trickery, or . . . means that are dishonest,”

Hammerschmidt, 265 U.S. at 188, ensures that only culpable conduct is covered by § 371.

Concord invokes the Ninth Circuit’s concerns in *Caldwell* that defraud-clause conspiracies risk capturing innocent conduct, *see* Def.’s Reply at 22 & n.17 (quoting *Caldwell*, 989 F.2d at 1059 60), but the court notably did not address those concerns through the void-for-vagueness doctrine. Rather, it embraced the protection for innocent conduct imbedded in § 371 itself, by insisting that the jury be instructed that deceit or dishonesty is an essential element of the crime. *See id.* at 1059 61.

For these reasons, the Court finds that § 371 is not unconstitutionally vague as applied to Concord in the indictment.

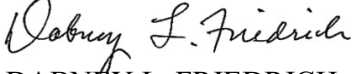
D. Failure to Allege Deprivation of Property

Lastly, Concord argues for preservation purposes only that *Hammerschmidt*’s holding interpreting § 371 to extend to conspiracies to defraud the United States by interfering with lawful government functions should be overruled and that § 371 should be limited to frauds that deprive the government of money or property. *See* Def.’s Mot. to Dismiss at 43 45.

As Concord acknowledges, this Court must follow Supreme Court precedent, which has long applied § 371 to conspiracies to defraud the United States by impairing its lawful government functions. *See Dennis*, 384 U.S. at 861; *Hammerschmidt*, 265 U.S. at 188; *see also Tanner*, 483 U.S. at 128 (“[W]e have stated repeatedly that the fraud covered by [§ 371] reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.” (internal quotation marks omitted)). Because the theory of fraud in this case falls squarely within the scope of § 371 as interpreted by the Supreme Court, this Court will not dismiss the indictment.

CONCLUSION

For the foregoing reasons, the Court will deny Concord's motion to dismiss the indictment. A separate order consistent with this decision accompanies this memorandum opinion.


DABNEY L. FRIEDRICH
United States District Judge

November 15, 2018

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

CONCORD MANAGEMENT &
CONSULTING LLC,

Defendant.

Criminal Action No. 18-cr-32-2 (DLF)

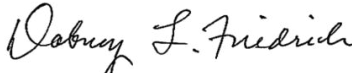
ORDER

For the reasons stated in the accompanying memorandum opinion, it is

ORDERED that Concord Management and Consulting LLC's Motion to Dismiss the Indictment, Dkt. 46, is **DENIED**. It is further

ORDERED that the parties shall propose a schedule for further proceedings and for briefing on any outstanding discovery issues on or before November 28, 2018.

SO ORDERED.


DABNEY L. FRIEDRICH
United States District Judge

Date: November 15, 2018

From: Boyd, Stephen E. (OLA)
Sent: Friday, November 16, 2018 3:39 PM
To: Lasseter, David F. (OLA); Rosenstein, Rod (ODAG); O'Callaghan, Edward C. (ODAG)
Subject: HJC to Subpoena Comey and Lynch

House Republicans ready subpoenas for James Comey, Loretta Lynch
By Manu Raju and Jeremy Herb, CNN

Updated 3:16 PM ET, Fri November 16, 2018

(CNN)The Republican-led House Judiciary Committee, in its final days in power, is planning to issue subpoenas to former FBI Director James Comey and President Barack Obama's attorney general Loretta Lynch, according to a source with knowledge of the subpoenas.

The source said the committee chairman, Republican Rep. Bob Goodlatte of Virginia, plans to issue the subpoenas on Monday for Comey to appear for a closed-door deposition on November 29 and for Lynch to appear on December 5. The interviews are part of the House Republican investigation into the FBI's handling of the Clinton email probe and the Russia investigation.

Comey has previously rejected the committee's request for him to appear privately before the GOP-led inquiry, saying he would rather testify publicly instead.

Rep. Jerry Nadler, the Democrat who is expected to chair the panel next year, railed against the move.

"It is unfortunate that the outgoing Majority is resorting to these tactics," Nadler said. "Months ago, Director Comey and Attorney General Lynch both indicated their willingness to answer the Chairman's questions voluntarily. My understanding is that the Republicans have had no contact with either the Director or the Attorney General since." Nadler added: "These subpoenas are coming out of the blue, with very little time left on the calendar, and after the American people have resoundingly rejected the GOP's approach to oversight if, indeed, 'oversight' is the word we should use for running interference for President Trump. Witnesses have an obligation to comply with committee subpoenas, but the committee has an obligation to issue those subpoenas with care."

A spokeswoman for Goodlatte did not immediately respond to a request for comment.

Goodlatte, who is retiring at the end of the year is conducting a joint investigation with Oversight Chairman Trey Gowdy, who is also leaving Congress. Goodlatte said earlier this week that the committees were still working to finish the investigation before the next Congress.

"Our investigation is continuing. It will definitely wrap up by January 3 at 12 noon. We're working on it," Goodlatte said.

Another potential witness still hanging over the GOP-led investigation is Deputy Attorney General Rod Rosenstein. Conservatives on the panels demanded that Rosenstein appear to answer their questions about his reported discussion of wearing a wire to record the President and the 25th Amendment, but a scheduled meeting with Rosenstein last month was postponed, and it has not been rescheduled.

That's frustrated conservative Republicans, including Rep. Jim Jordan, who could make a bid to be the top Republican on the Judiciary panel next year.

"It's been 8 weeks since @nytimes reported that Rod Rosenstein talked to subordinates about recording the President and invoking the 25th Amendment. Why has Mr. Rosenstein still not testified in front of Congress?" Jordan tweeted on Thursday.

Stephen E. Boyd
Assistant Attorney General
U.S. Department of Justice
Washington, D.C.

(b) (6)

From: O'Callaghan, Edward C. (ODAG)
Sent: Saturday, December 15, 2018 6:55 PM
To: Rosenstein, Rod (ODAG); Ellis, Corey F. (ODAG); Peterson, Andrew (ODAG); Suero, Maya A. (ODAG)
Subject: Fwd: Briefing Memos for Monday's Meeting
Attachments: Memo to DAG - GSB Recused.12.15.18.docx; ATT00001.htm; Memo to DAG wGSB (2).docx; ATT00002.htm

For SDNY briefing Monday.

Edward C. O'Callaghan

(b) (6)

Begin forwarded message:

From: "Lan, Iris (ODAG)" (b) (6) >
Date: December 15, 2018 at 2:41:05 PM EST
To: "O'Callaghan, Edward C. (ODAG)" (b) (6) >
Subject: Briefing Memos for Monday's Meeting

Hi Ed,

SDNY (Rob) just sent the briefing memos for Monday's meeting.

There are two, because one is from Rob for the cases from which the U.S. Attorney is recused, and the other is from the U.S. Attorney for the case from which is not recused.

Thanks,
Iris

Iris Lan

(b) (6) (direct)

(b) (6) (cell)

From: Khuzami, Robert (USANYS) (b) (6) >
Sent: Saturday, December 15, 2018 2:38 PM
To: Lan, Iris (ODAG) (b) (6) >
Subject: DAG Memos

Iris (b)(5), (b)(6), (b)(7)(C) per EOUSA
[Redacted]
[Redacted]

Rob