

**CONFIRMATION HEARING ON THE NOMINATION
OF JAMES B. COMEY, JR., TO BE DIRECTOR
OF THE FEDERAL BUREAU OF INVESTIGATION**

HEARING

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JULY 9, 2013

Serial No. J-113-19

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PUBLISHING OFFICE

23-750 PDF

WASHINGTON : 2017

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

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**CONFIRMATION HEARING ON THE
NOMINATION OF JAMES B. COMEY, JR.,
TO BE DIRECTOR OF THE FEDERAL
BUREAU OF INVESTIGATION**

TUESDAY, JULY 9, 2013,

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Hatch, Sessions, Cornyn, Lee, and Cruz.

Chairman LEAHY. The hearing will come to order. And before we start, just so everybody understands, I want everyone to be able to watch this hearing. I do not want anybody in the audience to be blocked by anyone for any reason whatsoever. I want everybody to be able to watch it comfortably. I am directing the police, if anybody stands up and blocks the view of anybody in this hearing, that person will be removed. Whether they are demonstrating either for or against any position I might take, for or against any position Senator Grassley or any other Senator might take, or for or against a position that Mr. Comey might take, that person will be removed. I do not think it is going to be necessary. I am sure everybody is going to want decorum, but I thought just so everybody would understand what the ground rules are, those are the ground rules. I have no idea how Senators will vote. More important, I want the American public to have a chance to be heard.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Today, as we know, we will consider the nomination of James Comey, Jr., to be the seventh Director of the Federal Bureau of Investigation. The current Director, Robert Mueller, started just a week before the terrorist attacks of September 11th. We know our world has changed dramatically in that time. We have often debated how best to ensure our national security while protecting the freedom and the liberty and the privacy rights—the privacy rights—that define us as a great Nation. That debate is alive today, and this confirmation hearing provides us another opportunity to evaluate existing policy and to correct our course. Few positions have as much impact on our liberty and our national se-

curity as the Director of the FBI. And as the body that considers the President's nominee, the Senate has an important role in this debate, and that debate, of course, begins here in this Committee.

I welcome Mr. Comey and his family here today, and they will be introduced in a moment. He has had an outstanding career in law enforcement. He served as Deputy Attorney General. He has served as the U.S. Attorney for the Southern District of New York under President George W. Bush. He has worked in the private sector with Lockheed Martin, Bridgewater Associates, and at the law firm of McGuireWoods.

When Mr. Comey appeared before this Committee in 2007, he described a dramatic hospital bedside confrontation with senior White House officials who were trying to get an ailing John Ashcroft, who was in the hospital, about to have serious surgery—or he had had it—to reauthorize an NSA surveillance program—a program that the Justice Department had concluded was illegal. As Deputy Attorney General, Mr. Comey showed courage and independence by standing firm against this attempt to circumvent the rule of law. I would want him to continue to demonstrate the same strength of character if he is confirmed as Director.

Since the terrorist attacks of September 11th, the FBI has dramatically increased its national security and counterterrorism efforts, but that is a transition that has not been without problems. From National Security Letters to the latest revelations about the use of PATRIOT Act surveillance authorities, I remain concerned that we have not yet struck the right balance between the intelligence-gathering needs of the FBI and the privacy rights of Americans. We all agree that the FBI must have the tools necessary to help keep us safe from terrorism, but I hope that we can agree that this should not come at the expense of our constitutional rights. It is these constitutional rights that make us unique and great as a Nation.

In recent weeks, Americans have become aware of the expansive scope of surveillance authorities granted to the FBI by the PATRIOT Act and other laws. We have heard administration officials defend these programs by saying that they are critical to identifying and connecting the so-called dots. But there are always going to be more dots to analyze and collect and try to connect, and when the Government is collecting data on millions of totally innocent Americans on a daily basis, when is enough, enough? Just because we have the ability to collect huge amounts of data does not mean that we should be doing it.

Last month, I introduced the FISA Accountability and Privacy Protection Act to ensure that there are proper limits on the Government's surveillance activities, along with strong privacy protections and oversight. But as the head of our premier law enforcement agency, the FBI Director bears a special responsibility for ensuring that domestic Government surveillance does not unduly infringe upon our freedoms. I have long said that protecting our national security and protecting Americans' fundamental rights are not and should not be mutually exclusive. We can and must do both, and I look forward to Mr. Comey's testimony about how we achieve both goals.

I also have concerns about the Justice Department's treatment of journalists. As the son of Vermont printers and publishers, the First Amendment is in my blood. The burden falls to the Federal Government to ensure that freedom of speech and of the press is being protected. I am very concerned by allegations regarding the broad collection of the Associated Press' phone records. Again, if confirmed, Mr. Comey is going to be tasked with balancing the Government's law enforcement interests with First Amendment rights.

I am concerned, as others have been here, that during Mr. Comey's tenure as Deputy Attorney General, he approved a legal memo that authorized the use of waterboarding and other techniques long recognized as torture under both domestic and international law. I have conducted oversight on this issue for years out of my belief that these memos led to the treatment of detainees that was contrary to our laws and our values and actually made us less safe, not more safe. It is critical that whoever takes over as Director of the FBI has a keen sense of history and an understanding that we must never repeat these mistakes because they leave a permanent stain on this great Nation.

If we learned nothing else from those years following the September 11th attacks, we learned that it matters who leads our Nation—at all levels of Government. We need strong, ethical leaders who will steadfastly adhere to the rule of law.

The next Director has to face the challenge of how to sustain the FBI's increased focus on counterterrorism while upholding the FBI's commitment to its historic law enforcement functions. So, of course, we want to hear what you feel are the priorities for the next decade. It is a 10-year term.

As Director Mueller noted—and I applauded him on the floor with a speech—he noted on the 100th anniversary of the FBI, the rule of law, civil liberties, and civil rights are not burdens for the FBI; they are what have made the FBI better for more than a century. So we will look forward to see how Mr. Comey, if confirmed, would lead the FBI during these challenging times.

[The prepared statement of Chairman Patrick J. Leahy appears as a submission for the record.]

I yield to Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Thank you, Mr. Chairman.

Thank you, Mr. Comey, for wanting to re-enter public service again. The Director of the Federal Bureau of Investigation is charged with running a vast agency with tremendous powers. This power, if used inappropriately, could threaten civil liberties of every American. However, when used appropriately, and subject to rigorous oversight by the Congress, it protects the Nation from terrorists, spies, and hardened criminals.

The Attorney General is commonly referred to as the “top law enforcement officer in the country.” The FBI Director serves the Attorney General and the American people as the top cop on the street. It is a demanding job that requires a keen understanding

of the law, sound management skills, calm under significant pressure, and a level head.

Director Mueller learned this soon after arriving at FBI headquarters when the United States was attacked by terrorists on September 11, 2001. As a result of those terrible attacks, Director Mueller's mission as FBI Director changed very instantly and significantly. Instead of managing a law enforcement agency, he was immediately thrust into the role of reinventing a storied law enforcement agency into a national security agency. This is not the sort of change that happens overnight. Fortunately, Director Mueller rose to the challenge and changed the face of the FBI for this new age and new threat.

The threats our country is facing are great and multifaceted. Terrorism is an unfortunate reality the FBI must face. In addition to serving as a law enforcement agency and the lead counterintelligence agency, the next Director of the FBI must be prepared to continue the transition. He must also be prepared to manage the FBI through the next challenge.

Despite the successes Director Mueller had in transforming the FBI to deal with national security threats, challenges remain for the next FBI Director. For example, legacy problems such as developing a working case management computer system; a working—effectively managing agent rotations to Washington, DC, headquarters; managing linguists; and dealing with aging infrastructure such as the FBI headquarters building.

Additionally, management concerns remain about the proper personnel balance between special agents and analysts, the perceived double standard of discipline between line agents and management, as well as the issues dealing with whistleblower retaliation. These matters must be addressed as they threaten to undermine the hard work of all the faithful employees at the FBI.

The position of FBI Director is unique in that it is a 10-year appointment, subject to the advise and consent of the Senate. This 10-year term was extended 2 years ago on a one-time basis only. The extension allowed Director Mueller to serve an additional timeframe as the President failed to nominate a replacement. At the time we held a special hearing to discuss the importance of the term limit for the FBI Director. One of the reasons Congress created a 10-year term was to ensure accountability of the FBI.

This confirmation hearing is part of that accountability. We have a responsibility to ensure that the Director will be able to balance the duties of the FBI Director against the civil liberties of Americans.

Before us today is the President's choice for the next FBI Director—you, Mr. James Comey. Mr. Comey has a distinguished past. He served as Senate-confirmed U.S. Attorney for the Southern District of New York and as Deputy Attorney General during the Bush administration. I would also like to add that he has smarts because he married an Iowan.

[Laughter.]

Senator GRASSLEY. But Mr. Comey handled difficult matters—Chairman LEAHY. You would do anything to get a vote up here. [Laughter.]

Senator GRASSLEY. Mr. Comey handled difficult matters that provide a solid basis for the types of matters that may come up as FBI Director.

I had the opportunity to sit down with Mr. Comey yesterday. We talked about his Government experience and how it prepares him for the job. So today I want to discuss with him his nongovernmental employment work with Lockheed Martin, hedge fund Bridgewater Partners, and his position on the Board of Directors at HSBC.

Having the balance of public and private sector experience is a very good thing, but I am openly concerned about the administration's failure to prosecute those involved in the financial crisis, including criminal wrongdoing at HSBC. I want to know whether Mr. Comey can look beyond his affiliations in the private sector and prosecute such wrongdoing.

I also want to discuss with Mr. Comey a number of policy matters impacting the Director. First, I continue to have serious concerns with the FBI's treatment of whistleblowers. Mr. Comey and I discussed the important role whistleblowers play in bringing transparency and accountability to bureaucracies. Unfortunately, the FBI, in my opinion, has a poor history of retaliating against whistleblowers who come forward and report wrongdoing. This is particularly concerning in light of the recent leaks of classified information. While not necessarily an FBI matter, the recent leaks have highlighted an issue I have focused on for years: whistleblower protection for national security employees. These employees, including many assigned at the FBI, need a protected mechanism to report wrongdoing without fear of retaliation. I believe a significant number of national security leaks would not have occurred if they had a path forward.

Unfortunately, a provision in the Whistleblower Protection Enhancement Act that I authored expanded protection to national security employees but was cut by the House of Representatives prior to being signed into law. I continue to believe this is necessary legislation. I would like to hear Mr. Comey's thoughts on whistleblowers, their value, and how he will handle whistleblower complaints. I would like an assurance from Mr. Comey that whistleblowers will not face retaliation. Further, I would like an assurance that the FBI's policy pursuing endless appeals against whistleblowers, even when retaliation was found by the Inspector General, will now come to an end.

Second, I want to ask Mr. Comey about some recent developments regarding FBI use of drones within the U.S. A few weeks ago, we learned from Director Mueller that the FBI was using drones here for surveillance. While Director Mueller indicated that this was very limited, he also said that policies regarding limitations on drone use were still being developed. And so that is concerning as policies are of little use if they are developed after the FBI deploys drones here.

Further, the FBI's use of drones calls into question the thoroughness of a written response I received from Attorney General Holder indicating the use of drones by DEA and ATF but only mentioning the FBI in passing. So I want to hear from Mr. Comey what he thinks the proper limit on domestic use of drones should be, wheth-

er he would delay their use until final regulations and policies are drafted, and how he would deploy drones for domestic use.

I would also discuss with him his views on national security and the FBI's role. We are all painfully aware of the limitations that were placed on FBI agents prior to 9/11 and the so-called wall between intelligence and law enforcement. Congress and the executive branch have been successful in bringing down the walls between intelligence and law enforcement, but concerns expressed in recent years threaten to rebuild those walls.

For example, advocates have opposed information sharing of cybersecurity threat information which could erroneously reconstitute a separation similar to a wall. I would like to hear Mr. Comey's views on national security matters such as cybersecurity, counterintelligence, and counterterrorism.

I will also discuss the nuts and bolts of management matters with the nominee. Specifically, I want to hear his assurances that he will work cooperatively with Congress and provide forthcoming responses to inquiries. Congress has a constitutional duty to conduct oversight, and so given the wide discretion the FBI has to conduct investigations, Congress needs to have an open channel to obtain information relative to our oversight requests.

Finally, I want to discuss some general management issues such as the disciplinary system which has long been criticized for having a double standard for management as opposed to line agents. Problems like this are dangerous to an agency and need to be managed before they bring out other problems.

So there is a lot of ground to cover, and obviously I will probably have to submit some questions for answer in writing.

Thank you very much.

Chairman LEAHY. Thank you. I would note that Senator Blumenthal is the senior Senator of the State in which Mr. Comey resides, or as we call it in Vermont, one of those "Southern States."

Senator Blumenthal, did you wish to introduce Mr. Comey?

**PRESENTATION OF JAMES B. COMEY, JR., NOMINEE TO BE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION,
BY HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM
THE STATE OF CONNECTICUT**

Senator BLUMENTHAL. Thank you, Mr. Chairman. I do, and I appreciate the honor of introducing Mr. Comey to the Committee and supporting him strongly for this new role in an extraordinarily distinguished career of public service. I want to welcome him and his family, his wife, Patrice, and I think a number of your children are with you today, and I will let you introduce them. But I look forward to saying hello to them later when we are done.

I want to say how much I admire Mr. Comey's record of public service. He really epitomizes what is best about American public service. Senator Grassley mentioned that he was re-entering public service, but in a sense he has never left it, because in his private life, his life of working in the private sector, he has also contributed immensely to his community and to his State, the State of Connecticut and the community of Westport, where he and his wife, Patrice, really have devoted themselves, and his family, to

serving the needs and interests of both their community and the State and many individuals who live there.

Mr. Comey is no stranger to our civil and criminal justice system. In fact, his life has been about public service and about using the Department of Justice as an agent and a means to achieve greater justice in our society. He began his career at the Department of Justice in one of the most difficult and important jobs there is, as an Assistant United States Attorney in the Southern District of New York, and he quickly rose to become the Deputy Chief of the Criminal Division. As a former United States Attorney myself, I know how important that responsibility is in a practical, hands-on sense of making extraordinarily difficult decisions about balancing individual rights and also the need to prosecute and achieve greater security and safety for the community.

He took on another difficult job as Managing Assistant United States Attorney for the Eastern District of Virginia, and he was recognized by his superiors there as an unusually skilled prosecutor who could be counted on to get results and get the job done. And he had personal responsibility for prosecuting one of the most heinous terrorist attacks in the history of the United States at Khobar Towers barracks in Saudi Arabia, and he quickly delivered 14 indictments.

He was promoted at that time to be United States Attorney for the Southern District of New York, one of the major prosecutorial areas outside of Washington, and he showed the same fearlessness and tirelessness and relentlessness in his dedication to justice there, which have become his trademark as a professional prosecutor. He also pursued corporate crime in some of America's biggest businesses, and he was recognized for his performance there with the Director's Award for Superior Performance and the Henry L. Stimson Medal from the New York City Bar Association. In fact, throughout his career he has been recognized not only in the public sector but also by the private Bar.

Mr. Comey's success led to his nomination to be Deputy Attorney General for the United States, the second highest ranking official at the Department of Justice, and a lot has been written and said about his tenure in that role. I had the privilege of working with him in a number of respects as Attorney General for Connecticut during that period of time. But I came to admire his extraordinary courage in standing up and speaking out to his superiors and his willingness to speak truth to power and defend the most fundamental liberties and guarantees that our Constitution provides. And I know that whatever the Members of this Committee think about Mr. Comey's views, they can count on his complete and utter integrity, his devotion to the rule of law, his dedication to excellence in the pursuit of justice and civil liberties, which he has demonstrated not just in words but in action throughout his career.

In Westport, Connecticut, I particularly admired the work that his wife and he have done in the community, as I mentioned earlier, but I think noteworthy for this Committee and I know a number of my colleagues are aware that he and his wife are licensed foster parents in Connecticut and have cared for infants and toddlers in that role. They have also donated their time and energy

and resources to create a foundation to support children who age out of foster care.

So his life has been about public service. I am honored and pleased that he has chosen to assume this very demanding and challenging role. I want to thank him and his family for the service and sacrifices they have made, and thank you, Mr. Comey, for joining us today. I look forward to hearing your testimony.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Mr. Comey, before I swear you in, just so we can have it on the record for the Comey archives someday, would you introduce everybody who is here from your family?

Mr. COMEY. Yes, Senator. I have my—

Chairman LEAHY. Is your microphone on? There you go.

Mr. COMEY. Sorry. I forgot that.

Behind me to my left is my wife, Patrice, whom Senator Blumenthal mentioned, the love of my life, and all that is good about me is her fault. And then my five children who are seated in just about the same seats they were sitting in 10 years ago when I was here to be confirmed as Deputy Attorney General. They are a little bit older.

Chairman LEAHY. I was going to say, I was here at that time, and they have changed.

Mr. COMEY. They have, right. The only one who has not aged a bit is my wife. The rest of us have gotten a little bit older. Maureen is 24, Kate is 23, Brian is 19, Claire is 16, and Abby is 13. And those are my troops.

Chairman LEAHY. Thank you. Now, would you please stand? Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COMEY. I do.

Chairman LEAHY. Please go ahead, Mr. Comey.

**STATEMENT OF JAMES B. COMEY, JR., OF CONNECTICUT,
NOMINEE TO BE DIRECTOR OF THE FEDERAL BUREAU OF
INVESTIGATION**

Mr. COMEY. Thank you, Mr. Chairman, Senator Grassley, and Members of the Committee. It is an honor to be back before you. The last time I sat at this table was 2 years ago or so to testify in favor of extending Bob Mueller's term by 2 years. Now I am back asking you to confirm me to replace Bob Mueller, which is both an amazing honor and a little bit hard to believe.

I have known and loved the FBI for a very long time. My first major case was an FBI case. In 1987, I was assigned an interstate theft and fraud case in the Southern District of New York, and the case agent, who was actually about to retire from the Bureau—he had reached mandatory retirement—went back and reported to his supervisor that a baby prosecutor had been assigned to this complex case, and she said, “I will go down and talk to Rudy Giuliani, and we will get somebody else assigned to this case.” And he asked her to please hold off because he thought that this prosecutor, maybe, could be trained.

And so I was trained, by him and by dozens and dozens of other special agents who were working the cases that I was so lucky to handle over the next decades.

I came to know the FBI agents well, and I used to tell them the division of responsibility was clear: They would do hard, dangerous work, and the United States Attorney would get the credit.

I was, of course, teasing, but rooted in that joke was some truth, that FBI agents every hour of every day did really hard, dangerous things, and the work was often only recognized when something went wrong. I came to know that they were people from all over the country, all walks of life, but united by a fierce desire to do something good for their country. I came to know that they embodied something that Churchill said that has stuck with me, that you make a living by what you get, but you make a life by what you give. They chose to make remarkable lives without getting much in return. Those people are what excite me most about the prospect of being confirmed to be the Director of the FBI.

I also know that if I am confirmed for this position, I will follow a great American, one who has been clear-eyed about the threats facing our country, especially the metastasizing terrorist threat, the cyber threat that poses a risk to our secrets, to our commerce, to our people, and most ominously to the networks we depend upon as our lifeblood. I know he has changed the FBI, as the Chairman and the Ranking Member described, in fundamental and crucial ways.

I know that this will be a hard job. I am sure that things will go wrong and I will make mistakes. What I pledge to you, though, is to follow Bob Mueller's example of staring hard at those mistakes, learning from those mistakes, and getting better as a result of those mistakes. His legacy of candor and straightforwardness and integrity is one that I pledge to continue.

I also know that the FBI is and must be an independent entity in the life of America. It cannot be associated with any party or any interest or any group. It has to be seen as the good guys and good gals in this country. The FBI is and must be about finding the facts and only the facts in a fair, thorough, and objective way, and to do that with a rock solid commitment to our Constitution and to our laws.

That culture of commitment to law and resistance to any jeopardy of our independence is at the core of the FBI. I know it is deep inside FBI agents. Those values are the things I love about the FBI.

As you know, Mr. Chairman, as I just introduced, sitting behind me is my beloved wife, Patrice, and my five kids. She, in a very real sense, is the reason I am sitting here today. I am going to embarrass her by telling you a little story. When I was first approached about this job earlier this year, I was inclined to say no, that it was too much for my family and it was the wrong time. And she urged me to say yes, I would be considered, and she said that for two reasons. She said, "This is who you are. You have always been happiest when you are in Government service. This is what you love." And, second, "They are not going to pick you anyway."

[Laughter.]

Mr. COMEY. "So you might as well go through the interviews. Just make them sorry that they do not pick you."

And so here we are. I will remind her of that, if I am fortunate enough to be confirmed, many times, I suspect, over the next decade. I have been gone from Government for 8 years, and I have missed it nearly every day of those 8 years, the mission of the Department of Justice, and I am looking forward to answering your questions and hope very much to be confirmed to rejoin that mission.

Thank you, Mr. Chairman.

[The biographical information of James B. Comey, Jr., appears as a submission for the record.]

Chairman LEAHY. Thank you, Mr. Comey. And I am reluctant to talk about private conversations, but a few weeks before your name was disclosed, the President called me at home and talked about you and asked me my advice and what I thought about nominating you. And I said, "How are you ever going to talk him into this?" And then I said, second, "How are you going to talk his wife into this?" He said, "We are going to have Bob Mueller's wife talk to his wife."

So, anyway, to be serious, let me go back to something I talked about earlier. Waterboarding has been recognized to be torture since the time of the Spanish Inquisition. We prosecuted American soldiers for using this technique in the last century. We prosecuted Japanese soldiers for using it on Americans during World War II. And after 9/11, when CIA personnel began to use harsh interrogation techniques, including waterboarding, Director Mueller refused to allow the FBI to participate in those interrogations. I have said before and I will say again that this was true leadership on the part of Director Mueller. He refused to bend to enormous pressure at the time.

It is easy to say what you might have done at the time, but what do you think you would have done had you been FBI Director at that time? Would you have given the agents the same directive Mr. Mueller did?

Mr. COMEY. Absolutely, Senator. When I first learned about waterboarding, when I became Deputy Attorney General, my reaction as a citizen and a leader was this is torture. It is still what I think. And to his great credit, Bob Mueller made sure the FBI had nothing to do with that business. And if I were FBI Director, it would never have anything to do with that.

Chairman LEAHY. Can that be reconciled with your approval of—was it May 2005?—the OLC memo which concluded the authorized use of waterboarding would not violate the torture statute?

Mr. COMEY. I think so, Senator, and if I might explain to you my involvement with that issue.

Chairman LEAHY. Please go ahead.

Mr. COMEY. As I said, when I was first read into the interrogation program, my reaction was what I described. And so maybe the most important thing I did on this topic as Deputy Attorney General was force, try to force, and fight for a discussion about whether this was the kind of thing we ought to be doing as Americans. There were legal issues which I will talk about in a second. But I thought most important of all was this question about, regardless

of whether the CIA says it is effective and regardless of whether the Office of Legal Counsel says it does not violate this particular 1994 statute, there is a critical third question, which is: Should we be doing this? And is it appropriate as Americans?

And so I fought some legal fights, which I will talk about, but I went to the Attorney General and said, "This is wrong. This is awful. You have to go to the White House and force them to stare at this and answer that question. I believe the answer is we should not be involved in this kind of stuff."

And so I made that argument as forcefully as I could to the Attorney General. He took my—actually literally took my notes with him to a meeting at the White House and told me he made my argument in full and that the principals were fully on board with the policy, and so my argument was rejected.

Now, on the legal front, what I discovered when I became Deputy Attorney General is that even though I as a person, as a father, as a leader thought that is torture, we should not be doing that kind of thing, I discovered that it is actually a much harder question to interpret this 1994 statute, which I found very vague, and apply that statute to the individual techniques. And so one of the first things I did as Deputy Attorney General was drive to withdraw some terrible opinions that had been written before my tenure and then to commission the drafting of a new analysis of this particular 1994 statute. And that resulted in an opinion at the end of 2004, which was a general opinion, I thought much more responsibly written.

And then in the spring of 2005, after I had already announced my resignation, it resulted in two opinions that applied to the individual techniques that the CIA wanted to use and to the combination of those techniques. The combination opinion was by far the most important because no interrogation was done with one technique. They were always used in a group. And so I read the first opinion about individual techniques, and I thought, "That is a serious and reasonable interpretation of a very vague statute." I read the second and thought it was terrible. I thought it was irresponsible both as a policy matter and as a legal matter, and so I objected to it and took that directly to the Attorney General and made my case that that was wrong. He disagreed with me and overruled me. And so next then I fought the policy fight that I talked about at the beginning.

So, Senator, I am not sure that I did it right. That would be—

Chairman LEAHY. Then let us take the move forward 8 years. I will ask you the same question I asked Attorney General Mukasey when he was before this Committee for confirmation, and actually I found his answer unsatisfactory, but I will ask you the same question. Do you agree that waterboarding is torture and is illegal?

Mr. COMEY. Yes.

Chairman LEAHY. Thank you. And would you agree to answer this question the same way no matter who was President?

Mr. COMEY. Oh, certainly.

Chairman LEAHY. Thank you.

Now, the surveillance powers of the FBI have grown. Americans are becoming increasingly concerned the FBI is becoming more of a domestic surveillance agency than a crime-fighting, intelligence-

gathering organization. With the PATRIOT Act and other authorities, they can get vast amounts of information, including the data of law-abiding Americans, something that creates concerns, I know, among my fellow Vermonters.

So do you believe that the bulk collection of meta data for domestic telephone calls or emails is appropriate, even when the majority of individuals with whom the calls or emails are associated are law-abiding Americans?

Mr. COMEY. Senator, I am not familiar with the details of the current programs. Obviously I have not been cleared for anything like that, and I have been out of Government for 8 years. I do know as a general matter that the collection of meta data and analysis of meta data is a valuable tool in counterterrorism.

Chairman LEAHY. Well, let me ask you this: We are going to be in this Committee very shortly reviewing again some of the aspects of this. If you are confirmed, will you work with me—I am not asking you for a commitment on a particular piece of legislation, but work with me to enact some commonsense improvements to our surveillance laws?

Mr. COMEY. Certainly, Senator, I would be happy to work with you.

Chairman LEAHY. I worry that, again, as I said earlier, just so you understand what I am thinking, just because we can do it, I am not sure it means we should. That is without going into the—well, in open session I will not go into some of the parts of it.

Let me also ask you this, which is a basic question. Will you make sure that the FBI does not lose sight of its traditional crime-fighting mission—violent crime, white-collar crime, public corruption, forensics reform—and not just be seduced away by the intelligence-gathering aspects?

Mr. COMEY. Yes, Senator, and I think Director Mueller has tried to strike that balance, and I would as well. The FBI has to be both an intelligence agency and a crime-fighting agency.

Chairman LEAHY. You and I both have a background in law enforcement, and sometimes it is the nuts and bolts that are the most important to the average person, and those are the people that we have to protect.

Mr. COMEY. Yes, sir.

Chairman LEAHY. Thank you.

Senator Grassley.

Senator GRASSLEY. As you and I discussed yesterday in my office how important oversight is in our checks and balances system of Government to make Government more transparent, accountable, and effective, I expect that you would be responsive to my constitutional duty of oversight and that my questions and documents will be taken seriously and answered in a timely and complete manner. So do I have your assurance that, if you are confirmed, you will assist me in my constitutional oversight activities, be responsive to my requests, my colleagues' requests, and help me make the FBI more accountable to the American people, which is the principle of checks and balances?

Mr. COMEY. I agree very much, Senator. I believe that oversight is a critical part of effective Government and of our functioning democracy. So, yes, sir.

Senator GRASSLEY. Okay. So would you pledge to be responsive to my requests for information and provide this information to Congress in a timely manner, that is not held up due to lengthy clearance processes?

Mr. COMEY. Senator, I do not know what the problems are that you have encountered. I pledge to do my all to accommodate your oversight requests.

Senator GRASSLEY. We also discussed the issue of whistleblowers. I value the candid, unfiltered information they provide Congress from the executive branch. Whistleblowers who raise concerns with management and who bring concerns to Congress and cooperate with congressional oversight efforts should be protected, not retaliated against. So to you, could you give me a commitment that you will not retaliate against FBI whistleblowers and instead work with them to address the concerns that they raise?

Mr. COMEY. Yes, I will give you—I would give you that assurance now, Senator. As I said to you when we spoke privately, I think whistleblowers are also a critical element of a functioning democracy. Folks have to feel free to raise their concerns, and if they are not addressed up their chain of command, to take them to an appropriate place.

Senator GRASSLEY. Now, I am not accusing you or other Directors of retaliation, but somewhere in organizations whistleblowers tend to be retaliated against in various ways by people within their organization. Would you assure us that every whistleblower is treated fairly, that those who retaliate against whistleblowers are held accountable?

Mr. COMEY. Yes, sir. Retaliation is just unacceptable.

Senator GRASSLEY. And do you believe that—this is a little more difficult probably for you to answer right now, but do you believe that whistleblowers who know of problems with matters of national security should be treated differently and they are treated differently today because the law does not apply to them?

Mr. COMEY. You are right, Senator. That is one I do not know well enough the law and regulation that governs that area. I commit that I will look into it to understand it better.

Senator GRASSLEY. I will go on to another subject. It might be a little more difficult because you are new to knowing you were going to be appointed, but sometimes a change in leadership can shift an organization and do it in a different direction while moving the organization forward. The Director of the FBI can set the tone for the Bureau, so the question is: Do you have specific goals or priorities for the FBI that, if you are confirmed, you would pursue?

Mr. COMEY. From this vantage point, Senator, I can only say with confidence that I believe it is very important for the next Director to continue the transformation of the FBI into an intelligence agency, to continue that cultural change. And I know, as I mentioned in my opening statement, that the cyber threat, both cyber espionage, cyber crime, and cyber terrorism, is an enormous and exponentially growing threat, and so will certainly be a key part of the next 10 years. Beyond that, I think it would be irresponsible to say more without first being confirmed and getting in the job to understand how things are going now.

Senator GRASSLEY. I want to go now to your public sector service and how that might interact with the new position if you are confirmed.

In March 2010, the FBI issued a stop-work order to Lockheed Martin, the leading contractor working with the FBI's next-generation case management system, Sentinel. The stop-work order preceded the FBI's termination of the Lockheed prime contractor—as being prime contractor. The development of Sentinel was closely watched and criticized by the Inspector General. Ultimately, the program development ran past the deadline and cost significantly more than was planned, not to mention the fact that the FBI got less system than originally thought.

Now, because you were general counsel at Lockheed Martin at the time the stop order was initiated, I ask these questions: What, if any, involvement did you have with the Sentinel program?

Mr. COMEY. None. I was aware of it internally at Lockheed Martin just in a general way. I had no contact with the FBI about it. I had been Deputy Attorney General when the contract was first let. I did not know that at the time. And so out of an abundance of caution, I tried not to be involved in it and was not involved in it.

Senator GRASSLEY. Okay. The Inspector General continually faulted Sentinel development. Do you think the FBI and the American taxpayers got what they paid for in the Sentinel program?

Mr. COMEY. I do not know, Senator. I know——

Senator GRASSLEY. That is okay if you do not know.

Mr. COMEY. I do not know the answer to that.

Senator GRASSLEY. Following your public service, you worked first at a major defense company, then a well-known private investment manager, Bridgewater. Recently you became a director of the global bank HSBC. Given that the Department has entered into a deferred prosecution agreement with HSBC, will you have a conflict of interest with regard to that matter? And if you do, or would have, how would you resolve that conflict?

Mr. COMEY. I think it would be a conflict, and so I would recuse myself from any involvement in any matter relating to my former employers.

Senator GRASSLEY. Okay. Just generally, in regard to pursuing those matters, what assurances can you give the Committee that you will actively pursue securities regulation violations, bank fraud, money laundering, and other financial white-collar offenses? And will you have any reluctance of conducting such investigations?

Mr. COMEY. None at all, Senator. I have long thought that aggressive investigation and prosecution of so-called white-collar crimes was both the right thing to do and extremely effective. I believe deterrence works in that area because you do not have people committing crimes of accounting fraud or securities fraud high on crack or inflamed with passion. They are people who think before they act, and so they can be deterred.

My track record as an Assistant U.S. Attorney and as U.S. Attorney and Deputy Attorney General was to make those cases, to make them fast, and send messages to the good folks of reassurance that we are doing something about this, and to the bad people

that if we catch you doing this, you are going to pay an enormous penalty for it, to try and change behavior.

Senator GRASSLEY. May I ask one more question, please?

Chairman LEAHY. Of course.

Senator GRASSLEY. At Bridgewater, your former employer, the founder of the firm embraced a philosophy called “radical transparency,” which involves recording a lot of meetings, and encouraged junior employees to probe senior staff with tough questions. As a strong supporter of transparency in Government, I think the FBI could use a little more radical transparency. I do not mean necessarily recording your meetings.

What do you think are the benefits of radical transparency? And how could this philosophy apply to the FBI? That will be my last question.

Mr. COMEY. Actually, Senator, Bridgewater’s founder suggested I consider taping all meetings at the FBI. I am not prepared to commit to that. I went to Bridgewater——

Chairman LEAHY. Do not.

[Laughter.]

Mr. COMEY. I went to Bridgewater in part because of that culture of transparency. It is something that has just long been part of me, and so I think it is incumbent upon every leader to try and foster an atmosphere where people will speak truth to power. Bridgewater and the FBI are two different institutions, but I promise you I will carry those values with me and try to spread them as far as I can within the institution.

Senator GRASSLEY. Thank you.

Chairman LEAHY. Thank you.

Senator Feinstein, and then it will be Senator Hatch.

Senator FEINSTEIN. Thank you. Thank you very much, Mr. Chairman, and welcome, Mr. Comey.

As you know, in December the Senate Intelligence Committee adopted a 6,000-page report that provides a comprehensive review of the CIA’s detention and interrogation program during the Bush administration. We are not quite ready to issue the findings publicly. The adoption of the report, however, is significant because it means the majority of the Committee has gone on record to declare that the so-called enhanced interrogation techniques should never be used—past, present, or future.

If you are confirmed to be the next FBI Director, I would like to ask you to personally review our report. It is a big deal to review. It is 6,000 pages. But I think it is very important. You have that background, and I think it is important to read the actual case studies.

I would like to focus on objections you raised with Attorney General Gonzales in May 2005 before he attended the White House principals meeting about CIA techniques. In one of your emails that was made public in 2009, you described telling Attorney General Gonzales that CIA interrogation techniques were “simply awful,” that “there needed to be a detailed, factual discussion” of how they were used before approving them, and that “it simply could not be that the principals would be willfully blind.”

Here is the question: Why did you believe that there was a danger that the principals on the National Security Council were unaware or willfully blind to the details of the CIA program?

Mr. COMEY. Thank you, Senator. Because I heard—I heard no one asking that third critical question. As you recall, I said I think there are three key questions with any counterterrorism technique, but especially with the interrogations: Is it effective? Something the CIA was talking about. Is it legal under Title 18, Section 2340? The legal question. And then this last question: Is this what we should be doing? And, instead, I heard nothing, and, in fact, it was reported to me that the White House's view was only the first two questions matter. If the CIA says it works and DOJ will issue a legal opinion that it does not violate the statute, that is the end of the inquiry. And as you said, Senator, I thought that was simply unacceptable.

Senator FEINSTEIN. Thank you. Now, I would like to speak about one other thing in my time. On June 19th, I wrote a letter to the Secretary of Defense Chuck Hagel on the issue of forced feeding of detainees at Guantanamo. A week prior, I had spent the day at Guantanamo with the President's Chief of Staff and Senator McCain, and we took a look at the forced feeding issue. Detainees are restrained in a chair by body, by foot, by hand, and twice a day a tube is inserted, perhaps covered with olive oil, up the nose and down into the stomach, and the individual is force-fed. This goes on week after week and month after month.

We have 86 detainees who are cleared for transfer. They are no threat to this country. They have been adjudged so, and they have no place to go. So this is an expression of acute hopelessness in the forced feeding.

The issue has recently been before the D.C. District Court, and this morning, the newspaper said that no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant. So we have a law that has essentially taken the courts out of any adjudication in this issue.

I am very curious, because you have looked at the combination of EITs, the manner in which they are administered, and you have come to the conclusion that they form torture. These are people now, 86 of them, who are no threat to this country—they have been cleared for transfer—many of whom are being force-fed to keep them alive. In my view, this is inhumane, and I am very curious as to what you would say about this.

I have received no answer from my letter to Secretary Hagel. The President's Chief of Staff was with me. He saw what I saw. And I am very concerned about it because it is the wrong thing to do.

I would appreciate your comment.

Mr. COMEY. Thank you, Senator. Obviously, if I were FBI Director, I do not think it is an area that would be within my job scope, but I do not know more about what you are describing than what you are describing. I—

Senator FEINSTEIN. Well, let me just say it is within all of our job scopes to care about how the United States of America acts.

Mr. COMEY. I agree very much with that, Senator. And I do also know that there are times in the Bureau of Prisons when the Federal authorities have had to force-feed someone who is refusing to eat, and they try to do it in the least invasive way. What you are describing I frankly would not want done to me, but I do not know the circumstances well enough to offer you an opinion. I do not think it would be worth much, my opinion, at this point.

Senator FEINSTEIN. Okay. Thank you very much.

Thanks, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Feinstein. I must say I agree exactly with what you said.

Senator HATCH.

Senator HATCH. Well, thank you, Mr. Chairman. Welcome back to the Committee, Mr. Comey. We are happy to have you here. I would be surprised if this is not the third time that you will be unanimously supported by the Senate, and I would hope that that is the case. After all, an ABC News report came back in May about your likely nomination and said that you are “a folk hero for Democrats.” At least in your case, I do not believe that is a cause for concern on this side of the aisle.

It is also easy to forget that Director Robert Mueller began his service just 1 week before the 9/11 terrorist attacks that changed our Nation forever. He oversaw a fundamental reconfiguration of the FBI. Since then, Congress has provided significant tools for the FBI to use. But debate continues here in Congress about whether these tools are sufficient or appropriate.

There is also a debate in the public arena sparked by damaging leaks by reckless individuals. But even while those debates continue, I hope that we have your commitment that, should you be confirmed, you will fully and aggressively use the tools that Congress has provided for your use.

Mr. COMEY. Yes, Senator, you have that commitment.

Senator HATCH. I believe that. In that connection, I am concerned that the American people do not fully understand the rules and standards that guide how the FBI uses these tools to protect the country. A recent column in The Washington Post, for example, claimed that we are living in a time of “warrantless everything.”

Please take a minute and explain some of the rules and standards, because our fellow citizens need confidence that the FBI itself respects the rule of law.

Mr. COMEY. Yes, Senator. I think that folks do not understand that the FBI operates under a wide variety of constraints, starting with the Attorney General’s detailed guidelines on how it is to conduct intelligence investigations, criminal investigations, and counterintelligence investigations. I think sometimes folks also do not understand what the FISA Court is. They hear “secret court.” Sometimes they hear “rubber stamp.”

In my experience, which is long, with the FISA Court, folks do not realize that it is a group of independent Federal judges who sit and operate under a statutory regime to review requests by the Government to use certain authorities to gather information. And it is anything but a rubber stamp. Anyone who knows Federal

judges and has appeared before Federal judges knows that calling them a “rubber stamp” shows you do not have experience before them.

Senator HATCH. I sure agree with you.

Mr. COMEY. And so I think that sometimes folks also do not understand the degree to which the FBI’s activities and the activities of the entire intelligence community are overseen by Congress and also overseen by independent and, in my experience, highly effective Inspectors General embedded within each of the institutions that report within the executive and also to the relevant oversight committee of Congress. That combination of judicial involvement, congressional oversight, IG oversight, to me results in a very effective regime of oversight that just took me 2 minutes to explain it. It is hard to get the time and space in American life to have folks understand that sometimes.

Senator HATCH. Well, that is good enough for me. I know you could go on for a long time on that.

On March 31, 2009, you spoke at the Humphrey Institute of Public Affairs at the University of Minnesota. When he introduced you, Vice President Walter Mondale said that you are a “remarkable example of public lawyers who remember their function in obeying and enforcing the law.”

I would like you to just comment briefly on that dual function, both obeying and enforcing the law, as it relates to the position to which you are appointed here.

Mr. COMEY. Yes, sir. The oath that public servants take is to uphold the laws and the Constitution of the United States, which means both to respect them in that you do not exceed the laws but also to ensure that they are executed and given life. Congress intended that they be used as tools to address crime, for example, or intelligence risk, for example, and so it is very important that you be both aggressive and respectful of the boundaries, and that is a balance that people sometimes think is impossible to strike. I do not think so. I think this Government is full of people who get it, that they are to do both: respect the law and the Constitution and ensure that they use the tools to protect the American people.

Senator HATCH. One of the many things I respect about Director Robert Mueller—and I greatly respect him—is his candor with Congress in acknowledging the problems in the FBI that have needed fixing. He has been very straightforward about it. He did so, for example, when the Justice Department’s Inspector General released a report in 2007 about the FBI’s use of National Security Letters. That report found an intentional misuse of either statutes or guidelines. Nonetheless, Director Mueller implemented reforms to address the deficiencies in oversight and auditing that the IG, Inspector General, identified. I hope you see the value of that transparency and accountability and would be open and candid about anything that might need to be corrected. And I am quite sure that you do, but I just thought I would—

Mr. COMEY. Well, I agree very much that is at the core of Bob Mueller’s being, and it is something I intend to emulate. Admitting mistakes and learning from mistakes is the only way in which an institution survives and improves.

Senator HATCH. And I think you will.

Senator Whitehouse and I, along with Representatives Schiff and Goodlatte, serve as Co-Chairmen of the Congressional International Anti-Piracy Caucus. For years, we have worked in a bipartisan manner to highlight the scope and depth of online piracy around the world. We lose billions and billions of dollars every year because of the lack of intellectual property protections. Now, theft of our intellectual property undercuts the hard work of Americans who share their talent and creations with us.

Unfortunately, because of ever-changing technology, those charged with enforcing these laws must constantly strive to remain a step ahead of those who perpetuate these crimes. It is not an easy job, but some of the recent investigations underscore the progress being made in this difficult area.

If you are confirmed, will you continue to prioritize intellectual property enforcement, including pursuing major copyright and counterfeiting enforcement actions?

Mr. COMEY. Yes, Senator. I know from my 8 years in the private sector that this is an enormous concern to businesses of all kinds. One of the things that makes this remarkable country great is that we are the cradle of innovation, of ideas that become products that become jobs that become enormous companies. We will lose that if we are not able to protect that which we invent.

Senator HATCH. Mr. Comey, I am happy that you have accepted this position. I have a great deal of respect for you and intend to work with you, as I think every Member of this Committee this does. I just want you to know that for you to be willing to come back into the Government is, I think, a great service to our country, and I just want to thank you. I support you, and we hope we can make this a quick confirmation.

Mr. COMEY. Thank you.

Senator FEINSTEIN [presiding]. Thank you, Senator Hatch.

Senator SCHUMER.

Senator SCHUMER. Well, thank you, and welcome. And despite the fact that you have moved to Connecticut—and I hope Senator Blumenthal does not take offense—we still consider you a New Yorker and a Yonkers boy made good. And we have known each other a very long time, and I am glad you are here. And I want to speak a little bit about my experience with you because I think everyone in the Committee and elsewhere should hear that, and then I will ask a few questions.

First, the job of FBI Director is one of the most important jobs in the Nation. It is a 10-year commitment—10 years for two reasons: first, because a lifetime appointment runs the risk of abuse of power, as we learned from J. Edgar Hoover; but, second, because a shorter appointment could put the head of the most important law enforcement body in the country in danger of being subjected to the whims of purely political appointees. So a 10-year appointment is the right amount—not lifetime, too removed; not shorter, too susceptible to whims.

Now, if there is one thing I am confident of, it is that you are more than capable of exercising independent judgment, even out-and-out courage in the face of enormous political and professional pressure.

Mr. Comey, it was just a little more than 6 years ago that you sat at that table, I sat at the dais chairing a Judiciary Subcommittee hearing about the overweening role of politics at the U.S. Department of Justice. Your testimony about this incident was one of the most courageous acts by a witness I have ever seen, and if another book were written about Profiles in Courage, this would certainly be a chapter.

Having served as Deputy Attorney General from 2003 until 2005, you came to my Subcommittee to talk about the Department's policies regarding appointments of U.S. Attorneys, and at that point the Department did not look very good.

But my staff—Preet Bharara, who was my chief counsel at the time, now U.S. Attorney for the Southern District, a place you had worked—had discovered there was more to the story. You reluctantly agreed to speak to him before the hearing on this additional topic, and after that conversation, we knew that you were prepared to testify about something of central importance: a possible constitutional crisis, previously unbeknownst to the American public by an administration embroiled in, very possibly blinded by, the war on terror.

And so your testimony was one of the most dramatic and brave moments that I have ever witnessed in my years as a legislator. You exhibited the wherewithal to talk about a different ilk of interference with law enforcement decisionmaking at the Department of Justice, the apparent attempt by two members of the President's team—Alberto Gonzales and Andrew Card—to attain approval of John Ashcroft for a warrantless domestic surveillance program while Mr. Ashcroft lay ill in his hospital bed. In fact, you were the Acting Attorney General on that night, March 10, 2004, and you were not willing to sign off on the full scope of the program that the White House wanted the Department of Justice to authorize.

The history is known, but at the hospital you and FBI Director Mueller made sure that no approval was given for a program you believed had no legal authorization and, in fact, on threat of your resignation and that of other senior Department officials, it appeared the program was authorized only after it had been modified to your satisfaction.

So, Mr. Comey, in 2005, you gave a speech in which you said that a good lawyer must be willing to say no when it matters most. As FBI Director, will you still be able to say no when it matters most, as you did on that night when you were the Acting Attorney General?

Mr. COMEY. Yes, Senator, I believe so.

Senator SCHUMER. Okay. Good. And I have every faith that you will.

Mr. Comey, the details of the program at issue in 2004 and your decisionmaking then are still classified. News reports have suggested you were reviewing information-gathering programs that involved large amounts of meta data from phone records and the Internet. The parameters of what are perhaps modified versions of these programs may have been authorized later by the FISA Court under the Foreign Intelligence Surveillance Act beginning in 2006. Leaks of classified documents also indicate that the FISA Court had approved gathering the content of email under certain cir-

cumstances, circumstances that might be broader than what most Americans have assumed.

Now, there has always been an age-old struggle between security and liberty. This tension has never been more stark in the 12 years since 9/11. As a New Yorker, I realize that very well. You know that better than most through your many roles in law enforcement before and after these events. My view, when you have the classic conflict of liberty and security, is, first, the debate should be open; second, the resulting policies have to be governed by rules, whether they are set by Congress and the administration; and, third—and this is where my questions lead—an independent arbiter must determine whether these rules are being followed.

So in order to make sure that we strike the right balance as a society, we need to know more about what the FISA Court's role is in approving these programs as they have been reported.

My questions to you are as follows:

First, would you be willing to support declassifying or releasing declassified summaries of FISA Court opinions that have been issued regarding these programs, as Senator Merkley proposes to do in a bill that I am a supporter of? Obviously with limitations on any security breaches.

Mr. COMEY. Senator, I agree with you that transparency is a critical value, especially when weighing tradeoffs between security and liberty. And I am also aware that the Director of National Intelligence is looking at that very question. Because I do not know what is on the—I do not know what is in the opinions. I also do not know what is on the other side in terms of concerns about classified information. It is hard for me to say at this point. I think it is a worthy exercise to look closely at it, though.

Senator SCHUMER. Okay. Let me just say this. If it is true that none of the 18 requests for orders last year were denied—and maybe some others on the Committee know that, but I do not—how can the American people be assured the FISA Court is exercising real oversight, as it was intended to do when it was established in 1978? You told Senator Hatch it is not a rubber stamp. But if they have approved every decision, it is awfully hard to think that they are really doing the job that they were empowered to do. Can you give me a little thought on that? And that is my last question.

Mr. COMEY. And I hear folks say that quite often, that the Government is undefeated in the FISA Court, so how can it be a real court? Well, I know from criminal cases that—I do not know of a case where a wiretap application in a criminal case has been rejected by a Federal judge, certainly none that I was involved with. And the reason for that is we do not ever want that to happen, and so we work like crazy to make sure we have our ducks in a row, we have probable cause, easily cleared, because if we lose that credibility with the court, we worry that we will have lost something that we cannot ever get back.

And so I know that in both FISA applications and in criminal applications for court-ordered wiretaps, the Government is extremely conservative in putting together what it presents to the court.

Senator SCHUMER. But you would work for greater transparency provided it does not jeopardize security.

Mr. COMEY. Yes.

Senator SCHUMER. Thank you.

Chairman LEAHY [presiding]. Thank you.

Senator SESSIONS.

Senator SESSIONS. Thank you, Mr. Chairman. And congratulations, Mr. Comey, on this very important nomination.

I love the FBI, as you have, and I remember, as you were telling your first case story, I remember being trained by some very fine FBI agents as a young prosecutor. And I do believe it is a great—the greatest law enforcement agency perhaps in the world and dealing certainly with complex cases of all kinds. And it deserves and must have great leadership.

I first consider a nominee should be able to give that leadership. I believe it was Rudy Giuliani when he talked about his successor one time who said it would be nice if he were able to contribute to the discussion every now and then. And that sounds like Rudy, I suppose. And you were able to contribute to the discussion.

I was just looking at your bio. Like Bob Mueller, you have the kind of bio that we should look for. You were Assistant United States Attorney in the Southern District of New York for 6 years; Assistant United States Attorney in the Eastern District of Virginia for 6 years; Deputy Attorney General, chairing the President's Corporate Fraud Task Force and the President's Board on Safeguarding America's Civil Liberties—I guess you were there about 3 years—in addition to being an attorney for some great law firms and corporate entities. So I think you bring the kind of background we need.

I was looking at some of your cases. You tried the Gambino brothers, the Khobar Towers case involving 14 Saudi Hezbollah people who murdered 19 Americans. You did the WorldCom case. That was a huge billion-dollar fraud matter. Adelphia Communications, a \$200 million case. You led the prosecution of one of the largest identity theft cases in U.S. history. The Martha Stewart insider trading case. Project Exile in Virginia, I will mention that in a minute. But those represent to me the experience of a highly professional, very, very rarely—a lawyer in the United States would very rarely be involved in so many intensive, high-profile cases.

So you bring that background and worked, I suppose, on virtually every one of those cases with the FBI, did you not?

Mr. COMEY. Yes, sir.

Senator SESSIONS. And so you know the rules that they operate under and the Department of Justice operates under very well from an intensive personal experience. I think you have the background for this job.

Now, you have proven in the past you are willing to stand up for your convictions. Will you be prepared to pursue any cases that come before you involving Congress or the administration or Governors or other powerful forces in the country if you are called upon to investigate them? And will you complete the investigation effectively and call the question based on the law and the facts?

Mr. COMEY. Absolutely, Senator.

Senator SESSIONS. I think that is your background, and I believe you can fulfill that task. I do.

Now, I do not know—we talk about Guantanamo—exactly what Senator Feinstein is referring to there. I would just say that no-

body is being tortured at Guantanamo. At Guantanamo, nobody was waterboarded. This was done special CIA or other people somewhere around the globe, but they were not done by the military at Guantanamo.

Don't you agree that there are two options with regard to how to handle someone who attacks the United States? If they are an enemy combatant, they can be tried by military commission; they can be tried and detained in a place like Guantanamo by the military as a prisoner of war; and they may be tried if they violated the rules of war or otherwise committed crimes as opposed to just being a lawful enemy combatant. And then, of course, there are Federal court prosecutions that can be carried out if a person is brought to Federal court and they have violated Federal civil laws and criminal laws. Is that right, two different approaches you can take?

Mr. COMEY. Yes, Senator. From my experience, I think of them as three effective lawful and appropriate tools that can be used, depending upon the individual case. You have mentioned all three: Law of War detention, detention and trial in a military commission, or detention and trial in a civilian court, in the Article III courts. And I know all three have been used in both President Obama's administration and President Bush's administration.

Senator SESSIONS. Well, if you are tried in civilian court, then you must be brought promptly before a United States magistrate judge. Is that correct?

Mr. COMEY. Yes, Rule 5 requires prompt presentment.

Senator SESSIONS. And your right to have an attorney appointed for you if you do not have one.

Mr. COMEY. Yes, sir.

Senator SESSIONS. Or the attorney you may have.

Mr. COMEY. Correct.

Senator SESSIONS. Who, if it is a terrorist, could be associated with a terrorist organization, could they not?

Mr. COMEY. Could be.

Senator SESSIONS. And then you give Miranda warnings. They do not have to make any statements.

Mr. COMEY. That is correct, at some point.

Senator SESSIONS. And they can be brought before the judge at a preliminary hearing, and the Government has to lay out evidence revealing to the world that the individual who may be an enemy combatant has been captured, revealing that to his compatriots and enemies, our enemies. Is that right?

Mr. COMEY. Certainly when court proceedings are filed and on the docket, the public can know about it.

Senator SESSIONS. Well, and evidence has to be presented, witnesses can be cross-examined, even in the early preliminary hearing stage. Isn't that right?

Mr. COMEY. Yes, Senator, if there is a preliminary hearing. I have actually never done one because I used to indict the cases instead. But I understand what you are saying.

Senator SESSIONS. And while there are some protections for intelligence methods and capabilities and sources in some of these hearings, it does provide the possibility of revealing through the evi-

dence that is presented the sources and methods of identifying and arresting this individual. Isn't that correct?

Mr. COMEY. I suppose it is possible. In my experience, Senator, the Federal courts are very effective at protecting classified sources and methods, even in prosecuted cases.

Chairman LEAHY. Thank you. Thank you, Senator Sessions.

Senator SESSIONS. Isn't it true that with regard to each of those instances I mentioned that the trial and military commission provides better protections for the United States with regard to intelligence revealing and be able to maintain the individual with or without a trial and without public presentment?

Mr. COMEY. I think in some ways the military commission has an advantage. In other ways, I am not so sure. I think it depends on the individual case.

Senator SESSIONS. My time is up, Mr. Chairman. Thank you. I am sorry to go over. I had a few more questions, but I understand.

Chairman LEAHY. We are probably getting off the subject, but I know we have had four or five convictions in military tribunals and 100 or 200 in Federal courts.

Senator SESSIONS. Well, that is—if you do not try them in military commissions, you are not going to get convictions.

Chairman LEAHY. Senator Durbin.

Senator DURBIN. Thank you—

Senator SESSIONS. And that is exactly what has been happening.

Senator DURBIN. Thank you very much, Mr. Chairman.

Let me start off, Mr. Comey, I understand your answer to Senator Feinstein's question about the force feeding at Guantanamo, particularly in light of Judge Kessler's opinion, but I would like to clarify for the record. I agree with Senator Feinstein's conclusion. We are going to join together, and perhaps others wish to join us, in a letter to the President asking him to exercise his Executive authority to end this force feeding in Guantanamo.

The President, for the record, has called for the closing of Guantanamo. He has also raised in a speech just a few weeks ago this very issue. He has not been evading it. But Judge Kessler is calling into question whether he has the authority, and we are going to express our feelings that it should come to an end. And that will force our hand.

I believe Congress has been complicit in the current complicated situation. We have not followed the President's lead in closing Guantanamo. We have left it in a limbo, which is unfair to many who are involved. I visited the Southern Command in Miami. I can tell you that the members of the Navy and Coast Guard who are part of it are at their wits' end as to what to do with these detainees, many of whom have been adjudged no threat to the United States and having held indefinitely. In this case, Mr. Dhiab, who raised the issue, has been held for 11 years and for the last 4 years has been judged ready for release. In his despair, he has turned to this black fast where he is not eating at all. So I think it is time for us to move the issue. I understand it puts you in a delicate position to have conjecture on where this goes, but we are going to follow through.

Let me go specifically to a couple issues. You and I had a long conversation yesterday about this torture issue, and I thought what

you said in a few words was what Attorney General Mukasey refused to say, that, in fact, waterboarding was torture. I could spend some time here—I will not—about what was going on within the administration, the debate over the use of waterboarding and other coercive techniques in interrogation. But I think more importantly was a point raised by Senator Schumer about the FISA Court.

You said yesterday that as Deputy Attorney General you did your best to declassify so that there was more information available to the public to understand the decisionmaking in our Government. That is certainly consistent with our democracy, and although there is an obligation to keep us safe, which requires classified information, declassifying provides that information.

Do you feel the same about these FISA Court decisions, that, if redacted, if carefully screened, we should be releasing more of the reasoning, more of the decisions to the public so they understand the role of the Court in this decision process?

Mr. COMEY. Thank you, Senator. As I said earlier, I think that transparency is a key value, especially when it helps the American people understand what the Government is doing to try to keep them safe, and I think if they understood more, they would feel better about it. It is when folks do not know things that people can question whether the Government is doing the right thing.

But at the same time, I am not in a position to judge what is on the other side. I would not want to let transparency be the only value—and I know you do not either, Senator—and that I would lose some operational advantage and let the bad guys know something by virtue of that. I think it is important to do what the DNI is doing, which is look closely at it and lean forward to see what you can do.

Senator DURBIN. I hope you would encourage more transparency in the FISA Court. I think that would be helpful. Also, in future gathering of information, minimization is critical, to minimize the information gathered to protect innocent Americans. You and I discussed this yesterday. Instead of gathering all of the meta data, phone records of one area code, to focus on the suspects, which I have been arguing for for years and hope that we can move toward.

Let me go to the point, though, that has been raised by Senator Sessions because it comes up time and time again. The minute we apprehend a terrorist, I can guarantee you within 24 hours, if we are in session, someone will take the floor and say, “Well, for goodness’ sakes, do not put them through the Article III courts. If it is a suspected terrorist, they must go to military tribunals or military commissions.”

I have always been puzzled by this, and I know you have as a prosecutor faced this decision, recommendation: Where will this person be tried?

For the record, I believe that hundreds, literally hundreds since 9/11 have been accused of some form of terrorism and were successfully tried and prosecuted in Article III courts. During that same period, I believe the track record is six who have been successfully prosecuted before military tribunals.

Let us go to the points raised by Senator Sessions. They would characterize the reading of the Miranda warnings as the end of the

interrogation. As soon as you say you can lawyer up, they will shut up.

What has been your experience as a prosecutor when it comes to prosecuting terrorism cases in Article III courts using Miranda warnings?

Mr. COMEY. My experience has been—I think we have about a 20-year track record in handling particularly al Qaeda cases in Federal courts, and that the Federal courts and Federal prosecutors are effective at accomplishing the two goals in every one of these situations, getting information and incapacitating the terrorist.

As I said, I believe there are a number of other tools that are available, but I know the track record of the criminal justice system, and it is highly effective.

Senator DURBIN. We discussed yesterday the role of attorneys and family in the Article III process in the interrogation and preparation for trial. Could you tell us on the record what your experience has been?

Mr. COMEY. Sure. One of the things I like about the Federal criminal justice system that I suppose some folks might not like is that the entire thing is designed to get information. We have very strong sentences in the Federal system. The only way to have any chance to get out from under them is to provide information. And in my experience, the presence in criminal cases of families and lawyers is often a useful lever for me as a prosecutor to get information, because then I have a loved one whispering in the ear of the person I have detained saying, “Look, you really need to do the right thing here. It is the only way you will ever see the kids again.” That lever assists me as a prosecutor in getting information.

Senator DURBIN. And what about this point about taking this in an Article III court and prosecuting a terrorist runs the risk of disclosing sources and methods that could jeopardize the lives of friends, allies of the United States, even our military? What protection is there against that possibility?

Mr. COMEY. Well, as I said to Senator Sessions, my experience has been the Federal courts are effective at protecting classified information. There is something called CIPA, the Classified Information Procedures Act, under which a court scrubs source and method information to try to reduce the risk of disclosure. I think the track record is pretty good. Obviously, there always remains a risk there is going to be disclosure. But I think, by and large, it is effective.

Senator DURBIN. Thank you very much. I appreciate your testimony and visitation in my office yesterday.

Chairman LEAHY. Thank you very much.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman, and thank you, Mr. Comey, for joining us. I remember distinctly meeting you several years ago when I was an Assistant U.S. Attorney in Utah. You visited our office. I still remember some of the counsel you gave us that day. I remember you telling us specifically that we as Assistant U.S. Attorneys ought to stay close to our families because, as you put it, you see things as an Assistant U.S. Attorney that sometimes no person ought to have to see, unpleasant things. And I can-

not help but be reminded of that as you begin what could become a journey in serving as our Director of the FBI where you, too, will have to see things that might be unpleasant. And it is good to see your supportive family here with you today.

I wanted to talk to you a little bit about some of the privacy interests protected by the Constitution and how those relate to some of the activities of the NSA and other arms of the Government.

The Government maintains that it has the authority through the NSA to collect large amounts of meta data and to store that meta data on a data base basically with respect to telephone and email communications of pretty much every American. And it purports to have the authority to store that, hold it over a long period of time, and when necessary, perform searches to figure out, you know, connections based on national security concerns, to identify leads that it might follow up on.

As I understand it, the searches on that data base are governed largely, if not entirely, by internal NSA rules. There is no external constraint on that, certainly no warrant requirement or anything really approaching it.

Those who defend this program and this practice insist that under Supreme Court precedent, most notably *Maryland v. Smith*, the Government has the right to do this and there is no real Fourth Amendment problem with it.

Maryland v. Smith, of course, was a case decided on a 5–4 margin back in 1979. It was an opinion authored by Justice Blackmun, and it dealt not with that kind of mass data collection; it dealt with data collection as against a single suspect in a single criminal investigation using a pen register.

Don't you think there might be different Fourth Amendment interests at play where we are dealing with a much broader scale where potentially, theoretically, every American is the target of the kind of data collection at issue with what we are talking about today?

Mr. COMEY. Thank you, Senator. It is a very interesting question. You and I spoke about this a bit privately, and I had not thought about it much then. I have tried to think about it more since and read some cases. I actually read a paper written by a second-year Harvard law student about this. It is a really interesting question as to whether the Fourth Amendment framework that is in part embodied in the *Smith* case applies as technology changes or whether, I think as Justice Sotomayor wrote in the *Jones* case last year, we ought to think about it differently where each of those pieces of meta data is allowing the Government to sort of put together a mosaic about you, that is, goes beyond what you would normally expect and intrudes into a reasonable expectation of privacy.

A fascinating question. I do not think it is settled. I hope it is one—I am going to ask if I am confirmed—that the Department of Justice is thinking about. So I do not think there is a clear answer to it, but it is a reasonable question to ask.

Senator LEE. Okay. I appreciate your willingness to keep an open mind on that issue. I think as you look at that and as you review, as the Court in *Maryland v. Smith* did, the precedent in *Katz v. United States*, and you asked the two questions asked in *Katz*:

number one, whether there was a subjective expectation of privacy in the case at hand; and, number two, whether that expectation of privacy is one that in objective terms society could and should regard as reasonable. I do think you come to a different—I think you have to come to a different conclusion with regard to this. So I appreciate your willingness to consider that.

Would you concede, as I suppose you would, that it would be different altogether—let us take in the case of email collection, surveillance of emails—it would be an even easier question with regard to collection of content of emails?

Mr. COMEY. Very much. That is the difference, to use the 1970s analog, between reading the outside of an envelope and opening it and reading your letter.

Senator LEE. Right, right. So you would not see any substantive distinction between the Government opening somebody's mail and the Government opening somebody's email to read the content of it?

Mr. COMEY. I do not. I have always thought of it as a Fourth Amendment event.

Senator LEE. Right. And yet it is interesting, the law in this area, the ECPA law, there is a particular title within ECPA that allows Government agents simply by sending a request to an email provider to read the content of someone's email, not just the meta data but to obtain the substantive contents of the email communication once that email has ripened past the age of 180 days. That seems to me to be a problem, and it is one that Chairman Leahy and I have been working on together. This is a loophole that we are trying to close.

But would you agree with me in concluding that, for Fourth Amendment purposes, there is no discernible constitutionally significant distinction between an email that is 179 days old and one that is 181 days old, with the former being entitled to Fourth Amendment protection and the latter being entitled to nothing?

Mr. COMEY. I would, Senator. I do not think the Fourth Amendment has—like your yogurt, it expires on—a date on it. I was unaware as a prosecutor of that 180-day. I always thought of it all as content that I would need probable cause to get. So I am aware of that, and I think the Department is also working to see if that cannot be fixed. It sounds like an anachronism to me.

Senator LEE. Yes, I think it certainly is. It was anachronistic even at the time in the sense that I think it was incompatible with the Fourth Amendment. But it is easier to understand why it did not raise eyebrows then because people typically did not store emails any longer than that. And so maybe one could have made an argument back then that nobody was concerned about it, therefore no reasonable expectation of privacy could develop. I certainly do not think the same argument can be made today, and I am pleased that you as a prosecutor never went down that road. I know I certainly did not. But there have been some within the Government who have suggested that this is an appropriate option for Government agents to pursue, and I hope you will stand with me in recognizing that there is an important Fourth Amendment interest at play.

Mr. COMEY. If there are, they are going to be unhappy with me, but I see it as you do.

Senator LEE. Okay. Thank you very much.

And thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, and we will continue to work on the legislation you discussed.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman. Welcome back, Mr. Comey.

Let me pick up where Chairman Leahy left off. You were describing the two Office of Legal Counsel torture opinions that addressed 18 United States Code Section 2340 and 2340(a), and there was one that related to certain techniques, and then there was a second one that related to combined techniques. You indicated that you focused on the combined techniques one because you knew that the techniques were being applied in combined fashion, and so that is what really mattered. But you concede that if the combined techniques memo were to fall, under the certain techniques memo the Government, the CIA, would have been able to go ahead and waterboard as long as that was their technique, as long as they left the other ones aside. And in that sense, you clearly authorized waterboarding by approving that memo. Correct?

Mr. COMEY. I think that is right. I do not want to quibble and say I authorized waterboarding. I found that opinion, which I think in its text has a very difficult and close question, was a serious and reasonable effort to interpret that statute. So that is what I thought. That is why I did not object to that one and objected to the second one.

Senator WHITEHOUSE. Looking backward, I would contend that it was not serious and not reasonable and that it left out things that you as a supervisor were not necessarily in a position to know about. But when it leaves out the history that the Chairman referred to of the United States having been the prosecutor of waterboarders in the past, prosecuting Japanese soldiers as war criminals for doing that during World War II, prosecuting our own soldiers for doing that during the Philippines uprising, prosecuting an American sheriff for doing it—there is actually a file somewhere in the Department of Justice about a criminal prosecution of an American for waterboarding at the time that that memo came out, and nobody bothered to bring that up or put that in the opinion. And it is not something you had to go through the files of the Department to find out about because that decision ended in an appeal and a Fifth Circuit published opinion talking about waterboarding describing it probably ten times as torture, and that never made it into the opinion.

So I cannot blame you for that, but I do not want to let the record of the hearing go forward with the thought that these actually are serious and responsible opinions, because I do not think they actually do meet that standard.

You also said that you were concerned that they were very narrow. It was a very specific question that was being answered, and so that kind of was a reason to let it go.

There was a third opinion dated May—these two were dated May 10th. The third opinion was dated May 30th. It is on the same let-

terhead from the U.S. Department of Justice Office of Legal Counsel. It is from the same office, the Office of the Principal Deputy Attorney General. It is signed by the same lawyer, Steven Bradbury. It is directed to the same recipient, John Rizzo, the counsel at the CIA. It discusses the same topic, waterboarding. But it is not specific to 2340 or 2340(a). It is the general opinion. It discusses the constitutional requirements. It discusses our obligations under the Convention Against Torture.

What of that opinion? It came out 20 days later.

Mr. COMEY. I did not see it at the time. I do not know why they—well, I guess I can guess why they did not show it to me at that point. I fought on both policy and legal grounds. So I did not see it. I have read it since, but I did not know about it.

Senator WHITEHOUSE. That is somewhat remarkable, isn't it? Didn't you ask Steve Bradbury to write the first two opinions, to review the previous opinions that you had said were not up to the standards of the Department of Justice?

Mr. COMEY. I asked the then head of Office of Legal Counsel—we call it "OLC."

Senator WHITEHOUSE. OLC, yes.

Mr. COMEY. There was a fellow named Dan Levin—to undertake the completion of Jack Goldsmith's work, to finish the general opinion. I did not ask Steve Bradbury to do the two May 10 opinions. I think that came from elsewhere, probably the CIA.

Senator WHITEHOUSE. So you were made aware of the two May 10 opinions.

Mr. COMEY. Yes.

Senator WHITEHOUSE. Presumably between May 10 and May 30, you had made your concerns about them known?

Mr. COMEY. Very much. I had made my concerns about the legal analysis known late April or early May, and then late May is when I went to the Attorney General and said we have to address why we are doing this as Americans. And then I—

Senator WHITEHOUSE. So the response was that by the time of the May 30 opinion, they wrote another and broader opinion on the same subject and simply cut you out of the loop.

Mr. COMEY. Yes, unless I am completely losing my mind, I do not remember—

Senator WHITEHOUSE. I doubt that.

Mr. COMEY [continuing]. Ever seeing that opinion. And so that opinion is about, as I recall from reading it recently, Article XVI and interpreting whether it is cruel, inhuman, and degrading treatment.

Senator WHITEHOUSE. Yes, and applying a Fifth Amendment standard to that determination.

Mr. COMEY. Yes, I do not know what—so, anyhow, I did not see that opinion.

Senator WHITEHOUSE. When you said that you thought that the latter two opinions were more responsibly written than the first two, what effort had you made to put a foundation under that determination? More responsibly written in terms of what did you—

Mr. COMEY. Both the people involved—and by that I mean I had great confidence in both Jack Goldsmith and in Dan Levin, serious,

balanced people—and the process they went through involving many more bright lawyers from around the Government—State Department, for example—to poke at their ideas to try and pressure test them in a way that I do not think was done in the early opinions.

Senator WHITEHOUSE. So would it be fair to summarize it as saying you did not pressure test them yourself, but you saw to it that they were subjected to a much broader array of comment and, therefore, received pressure testing from multiple agencies and you also had considerably more confidence in the principals involved in writing—principals, P-A-L-S—the individuals involved in writing the opinion than you had in their predecessors. Correct?

Mr. COMEY. That is fair. Yes, sir.

Senator WHITEHOUSE. Okay. One thing I think I would like to emphasize to you, I think it would be very, very wise and helpful for you to take Senator Feinstein's advice and spend some time with the Intelligence Committee report on the torture program. I was heavily involved in that, and if you look at particularly the third one, they make assertions specifically—a lot of the stuff is classified, so it is hard for me to debunk it here because it is classified. But I had a hearing in this Committee on the interrogation of Abu Zubaydah, and the FBI participated in that, and it was from the FBI's humane interrogation that we got the news that Khalid Sheikh Mohammed, the 9/11 guy, was from the FBI's humane interrogation that we got the information about the Jose Padilla dirty bomb plot. The CIA contractors, not the CIA agents, the contractors came in and started to apply the abusive techniques. At that point the information completely shut down, did not get anything more out of the guy that was of any significance, certainly nothing compared to what had been achieved by the FBI agent, who was a very gifted interrogator.

My apologies. My time is up. But take a look at page 10 in the May 30 report and compare that to the facts, and I think you will see that the Department was pretty gravely misled.

Chairman LEAHY. I am sorry to be so tough on the clock.

Senator WHITEHOUSE. No, no. I appreciate that you did that, Chairman.

Chairman LEAHY. I know we have a vote coming.

Senator WHITEHOUSE. You did the right thing.

Chairman LEAHY. Senator Cornyn.

Senator CORNYN. Mr. Comey, congratulations on your nomination, and I am glad that your family is able to be here today. None of us could do these jobs without the support and love of our families, and thank you for your willingness to continue to serve the United States.

I wanted to ask you, first of all—and I know you will agree with this. One of the great things that is unique about the American system is that no person, whether you be President of the United States or an average citizen on the street, no person is above the law.

Mr. COMEY. Yes, that is one of many great things about this country.

Senator CORNYN. But it is hard when you are a member of an administration sometimes to do what you have recounted that you

did during the Bush administration, and that is, be a voice of independence and perhaps go against the grain.

Are you going to be as equally committed as a member of the Obama administration as you were as a member of the Bush administration to go against the grain and to be that independent voice where you feel that that is the appropriate course of action?

Mr. COMEY. Yes, I am, Senator.

Senator CORNYN. And for all the differences that have been discussed here over enhanced interrogation, my impression is that the counterterrorism policies of the Obama administration in large part bear a lot of similarity to the counterterrorism policies of the Bush administration. Would you agree with that?

Mr. COMEY. I think that is fair.

Senator CORNYN. I am thinking, for example, about the role of the Foreign Intelligence Court, the National Security Agency's role in collecting meta data, their use of unmanned aerial vehicles to kill terrorists, members of al Qaeda. There seems to me to be a lot of continuity here, with some notable differences.

I do have a question about the enhanced interrogation techniques that you talked about earlier. As I understood it, you said there were three questions: one is was it effective, which is a question, I suppose, for the intelligence agencies; second, was it legal, which is a question for the Office of Legal Counsel, the primary law firm, so to speak, for the United States Government; and then there is the prudential question about should we be doing this stuff, and I think you made clear that on the third issue you thought we should not.

Mr. COMEY. Correct.

Senator CORNYN. And does that apply to all of the enhanced interrogation techniques that were used to interrogate members of al Qaeda and other terrorists or just waterboarding?

Mr. COMEY. I was particularly concerned with waterboarding and sleep deprivation in particular. I think those are the two I focused on the most, Senator.

Senator CORNYN. Just to be clear, you think sleep deprivation is torture?

Mr. COMEY. I was concerned, Senator, that particularly in aggregation, the use of 6-1/2 days of sleep deprivation plus these other things was very problematic under the Office of Legal Counsel's interpretation of the statute.

Senator CORNYN. Well, one of the consequences of the Obama administration's decision to shutter the enhanced interrogation—and there are, of course, a number of practices, as you know, that do not include the ones that you object to. But by virtue of their decision not to question members of al Qaeda and other terrorist organizations, we do not have a lot of information that we might otherwise be able to get from an intelligence-gathering perspective, and that strikes me as problematic. And instead we have an administration that has decided to compile kill lists for terrorists using armed drones and the like.

That strikes me as problematic as well because if you are just going to use that authority to kill terrorists, you certainly do not know anything about their networks, any of the other information

that would be helpful from an intelligence perspective, and perhaps save American lives.

Do you believe that the memos from the Office of Legal Counsel that have authorized the use of kill lists for armed drones, including American citizens, that those should be made public?

Mr. COMEY. I do not know, Senator. I know—as I said earlier, I think transparency is a very important value. I do not know well enough what is on the other side of the scale on that, the operational risk, the exposure of methods. So I am not in a position to say that from this vantage point.

Senator CORNYN. But you are not differentiating in terms of your transparency commitment between what was revealed during the last administration and what should be revealed here. I mean, the same principles would apply.

Mr. COMEY. Oh, certainly, same values, same principles, should be thought of the same way.

Senator CORNYN. And it strikes me as a lawyer's argument that we would really be interested in to know how—what sort of process would be required as a legal matter and as a prudential matter to protect against inadvertent or improper use of that kind of ultimate authority to kill an American citizen using an armed drone. That would be something that, if kept secret, would, I think, tend to undermine public confidence. If, in fact, there is a good lawyer's argument or one that would satisfy a court of law that this was necessary and it was properly applied, that would be something that would bolster public confidence, wouldn't you think?

Mr. COMEY. I think that is right as a general matter. As I said, I think transparency on these matters, including the views of the executive branch on the legal authorities, tends to bolster people's confidence and support for the use of those authorities. Again, though, there may be reasons, good reasons, why an opinion would need to remain confidential or classified. And sitting from this vantage point, I really could not say about the particulars.

Senator CORNYN. Well, of course, I do not suppose you have seen them—

Mr. COMEY. No.

Senator CORNYN [continuing]. and I would not ask you to pass judgment on something you have not seen. But certainly they could be redacted or otherwise protected in terms of the information that would need to be protected and still give some better understanding of the legal rationale and how the due process concerns could be addressed, especially when you are talking about killing American citizens.

I understand the questions you were asked and you answered about enhanced interrogation and your objection to the use of enhanced interrogation while you were a member of the Bush administration. Why didn't you resign if you objected to those techniques?

Mr. COMEY. I had already resigned by the time this came up. I announced my resignation in mid-April, and this came up, the memos we are talking about, in late April and into May, toward the end of May. I announced in mid-April I was going to leave before the end of the summertime, and I decided to stay for those 2 months because there were a number of important things I needed to complete, especially on violent crime. So that is where I was.

Senator CORNYN. Were those of sufficient seriousness to your mind that, if you had not already announced your intention to resign, they would be resign-worthy or justify your resignation, that sort of serious disagreement with administration policy?

Mr. COMEY. Hard to answer looking back, but I would have given it very serious consideration.

Senator CORNYN. My time is up. Thank you.

Chairman LEAHY. Thank you very much.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you, Mr. Comey. And, again, welcome to your family. They are very stoic behind you. I have been watching them.

Mr. COMEY. They were instructed to be stoic.

Senator KLOBUCHAR. Yes, and I also understand that one of them—we will not reveal who—actually was assigned to play Senator Blumenthal in a high school debate and miraculously won that debate.

Mr. COMEY. She swept the middle school.

[Laughter.]

Senator KLOBUCHAR. Very good.

You and I went to law school together. We were in the same class—and I love how you are pointing her out. We all see here.

You and I were in the same class in law school, and people often wonder what people were like before they were shining lights in their face, and I can tell my colleagues and everyone here that you were an incredibly decent person, a smart guy, and a lot of fun to know. So I want to thank you for that. I know there are a number of law school classmates watching this hearing right now, and I have this urge to mention all their names. But I will not do that.

And my colleagues should also know that the law school professors at the University of Chicago called our class “the happy class,” in part because we started the first law school musical and then, second, because I do not think we produced enough Supreme Court clerks to their liking. But I really hope they are watching this hearing right now and see the both of us up here and mostly see what a great job you are doing.

I know most of my colleagues have focused on terrorism and drones and the important work you have done in the past in terms of upholding the law. And while I think we can all agree that counterterrorism and national security is a top priority of the FBI, I think you also know the bread-and-butter work of the FBI is still incredibly important to victims of crime, to those who are victims of complex fraud. As a former prosecutor, that is how I always thought of the FBI and the work that we did so well with them in Minnesota.

And I know one of the things that has not come out is the work that you did in Richmond where you started Project Exile, a successful program that involved Federal, State, and local partnership. We copied that program, actually, in Minneapolis years later, and when the effort began, I know it was supported both by the NRA and the Brady Campaign, and the result of the successes, again, it spread across the country. Can you talk about that work and how that will inform your work as head of the FBI and what you

have learned from that that you think would be helpful to what we are facing now in street crime?

Mr. COMEY. Yes, Senator, thank you very much. That was some of the most rewarding work I ever did. Richmond, Virginia, had a horrific violent crime problem, isolated especially in the minority community, and the idea behind Project Exile was what if we used the Federal penalties that came with gun possession offenses, possession by a felon, possession by a drug user, drug dealer, stiff penalties, what if we used those to try and change criminal behavior and make the gun a liability in the eye of a criminal?

In Richmond, the situation we had was the average criminal got dressed for the evening and put on shoes, socks, pants, belt, gun—with equal amounts of reflection. So the idea was, What if we can change that dressing practice so they are afraid to have that gun?

And so the first part of Project Exile was really aggressive prosecution of gun possession crimes, and the magic, I think, of Project Exile, which was not my idea—it was the idea of one of my Assistant U.S. Attorneys—was: What if we went into the public markets and hired an advertising agency—and they worked for free; “hiring” is in quotation marks—to sell deterrence to the bad guys? And so these geniuses at the advertising agency created a brand and bought billboards in bad neighborhoods and buses and TV commercials, and they printed little cards with our slogan, and cops gave out thousands of them so that—because advertising works, and actually the criminals became more afraid of us maybe than they should have been, because advertising works. There was a brand, there was a criminal actually—our slogan said, “An illegal gun gets you 5 years in Federal prison.” We locked one guy up, and he got 7 years. He actually sent us a letter saying, “The damn ad says 5.”

[Laughter.]

Mr. COMEY. An unhappy consumer I guess was our goal. And so that aggression plus the magnification that came from advertising changed that community and changed behavior.

Senator KLOBUCHAR. Well, I also do not think it has come up, but you and your brother were actually held hostage by an armed burglar when you were young, and you were able to escape captivity. And in an interview, you once said that experience gave you “a keen sense of what victims of crime feel.”

Could you talk about the current FBI and how you see the FBI’s role with violent crime, understanding most of it is headed upon the local level, how you can coordinate with that? And then I would add onto that, on those really complicated white-collar cases which are increasingly hard for local law enforcement to handle.

Mr. COMEY. As we talked about earlier in response to other questions, the FBI has a vital role to play in criminal enforcement, and I know Bob Mueller has explained to this Committee that is a challenge for him, given all the things on the FBI’s plate. But at least from the outside, it looks to me like he has been smart and used leverage to achieve the objectives by forming good task force relationships, on violent crime in particular, with State and local law enforcement. The FBI has long been accused of not playing well with others. I think that is a bit of a myth in general, and I know that Bob Mueller has pushed to change that in both perception and reality. So that is critical.

And as I said in response to earlier questions, the FBI's role in white collar is also indispensable, because you need an agency that can devote the time, the resources, and has the expertise to plow through stacks of Excel spread sheets to find the evidence of the fraud. That is very hard for overworked local enforcers to do, so it is ground you cannot surrender.

Senator KLOBUCHAR. Very good. I am the daughter of a reporter, so I am asking this for my dad, but I also have seen both sides of this, the balance of the importance of a free press and then as a prosecutor the importance of moving forward with cases and keeping information so that you can do a good job and protect the public safety. And I am cosponsor of the Free Flow of Information Act—I was the first time it was introduced, and I am now—to protect the freedom of the press.

Can you talk about your views on how law enforcement should balance one of our Nation's most cherished rights, that is, freedom of the press, and the investigations of classified information leaks?

Mr. COMEY. Law enforcement can balance it most importantly by keeping front of mind both of those values. There are secrets we must keep, and so we have to investigate their loss, and that may lead to bumping into the media. But when we do those bumps, we have to understand that essential to what a remarkable country this is is that aggressive, sometimes pain-in-the-neck press. They are a great pain in the neck. And so an enforcer has to keep both of those front of mind, and then in each case try to work it so you preserve both of those values.

You are going to make mistakes, but if you keep both front of mind, I think in the main you will get it right. And I am aware of the shield legislation. I testified about a different shield bill when I was still in the Government that did not have a carveout for national security, which was very concerning to us. I gather this is different.

Senator KLOBUCHAR. Okay. Well, we look forward to working with you on that. I have a question I will just put on the record about the Human Trafficking Report Act that I have introduced with Senator Cornyn.

[The question of Senator Amy Klobuchar appears as a submission for the record.]

Senator KLOBUCHAR. And I know there are a lot of my colleagues that have been waiting for a while, so thank you very much.

Chairman LEAHY. I am just worried about this vote coming up. The record will stay open until noon on Friday for any questions to be submitted to Mr. Comey, and his nomination will be on the agenda a week from Thursday.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

Mr. Comey, welcome. Thank you for your testimony this morning, and thank you for your long public service as well.

I have a number of topics that I would like to discuss. I want to start by talking about the IRS. As you know, as you and I discussed in my office, there has been multiple reports and admissions of the IRS improperly targeting groups based on political speech, based on their espousing conservative views, their espousing pro-Israel views. There is an ongoing investigation of the FBI into what

exactly the IRS has done. And your predecessor, whom I like and respect, has received some amount of criticism for not appropriately prioritizing that investigation. Indeed, there have been multiple reports that even to date many of the groups that were unfairly targeted by the IRS, or at least that believe they were unfairly targeted, have yet to be interviewed by the Bureau.

What level priority in your judgment should the investigation into the allegations of misconduct and political targeting by the IRS, what level priority do you believe that should hold at the Bureau?

Mr. COMEY. I think—and I think I have seen Director Mueller say a similar thing—it should be a very high priority.

Senator CRUZ. Well, I appreciate that commitment, and I would also—you know, anytime the Bureau is asked or the Department is asked to investigate allegations of wrongdoing by the administration, and in particular, wrongdoing that raises at least some concerns about infusing partisan politics in what should be the fair and impartial administration of justice, that puts the Bureau in a delicate position. We saw that during the Nixon administration when President Nixon attempted to use the IRS to target his political enemies. And there have been similar concerns raised here.

Can we have your commitment that this investigation, if you are confirmed, you will pursue every lead vigorously, regardless of the political consequences?

Mr. COMEY. Absolutely, in this and all other investigations.

Senator CRUZ. Let us shift to a different topic, which is I have been concerned about the current administration's balance of the rights of law-abiding citizens on the one hand and the willingness to pursue serious terrorist threats on the other. And in my view, the balance has been wrong on the one hand, not fully respecting the constitutional rights of United States citizens, and on the other hand not vigorously going after radical Islamic terrorists and not acting to stop terrorism before it occurs.

On the first piece, one of the aspects where I think the administration has been less than fully protective of the constitutional rights of U.S. citizens deals with drones. So I would like to ask your view as a lawyer, which is, do you believe that the Constitution allows the U.S. Government to use a drone to target with lethal force a U.S. citizen on U.S. soil if that individual does not pose an imminent threat?

Mr. COMEY. No, Senator.

Senator CRUZ. Thank you for that answer. I agree with that answer, and the current administration has not always been so forthcoming in providing that answer.

I want to talk about the other half of the balance, stopping terrorism, because, ironically, I think although the administration has been willing to sweep law-abiding citizens into the ambit of surveillance, the administration and, unfortunately, the Bureau has been less than vigorous tracking down hard leads and intelligence. And we see in instance after instance, we see in Benghazi, where there were multiple reports about the need for additional security that were not followed up on.

We see with the Boston bombing—the Boston bombing I think is a very distressing pattern where the U.S. Government dropped the

ball. We had the Government of Russia that notified us directly about the concerns about the Tsarnaev brothers, that told us that he was a follower of radical Islam and they had fears of terrorist activity on his behalf.

The Bureau interviewed him, interviewed his family, concluded they did not find any terrorist activity, and it appears dropped the ball after that. After that interview, we now know that he traveled to Chechnya without any apparent follow-up from the Bureau or other U.S. national securities. We know that in August 2012 he published a YouTube page with jihadist propaganda on it, and by all appearances, the Bureau missed that, law enforcement missed that. We know he was also affiliated with Abdurahman Alamoudi, who pleaded guilty to illegal transactions with the Libyan Government and a role in a conspiracy to assassinate Saudi Crown Prince Abdullah.

And yet it appears with all of these warning signs, the Bureau did not follow up on the credible information it had and, tragically, because the dots were not connected, we saw a horrific bombing occur in Boston.

Similarly, in Fort Hood—I was just in Fort Hood last week—the murder that occurred there, the FBI was aware that Major Hasan had been emailing with al Qaeda cleric Anwar al-Awlaki, asking about the permissibility of killing his fellow soldiers. The FBI was aware of that. Major Hasan had made a presentation espousing jihadist views, and yet it appears in both of those instances the Bureau dropped the ball. And I have a real concern that fears of political correctness are——

Chairman LEAHY. I would advise the Senator that his time is up, and there is a vote on. Did you have a question here or just a speech?

Senator CRUZ. I did have a question, Mr. Chairman. I apologize for, when you gaveled, being a few seconds over. If I may ask the question? Do you share the concerns about the Bureau being either unwilling or unable to connect those dots and, as a result, to prevent terrorist attacks that have been carried out?

Mr. COMEY. I do not know enough from this vantage point, Senator, to comment on the particular cases. Obviously I think it is always important to connect the dots as best you can. But I do not know enough to give you a responsible answer at this point.

Senator CRUZ. Do we have your commitment that you would not let political correctness impede efforts to connect the dots and to prevent terrorism?

Mr. COMEY. Certainly.

Chairman LEAHY. Senator Franken.

Senator FRANKEN. Thank you. Mr. Comey, thank you for coming to my office yesterday. I enjoyed our conversation. You have had a very impressive career, and if you are confirmed, you have a hard act to follow. Bob Mueller is really amazing.

We touched on a number of subjects yesterday when we talked, and one of them was the right of Americans, American citizens, to counsel. We talked about Jose Padilla, the American citizen who was accused and has since been convicted of providing material support to terrorists. He was arrested on American soil but was subsequently transferred, with your support, to military custody.

While in military custody, Mr. Padilla went almost 2 years without having any access to an attorney.

I abhor the beliefs and the actions of Mr. Padilla. He deserves to be punished. But I have to say that I was dismayed by the principle that an American can be detained in his own country for almost 2 years without having any contact with an attorney.

I asked you this question in our meeting yesterday, and to be honest, I think that—I was not satisfied totally with your answer, so I just want to ask this head on. Do American citizens always have the right to talk to an attorney when they are detained by their own Government on American soil?

Mr. COMEY. I suppose one of the reasons you may not have been satisfied is I am not sure I was expert enough, or still am, to give you a really good answer to that. I think the answer is yes, except when that person is detained as a prisoner of war in an ongoing armed conflict; that as a prisoner of war, the person does not have a constitutional right to counsel. I think that was the position that the Justice Department took in Mr. Padilla's case, and so I think that is the position—

Senator FRANKEN. And who determines whether that person is a prisoner of war, an American citizen on American soil, is arrested on American soil, who makes that determination? And doesn't that person have—an American citizen now—have a right to an attorney to make the case that, "I am not a prisoner of war"?

Mr. COMEY. Well, they certainly have a right to access to the courts, as was done in that case, to file a habeas corpus petition to challenge the President's decision and designation that that person is involved in an armed conflict with the United States. So that is a different question from whether they have a constitutional right to have a lawyer. I think the district judge in that case said that, as a matter of his ability to oversee habeas corpus petitions, he thought the person ought to have a lawyer to assist him in the preparation of that petition. I do not think the judge found he had a constitutional right to counsel.

Senator FRANKEN. Okay.

Mr. COMEY. And as you said, it is a one-off horrific case that was a very difficult one. So it is obviously not a settled area, because I do not know that it has ever happened other than Padilla's case.

Senator FRANKEN. Okay. Well, I want to move to the warrantless wiretaps. By the way, a number of my colleagues have remarked on your courageous act—Senator Schumer referred to it—coming to that hospital room, when you were Acting Attorney General, and I commend you for those actions.

At the same time, last month the New York Times reported that you did not object to "the key element of the Bush administration's program, the wiretapping of American citizens inside the United States without warrants." The Times reported in December 2005 that, under this program, the NSA could eavesdrop on up to 500 people in the U.S. at any time as long as one party to the call was abroad.

According to a public letter from then-Attorney General Gonzales in 2007, the surveillance was subsequently approved by the FISA Court and, therefore, continued under the supervision of the Court,

as it is now. But until then, this wiretapping program had not been reviewed by the Court.

How do you respond to the Times' allegation that you did not object to this warrantless wiretapping program?

Mr. COMEY. I have to be cautious in the way I answer simply because I do not know what is still classified and not. I think a lot of the things that I was exposed to in that connection in 2004 is still classified. I do not think the Times story is accurate. Maybe I should just leave it at that. I do not think it is accurate.

Senator FRANKEN. Can you say in what way it is accurate without—

Mr. COMEY. Maybe I can say, Senator, while I was Deputy Attorney General, the Office of Legal Counsel headed by Jack Goldsmith concluded that the President could lawfully, relying upon the Authorization for the Use of Military Force, target the international communications of members of al Qaeda and associated forces. And the Office of Legal Counsel issued a written legal opinion that that could be done, that targeted collection of content of international communications of al Qaeda members and associated forces.

So I think that is public, but I do not want to get into what I objected to because I think it is different than that.

Senator FRANKEN. Okay. Let me move on to sleep deprivation. You talked about how sleep deprivation can be torture, and I think you said in combination with other methods. This is what the Bradbury memo says about sleep deprivation: "In this method, the detainee is standing and is handcuffed, and the handcuffs are attached by a length of chain to the ceiling. The detainee's hands are shackled in front of his body, so that the detainee has approximately a 2- to 3-foot diameter of movement. The detainee's feet are shackled to a bolt in the floor."

The memo also says that the detainee wears diapers and that sleep deprivation can cause swelling in the lower extremities. The memo goes on to say that none of this amounts to torture, and it authorized sleep deprivation for up to 180 hours. That is 7½ days.

That is torture, isn't it?

Mr. COMEY. That was my reaction, and I remember that description vividly, Senator. That is one of the things that led me to ask who are we as Americans, and we have to have that conversation about even if someone says it is effective, someone says it does not violate this vague statute, there is this third question that that description cries out for us to answer.

Senator FRANKEN. Okay. I am out of time, but I would say—that was a memo that you approved. That was one of separate methods that was talked about in that one. That was the first Bradbury memo.

Mr. COMEY. Correct.

Senator FRANKEN. Thank you, Mr. Chairman, and thank you, Mr. Comey.

Chairman LEAHY. Thank you.

I see Senator Hirono is back, and I will yield to her, and then Senator Blumenthal is on his way back. I am going to leave to vote. I will not be back as they finish up. It is not out of disinterest in your hearing, Mr. Comey. You and I have known each other for a long time. I also, though, just want to take a moment to com-

pliment Mrs. Comey and all your children. Senators can kind of go in and out and check other notes and whisper back and forth, and I am sure they hear their father and husband a lot, and they have to stay riveted—riveted with interest on everything you are saying. And they are probably thinking, “Wait until we get him home and tell him what we really think.” But I do want to compliment your family.

And I would say the same thing I said to Director Mueller and to Ann Mueller. It does mean a big sacrifice on the part of the family, and I just want you to know that those of us who spend time in Government realize that, and I compliment you on that, too.

We will go to Senator Hirono, and then from her to Senator Blumenthal, and then after that, the Committee will stand in recess, and the record will be kept open until noon on Friday for further questions. Thank you.

Senator HIRONO [presiding]. Thank you very much, Mr. Chairman. I do apologize for having to leave the hearing, but I know that I am going to have an opportunity to chat with you further this afternoon, so thank you for that.

I also apologize if some of the questions have already been covered by my colleagues. I note that the questions regarding waterboarding—and you acknowledged that while you had advocated—you were in disagreement on the use of waterboarding by CIA, but you were overruled in terms of your perspective, but now that potentially you would become the head of the FBI, the FBI does not utilize those forms of interrogation, and you would continue that policy, would you not?

Mr. COMEY. I absolutely would, Senator. The FBI does not use any abusive interrogation techniques, and if I were confirmed, the effort—that would stay the same.

Senator HIRONO. I think that is very important in the context of other agencies using some of these so-called enhanced interrogation techniques that we have an agency, the FBI, which will draw the line on the use of those kinds of techniques.

There has been a lot of discussion around the surveillance programs and the collection of trillions, literally trillions millions of pieces of information in this program. So I wanted to ask you, regardless of the legality or constitutionality of a given surveillance program, do you believe that Government surveillance of U.S. citizens can go too far?

Mr. COMEY. I am certain that there are circumstances in which it could, Senator.

Senator HIRONO. It seems as though in a program where meta data, millions of pieces of information, where do we draw the line at going too far?

Mr. COMEY. Hard for me to answer from this vantage point. I do not know—I am a private citizen at this point. I do not know the details of the programs involving meta data, for example, that are going on now. I have watched testimony from this table by Director Mueller about, for example, the safeguards around the meta data collection, the oversight of Congress, the involvement of the FISA Court, the IG’s involvement. All of those sounded reasonable to me from this distance, but I do not know enough to say at this point.

Senator HIRONO. Well, Director Mueller, when he testified, also said that the collection of this kind of information is very important. He used the description of “connecting the dots,” and you never know where that important connecting dot is going to come from, whether from the collection of millions of this kind of information or not. And if that is the answer, then if you start thinking about what the parameters may be, it seems as though there would not be any parameters because how could you define when that particular dot, critical dot of information, when that would arise? So that troubles a number of us.

So I hope that you will give some thought to what the parameters might be, when can Government go too far in collecting data from millions and millions of U.S. citizens who have done nothing wrong.

I think you also mentioned that you are engaged in—the FBI needs to now engage in a cultural change, acknowledging the threat to us from cyber threats. At the same time, though, the FBI has a very strong mission to go after white-collar and other criminals. So I think there might be some concerns in the law enforcement community as to where the FBI’s priorities will be and what percentage of your mission will involve the kind of intelligence gathering versus the traditional crime-fighting role that the FBI undertakes.

Where do you see that balance? You can respond in terms of the percentage of your resources that will go toward this new kind of crime versus the traditional white-collar and other kinds of crime.

Mr. COMEY. Thank you, Senator. I do not think I can responsibly be too specific from this vantage point. I know that it is essential that the FBI do both, be an intelligence agency and a counterterrorism agency and a counterespionage agency, and also address those vital criminal needs, especially things like public corruption and white-collar crime. But from this vantage point, I would hope to be confirmed and then to get into the job to understand what is going on now before I can make any prescriptions about how I would strike the balance. I know it is a constant challenge of Director Mueller, and I am sure it will be mine, but that is about all I could say from here.

Senator HIRONO. So should you get confirmed, then you would be responsive to questions that we would have that would follow up, and in your role as Director, should you be confirmed, you would be in a much better position to provide us with timely responses to these kinds of questions.

Mr. COMEY. Yes, Senator. If I am confirmed, I suspect you will see a lot of me.

Senator HIRONO. And you would make the commitment to do that?

Mr. COMEY. Yes.

Senator HIRONO. Thank you. I do not know if there have been questions relating to the civilian use of drones. That is a burgeoning area of concern for us. And with the expansion of civilian use of drones, do you have any security concerns about criminals of terrorists using drones to conduct surveillance of potential targets?

Mr. COMEY. I do. I know from just the time even as a private citizen reading about the increasing availability of drones, I watched what to me was a sobering video of someone who had put a firearm on a drone and fired it remotely while flying one of these cheaply acquired drones, a \$100 drone. So it is certainly something that lies in our future, if not in our present.

Senator HIRONO. Do we already have laws that would allow the FBI to go after these kinds of use of drones?

Mr. COMEY. I think so, Senator, but I do not know enough to give you a definitive answer. That is something I would need to understand if I became the Director. But I think that the FBI has authorities that it can—for example, if someone tried to shoot someone using a drone, there would be firearms or attempted homicide statutes that could be available. I do not know if there are any that are specific to drones, though.

Senator HIRONO. I think that is another area that I would ask that you review, because when Director Mueller was here and I asked him other kinds of questions, he said that perhaps this is a good time for us to review whether or not we have very specific laws that address the use of drones by the civilian community, private use of drones.

Mr. COMEY. I will do that, and I will urge the Department of Justice to do it as well.

Senator HIRONO. Thank you. My time is up. Thank you.

Senator BLUMENTHAL [presiding]. Thank you for your patience and for your excellent testimony, and let me begin by thanking you for bringing Claire to the hearing today.

[Laughter.]

Senator BLUMENTHAL. Just to embarrass her.

As a father of a Claire—my daughter is named Claire—I am particularly partial to the name. So you can be me anytime you want, Claire.

[Laughter.]

Senator BLUMENTHAL. And I want to just say that the fact that I am able to joke about one of your children I think reflects the very solid support and the lack of any need to, as they say, “rehabilitate the witness.” But I think that you have done an excellent job today, and I am looking forward to your confirmation.

I do have a few questions, and first, beginning with one of the topics that has been covered today, the interrogation procedures and waterboarding and so forth, I take it not only that you would oppose the use of such enhanced interrogation like waterboarding or other forms of interrogation that could be regarded as torture, but also that you would use the FBI’s resources to investigate those kinds of violations of law if you found reason to think they were occurring.

Mr. COMEY. Correct.

Senator BLUMENTHAL. And there is no question that you would oppose those kinds of procedures within the administration and recommend to the President that prosecution be undertaken if an official of the administration or the military or anyone in the Federal Government engaged in such practices.

Mr. COMEY. That is correct, Senator. I think that would be without lawful authority, so it would be a violation of law.

Senator BLUMENTHAL. Let me turn to another subject that is close to my heart and I think close to anyone who, like yourself, lives in Connecticut—gun violence. And the answer to this question may be self-evident, but I take it that you would support with great vigor and zeal the position of the administration in support of background checks, a ban in illegal trafficking, assault weapons, high-capacity magazines, in other words, the position and proposals of the administration to combat gun violence.

Mr. COMEY. Yes, Senator. I think you will find that I approach that just as Bob Mueller did.

Senator BLUMENTHAL. Thank you. And using the resources of the FBI to investigate violations of our gun laws, as you did in Virginia, not only for their own sake but also because so many of those gun violations are related to other kinds of crime, whether drug dealing or extortion, can you talk a little bit about the importance that you would bring to violations of our gun violence prevention laws as the Director of the FBI?

Mr. COMEY. Yes, Senator. I think in general the enforcement of those laws is essential to crime reduction, especially violent crime. I have always believed that a gun in the possession of a felon or a drug dealer or drug user is a homicide that has not happened yet. And so I think it is important that the Government as a whole approach that very aggressively.

I think the FBI's role in addressing those particular offenses is more in the context of complex violent crime cases, gang cases, things of that sort, and the essential work on the possession and trafficking is more of an ATF responsibility. But I have a passion for this across the board, and I will ensure that we continue to do what Director Mueller has done, look at those seriously in the context of this complex gang case stuff.

Senator BLUMENTHAL. I welcome that passion. I think it is tremendously important because, as you know, one of the arguments made against the improvement of these kinds of laws is that not enough prosecutions are undertaken under existing laws, and I strongly support stronger and more frequent prosecutions under existing laws, even as we move forward to improve those laws. And I take it that you would agree.

Mr. COMEY. Yes.

Senator BLUMENTHAL. Let me turn to an area that I think is very important. You have addressed it in part. I circulated a letter yesterday to my colleagues on the issue of NSA surveillance, and in particular the FISA Court. And I take your point and agree with it that any Assistant United States Attorney or United States Attorney or Department of Justice official who in effect failed to respect a district court judge in seeking a warrant where there was no reasonable suspicion or probable cause to do so would soon lose credibility and would undermine not only his or her credibility but also the office's, and so would be rigorous, as you have been, and I think all of us are who have been Federal prosecutors in that ex parte process.

But in the context of the Federal criminal procedure, there is ultimately a public proceeding when evidence is sought to be introduced in court, and there are challenges to admissibility and law is made in an adversarial process.

There is no such adversarial process in the FISA Court, and so I propose that there be some special advocate, in effect a defender of constitutional principles, to make sure that the other side is heard, if there is another side. I support declassifying and disclosing some of the opinions and rulings where possible, and so I have joined in supporting the measure that Senator Schumer and Senator Durbin mentioned.

But put aside the disclosure and declassification issue. Isn't there a role for the adversarial process in some form when law is made in the FISA Court, whether it is on the meaning of relevant or other kinds of key legal standards and criteria for the issuance of warrants or other kinds of means of surveillance, search, seizure, where constitutional protections of privacy and liberty are implicated.

Mr. COMEY. My honest answer is I do not know, but I think it is a very good question. I have not thought about it well enough to give you a good answer. I would hope that the Department of Justice would take seriously that kind of suggestion and think it through in a way that I cannot sitting here.

Senator BLUMENTHAL. Well, I welcome your receptiveness to thinking more seriously about some kind of adversarial process in the FISA Court so that, in effect, law is the result of litigation rather than simply fiat. And I know that that characterization may strike some as unfair, but I would hope to work with you and I hope you will work with me and other colleagues on trying to reform the FISA Court in that way.

I also, by the way, think that you have raised a very important point that the American public does not fully understand the way the FISA Court works, has no inkling, in fact, in many ways of the way it works. And one of the aspects of the FISA Court unknown to a lot of people is that the Chief Justice acting alone appoints members of the Court. And I think strictly from an appearance standpoint, that could be regarded as raising questions about the accountability as well as the transparency of that procedure. There is no other court, specialized court, that operates in that way, and I understand that the FISA Court is different from the Court of Claims or other similar specialized courts where judges are appointed for a term of years with the advice and consent of the Senate. But I would invite your thinking about that issue as well. I recognize it may not be within your direct purview as the Director of the FBI, but I think in light of your experience as a Federal prosecutor and litigator, I would hope perhaps you would work with us on that issue as well.

Mr. COMEY. Okay.

Senator BLUMENTHAL. Finally, and maybe most important, I join you—I share with you a tremendous admiration and love for the FBI as an institution that has done great good for the country and has some of the most talented and dedicated public servants in America. And I wonder if you have given thought to how the FBI can continue to attract the very best talent, both women and men, to its ranks.

Mr. COMEY. Some, Senator; enough to know that it is something I am keen to learn about, and not just because I have four beautiful, talented daughters sitting behind me, but I know that diver-

sity in all institutions, public and private, is essential to excellence. Especially if you are going to enforce the myriad of laws the FBI has to enforce, you have got to look like America. And so I am keen to know—and I know this is a passion of Bob Mueller's—how they are approaching that. As boring as it sounds for a chief executive, the two most important underlings I think are your head of H.R. and your head of technology. I am eager to learn how they are approaching recruitment, promoting, training people of all stripes. So from this vantage point, that is the best I can say, but I am sure you will hear more from me about it.

Senator BLUMENTHAL. I hope to hear more from you about it, and I hope that you will let us know whenever we can support or help you in that effort, because it is, in my view, with all humility, one of the most important tasks and challenges that you will have as Director of the FBI.

Thank you very much, and, again, my thanks to you and your family. And I am going to ask Senator Coons now to ask whatever questions he may have.

Senator COONS. Thank you. Thank you, Senator Blumenthal, and thank you, Mr. Comey. Thank you for your service to date to the people of the United States, and thank you for the task you are about to take on. I was moved by your comments earlier about Patrice, about the children you have raised together, and about the foster children you have cared for together, and I am grateful for your service. And I think the task you are about to take on as FBI Director is central to the security of the United States, to the enduring vitality of our constitutional liberties, and to the fate of our Nation. So this is a very important task, and I take this confirmation seriously as a result, and I appreciate how seriously you have taken it and the answers you have given so far.

As many of my colleagues have noted previously, your record and prior service during the Bush administration gives you significant familiarity with and some responsibility for some very controversial decisions, in particular with regard to enhanced interrogation techniques. And in my view, in the last administration, legal opinions were improperly used to facilitate acts of what is now broadly understood to be torture. And I appreciate your answers previously in response to the Chairman and will rely on them in my support for your nomination. I think Americans will rely on you to defend their civil liberties in what are difficult times.

Your prior involvement in also addressing the proper scope of surveillance authority is also deeply relevant once again, and here it is my hope you will be a force for openness and transparency as you have committed to this panel today. Particularly with regard to clarifying the legal rules of the road, as Senator Blumenthal was just saying, transparency and openness at this time in particular I think is essential to the role you will be undertaking.

If I might then, could you comment on how you plan to address the current classification standards and whether you would consider loosening them? In response to Senator Durbin earlier, you said that transparency is a key value and that people would be better off if they knew more rather than less. How will you take an affirmative effort to ensure that classification is as minimal as is necessary?

Mr. COMEY. Thank you, Senator. First, as FBI Director, I would try to understand how are we approaching it at the FBI when the FBI is the classifying authority. I have a sense from my time in Government that there is a reflex to classify and to up the classification. But from this vantage point, I do not know how the Bureau is approaching that. And with respect to the broader questions, to the extent I am involved with those issues about FISA Court opinions or other opinions, I would simply be a voice, as I hope I was here, for the importance of the value of transparency, obviously balancing the other things I have to worry about. But in, for example, taking the FISA Court opinions, I think that is largely a question for the Director of National Intelligence, but I would be, I would hope, involved in discussions about that as the Director of the FBI. So I would bring with me that commitment to that value.

Senator COONS. I think Director Mueller has laid out a long and important record on both of these issues, in particular on standing up against torture, and as well, standing for openness and transparency. And it is my hope you will continue in that tradition.

You just mentioned, I think, to Senator Blumenthal that two of the most important folks you will be looking to are your head of H.R. and your head of technology. I am sure you are familiar with Director Mueller's assessment that the FBI is somewhat behind the curve when it comes to countering cyber crime, and a piece of that is not having the personnel needed. And in a time of sequestration, that may be particularly difficult.

How do you plan to ensure the FBI catches up, is current, and is fully participatory in what I think is one of our most important fronts against crime?

Mr. COMEY. I agree very much that it is one of our most important fronts, and you spoke about being behind the curve, and it is a curve that is moving away from us at great speed. The first thing I intend to do is to understand what is going on now, what shortfalls there are. I come in with, I think, Bob Mueller's sense that this is a vital area to be addressed, and to understand where we are falling short, and then to make appropriate tradeoffs if I cannot get the money and resources or to shout to the heavens that I need the money and resources. From this vantage point, I do not know, but it will be something I will focus on very early.

Senator COONS. One of the things I am concerned about and that we spoke about earlier is the amount of both counterfeiting that is coming out of the People's Republic of China—there was a report that Mark Turnage just put out suggesting 70 percent of counterfeit goods worldwide are of Chinese origin; 87 percent of seized goods in the United States are of Chinese origin. And there is a great deal of trade secret theft and of hacking, yet DOJ trade secret cases are relatively rare, between 10 and 20 a year over the last 5 years.

I was wondering what you think U.S. law enforcement could do to be a better partner with companies that are facing either loss of intellectual property or that have become victims of industrial espionage or hacking in some way or have lost trade secrets. How could we be better partners between U.S. law enforcement and the private sector in this area?

Mr. COMEY. I think key to working together better is talking more. I think that coordination, which I know the Bureau has been pushing, to understand the threats—I just spent 8 years in the private sector, two different companies, that were keenly focused on this threat of someone stealing their intellectual property. I think it is vitally important that Government and the private sector speak together very, very closely because the information about the threat often lies in our wonderful balkanized private enterprise system, but it is in those little pockets at all those companies. And so to be able to address it, especially on a global basis, the Bureau needs to find out what is going on in each of those pockets of industry, and that requires conversation, a lot of conversation.

Senator COONS. Last question. I was responsible for a county police agency, and so I am particularly passionate about State and local law enforcement. As the Co-Chair of the Senate Law Enforcement Caucus, I am trying to encourage closer working relationships between Federal, State, and local law enforcement.

In your own experience as U.S. Attorney and other roles in the Department, you have had some real exposure to how it works well when it works well and how it breaks down when it does not. Tell me something about your plans as FBI Director to fully engage with State and local law enforcement, particularly with regard to emerging threats like cyber crime or IP theft, as well as terrorism and other threats to our national security.

Mr. COMEY. I think most importantly I approach it with an understanding born of decades of experience that nobody can do it alone, that Federal, State, and local enforcers in a particular jurisdiction and across jurisdictions have to cooperate and work together. Especially true for the FBI, with so many things on its plate, it has to find the leverage to achieve its goals, and that leverage lies in the amazing people of State and local law enforcement.

So I will understand better once I am in the job, if I am confirmed, but my long practice has been we have got to build those relationships.

Senator COONS. Well, thank you. I appreciate your testimony today. I appreciate your willingness to serve. I note the visible relief on the faces of your family that this hearing is at last coming to an end.

Senator Blumenthal, did you have the closing announcement to make, or should I?

Senator BLUMENTHAL. I am happy to close the hearing, and the record will remain open until Friday at noon. Seeing no other questions, this hearing is adjourned. Thank you very much.

Mr. COMEY. Thank you.

[Whereupon, at 12:43 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Nominations”

Tuesday, July 9, 2013
Dirksen Senate Office Building, Room 226
10:00 a.m.

James B. Comey, Jr., to be Director of the Federal Bureau of Investigation

QUESTIONNAIRE AND BIOGRAPHICAL INFORMATION OF JAMES B. COMEY, JR.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

James B. Comey, Jr.
2. **Position:** State the position for which you have been nominated.

Director, Federal Bureau of Investigation
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Columbia University Law School
435 West 116th St.
New York, New York 10027

Residence: Westport, Connecticut
4. **Birthplace:** State date and place of birth.

1960; Yonkers, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Chicago Law School; October 1982 - June 1985; J.D. 1985

College of William and Mary; August 1978 - May 1982; B.S. 1982
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Senior Research Scholar and Hertog Fellow on National Security Law (2/13 to date)
Columbia University Law School
435 West 116th St.
New York, New York 10027

Director (3/13 to date)
HSBC Group plc
London E14 5HQ, United Kingdom

Member (9/12 to date) (unpaid)
Defense Legal Policy Board
United States Department of Defense (Pentagon)
875 North Randolph Street
Arlington, Virginia 22203

General Counsel (9/10-1/13)
Bridgewater Associates, LP
One Glendinning Place
Westport, Connecticut 06880

Board Member (3/08-3/12) (unpaid)
Alumni Association
One Alumni Drive
P.O. Box 2100
College of William and Mary
Williamsburg, Virginia 23187

University of Chicago Law School (all unpaid)
1111 E. 60th Street
Chicago, Illinois 60637
Visiting Committee Member (est. 9/07-9/10)
Business Advisory Council (2011 – date)
Public Service Advisory Council (2013 – date)

Board Member and Chair (10/05-9/10) (unpaid)
U.S. Chamber of Commerce
National Chamber Litigation Center
1615 H Street NW
Washington, DC 20062

Senior Vice President and General Counsel (9/05-9/10)
Lockheed Martin
6801 Rockledge Drive
Bethesda, Maryland 20817

Deputy Attorney General (12/03-8/05)
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Chair, President's Corporate Fraud Task Force (est. 2003-2005)
Chair, Presidential Board on Safeguarding Americans' Civil Liberties (est. 2003-2005)

United States Attorney (1/02-12/03)
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Managing Assistant United States Attorney (9/96-1/02)
United States Attorney's Office, Eastern District of Virginia
600 East Main Street
Richmond, Virginia 23219

Acting Chairman, Weed & Seed of Richmond, Inc. (1998-1/02) (non-profit) (unpaid)
c/o United States Attorney's Office
600 East Main Street
Richmond, Virginia 23219

Board Member
The Healing Place, Inc. (2000-1/02) (non-profit addressing homelessness) (unpaid)
c/o The United Way
200 East Broad Street
Richmond, Virginia 23219

Adjunct Professor (1994-1/02)
University of Richmond Law School
28 Westhampton Way
Richmond, Virginia 23173

Associate & Partner (8/93-9/96)
McGuire Woods, LLP
901 East Cary Street
Richmond, Virginia 23219

Deputy Special Counsel (6/95-7/95)
U.S. Senate Special Committee to Investigate Whitewater
and Related Matters
United States Senate
Washington, DC 20510
(Held position while an associate at McGuire Woods and the firm billed the U.S. Senate
for my services.)

Assistant United States Attorney (est. 10/87-8/93)
United States Attorney's Office, Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Associate (est. 9/86-10/87)
Gibson, Dunn & Crutcher, LLP
200 Park Avenue
New York, New York 10166

Law Clerk (9/85-9/86)
Hon. John M. Walker, Jr.
United States Courthouse
Foley Square
New York, New York 10007

Summer Associate (6/84-9/84)
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

Summer Associate (7/83-9/83)
McCarter & English
4 Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

Law Clerk (6/82-8/82)
Thomas H. Bruinooge, Esq.
85 Orient Way
Rutherford, New Jersey 07070

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. Military. I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

2011 Carter O. Lowance Fellowship, William and Mary Law School

2008 Honorary Doctor of Laws, College of William and Mary

1994 Director's Award for Superior Performance, Department of Justice

1993 Henry L. Stimson Medal from New York City Bar Associate as outstanding Assistant U.S. Attorney in the Southern District of New York

1992 Director's Award for Superior Performance, Department of Justice

1982 James Frederick Carr Cup for Character, Scholarship & Leadership, College of William and Mary

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Virginia State Bar – Professionalism Faculty (2000-1/02)

Virginia Bar Association – Task Force on Professionalism (1998-1/02)

Virginia Bar Association – Special Committee on Issues of National and State Importance (2000-1/02)

Association of General Counsel, Member (10/05-9/10)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York (1986)

Virginia (1994)

Connecticut Authorized In-house Counsel (2011-13)

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U.S. District Courts for the Southern and Eastern Districts of New York (1987)

U.S. Court of Appeals for the Second Circuit (1987)

U.S. District Court for the Eastern District of Virginia (1993)

U.S. Court of Appeals for the Fourth Circuit (1996)

United States Supreme Court (2004)

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Colonies Wilde Lake Association, Richmond, Virginia (1993-5/02)

Colonies Swim & Tennis, Richmond, Virginia (1993-5/02)

Board member, The Healing Place, Inc., Richmond, Virginia (2000-1/02)

Acting Chairman, Weed & Seed of Richmond, Inc., Richmond, Virginia (1998-1/02)

Sultana Ridge Pool, Yorktown Heights, New York (2002-04)

PTA, Richmond, Virginia (1993-2001); Somers, New York (2002-03); McLean, Virginia (2004-10)

Somers High School Booster Club, Somers, Connecticut (2002-03)

Highlands Swim Club, McLean, Virginia (2004-08)

Chesterbrook Swim Club, McLean, Virginia (2008-10)

Morrow United Methodist Church, Maplewood, New Jersey (1988-93)

Reveille United Methodist Church, Richmond, Virginia (1993-2002)

Yorktown Heights United Methodist Church, Yorktown Heights, New York (2002-04)

Mt. Olivet United Methodist Church, Arlington, Virginia (2004-07)

Metropolitan United Methodist Church, Washington, DC (2007-10)

Southport Congregational Church, Southport, Connecticut (2010-present)

TPC Potomac at Avenel Farm Golf Club, Potomac, Maryland (2008-present)

Westport Weston YMCA, Weston, Connecticut (2010-present)

Aspetuck Valley Country Club, Weston, Connecticut (2011-present)

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in organization activities, although the organization may label me as a member by virtue of my financial contributions.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None to my knowledge.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all titles, publishers and dates of books, articles, reports, letters to the editor, editorials or other published material, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

James B. Comey, Letter to the Editor, "Leave Emotion out of the Abortion Debate," The New York Times, May 2, 1982.

James B. Comey, "Wide-eyed Visitor to Africa Discovers Blessings of America," The Wall Street Journal, September 12, 1983 opinion/editorial page.

James B. Comey, Letter to the Editor, "High Hurdle to Boosting New York Wine," The New York Times, April 7, 1984 (responding to criticism of New York Times editorial opposing proposal to permit New York supermarkets to sell only New York wines).

James B. Comey, Letter to the Editor, "How Far Should Society Butt in on Smokers," The Wall Street Journal, May 18, 1984 (responding to editorial about cigarette smokers' rights).

Deputy Attorney General James B. Comey, Letter to the Editor, "In Defense of Civil Liberties," The New York Times, September 27, 2004 (responding to criticism of Civil Liberties board).

Deputy Attorney General James B. Comey, Letter to the Editor, "Re: Politics and the Patriot Act," The New York Times, April 28, 2004 (responding to editorial about delayed notification search).

"Intelligence Under The Law," 10 GREEN BAG 2D 439 (2007) (Deputy AG speech at NSA Law Day, May 2005).

"Holder's Reasonable Decision," The Washington Post, opinion/editorial page (November 20, 2009) (with Jack Goldsmith).

"The Role of General Counsel in a Crisis," book chapter in "Defending Corporations and Individuals in Government Investigations" (West 2011).

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify any testimony, official statements or other communications relating to public policy or legal interpretation, including through a review of my personal files and searches on publicly available electronic databases. Despite my searches, there may be other items I have been unable to identify, find or remember. I have located the following:

June 19, 2002, testimony before the Senate Judiciary Committee Subcommittee on Crime and Drugs concerning "Penalties for White Collar Criminal Offenses."

November 14, 2002, testimony before the United States Sentencing Commission Ad Hoc Advisory Group on Organizational Sentencing Guidelines.

October 29, 2003, testimony before the Senate Judiciary Committee, Confirmation hearing on the Nomination of James B. Comey to be Deputy Attorney General, Department of Justice.

March 24, 2004, testimony before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, hearing on the FY 2005 Budget.

April 14, 2004, testimony before the Senate Judiciary Committee hearing on "Preventing and Responding to Acts of Terrorism: A Review of Current Law."

September 22, 2004, testimony before the Senate Judiciary Committee hearing on "A Review of Counter-Terrorism Legislation and Proposals."

June 8, 2005, testimony before the House Judiciary Committee on the Reauthorization of the PATRIOT ACT.

June 16, 2005, Advisory Committee on Federal Rules, remarks on Proposal to Amend Rule 16, Boston, MA.

July 20, 2005, testimony before the Senate Judiciary Committee hearing on "Reporters' Privilege Legislation: Issues and Implications of S. 340 and H.R. 581, the Free Flow of Information Act of 2005."

May 3, 2007, testimony before the House Judiciary Committee Subcommittee on Commercial and Administrative Law hearing on "The Continuing Investigation into the U.S. Attorney Controversy."

May 15, 2007, testimony before the Senate Judiciary Committee hearing on "Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys: Part IV."

June 14, 2007, testimony before the House Permanent Select Committee on Intelligence closed hearing on "NSA Terrorist Surveillance Program and the FISA system."

June 27, 2007, testimony before the Senate Intelligence Committee closed hearing on Terrorist Surveillance Program and FISA.

June 8, 2011, Senate Judiciary Committee hearing on "The President's Request to Extend the Service of Director Robert Mueller of the FBI until 2013."

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other material I have been unable to identify, find or remember. The records of my speeches that I have located are set forth below.

In addition, during my service in the United States Attorney's Office for the Southern District of New York and as the Deputy Attorney General, I gave essentially the same or very similar speeches on some topics on multiple occasions. They are described below to the best of my ability, but I cannot reconstruct the specific dates and other details of each such speech. I have supplied documents relevant to these speeches whenever possible.

From 1997-02, I gave a number of speeches about Project Exile and the importance of prosecuting gun possession crimes (notes only or no notes).

April 1998, keynote address about importance of reducing demand for drugs, Metro Richmond Coalition Against Drugs, Richmond, VA (notes only).

From 1/02 to 8/05, I gave many talks within and outside the Department of Justice about white collar crime, gun crime (including the Violent Crime Impact initiative I led as Deputy Attorney General), terrorism, the PATRIOT ACT, and/or the work of federal prosecutors (usually without notes or from notes only).

September 25, 2002, Corporate Fraud Conference, Washington, D.C. (notes only).

June 15, 2003, Connecticut Bar Association Panel on Counterterrorism/Civil Rights (notes only).

June 17, 2003, Law Library of Congress, "The Holmes Debates" (notes only).

August 29, 2003, Convocation Address, College of William and Mary, Williamsburg, VA.

December 11, 2003, DEA 30th Anniversary Commemoration, Alexandria, VA.

January 29, 2004, "Trends in White Collar Criminal Enforcement," Federalist Society Luncheon, Washington, D.C. (notes only).

February 5, 2004, "Mitigating the Impact of Intellectual Property Theft and Counterfeiting," United States Chamber of Commerce Strategic Leadership Forum.

February 20, 2004, Installation as Deputy Attorney General, Great Hall, Department of Justice, Washington, D.C.

March 16, 2004, Judicial Conference of the United States on issues of concern to judiciary, Supreme Court Building, Washington, D.C.

March 22, 2004, "The Meaning of Valor," Medal of Valor Awards ceremony, Great Hall, Department of Justice, Washington, D.C.

March 29, 2004, "Fighting Terrorism and Preserving Civil Liberties," Fox Lecture, New York Crime Commission, New York, New York.

March 30, 2004, U.S. Marshals Director's Awards, Alexandria, VA.

April 23, 2004, DEA Graduation Ceremony, Quantico, Virginia (notes only).

May 5, 2004, Civil Division Office of Immigration Litigation Annual Conference, Washington, D.C.

May 5, 2004, National Network of Youth Ministries National Mentoring Recruitment Campaign, Washington, D.C.

May 10, 2004, Portland Community Forum on Counter-Terror Challenges (notes only).

May 13, 2004, American Bar Association, Institute on Health Care Fraud, New Orleans, Louisiana.

May 19, 2004, Fighting Terrorism and Preserving Civil Liberties," American Law Institute, Washington, D.C.

June 2004, Richmond Police Department Graduation, Richmond, VA.

June 1, 2004, Deputy Attorney General Comey Remarks Regarding Jose Padilla.

June 14, 2004, "Trends in White Collar Criminal Enforcement," American Corporate Counsel Association, Alexandria, Virginia (copies not located).

June 16, 2004, National Project Safe Neighborhoods Conference, Kansas City, Missouri (notes only).

July 20, 2004, OCEDTF National Leadership Conference, Washington, D.C. (first page of text unavailable).

July 21, 2004 "The State of the Department," 9th Circuit Judicial Conference, Monterrey, California (notes only).

August 30, 2004, Crimestoppers International conference, Cincinnati, Ohio (notes only).

September 17, 2004, Federal Prison Industries 70th anniversary conference, Washington, D.C.

September 30, 2004, PATRIOT Act, Americas Conference, Miami, Florida.

October 1, 2004, "The Meaning of Valor," Medal of Valor Awards ceremony, Richmond, Virginia.

October 18, 2004, "Lessons Learned from Recent Corporate Debacles," National Association of Corporate Directors," Washington, D.C. (notes only).

October 20, 2004, Intellectual Property Student Summit, Great Hall, Department of Justice, Washington, D.C.

October 22, 2004, "The Meaning of Valor," Law Enforcement Awards Ceremony, Pittsburgh, Pennsylvania.

October 22, 2004, Pittsburgh Community Forum on Counter-Terror Challenges (notes only; please see notes from May 10, 2004 Portland Community Forum).

November 9, 2004, "Why Project Safe Neighborhoods Matters," American Prosecutors Research Institute Conference, Alexandria, Virginia.

November 17, 2004, "Lessons Learned From Recent Corporate Debacles," CNBC Conference, Washington, D.C. (please see notes from 10/18/04 speech).

December 6, 2004, Conference on Partnering to Prevent Truancy, Washington, D.C.

February 11, 2005, "Fighting Terrorism and Preserving Civil Liberties," Virginia Bar Criminal Law Section, Williamsburg, Virginia (please see notes from March 23, 2005 and April 15, 2005).

March 7, 2005, Symposium on Victims of Federal Crime, Atlanta, Georgia (notes only).

March 23, 2005, "Fighting Terrorism and Preserving Civil Liberties," Duke Law School, Durham, North Carolina (notes only).

April 15, 2005, "Fighting Terrorism and Preserving Civil Liberties," Emroch Lecture, University of Richmond Law School, Richmond, Virginia.

April 15, 2005, "Lessons Learned From Recent Corporate Debacles," Leadership Metro Richmond, Richmond, Virginia (notes only).

May 6, 2005, International Fugitive Conference, Toronto, Canada (notes only).

May 16, 2005, National Law Enforcement Memorial Remembrance, Washington, D.C.

May 20, 2005, "Intelligence Under the Law," NSA Law Day, Ft. Meade, Maryland.

May 23, 2005, "Relationship with the Judiciary," 7th Circuit Judicial Conference, Washington, D.C. (notes only).

May 24, 2005, National Gathering of Tribal Justice Officials, Washington, D.C.

May 26, 2005, Iraq Regime Crimes Liaison Office Awards Ceremony, Department of Justice, Washington, D.C. (copies not located).

July 11, 2005, "Do the Write Thing" awards ceremony, Washington, D.C. (notes only).

July 12, 2005, National Sentencing Policy Institute, Washington, D.C. (notes only).

July 27, 2005, National Advocacy Center First AUSA conference (by video) (notes only).

August 15, 2005, Farewell Remarks, Great Hall, Department of Justice, Washington, D.C.

May 17, 2006, Commencement Address, Cleveland State Law School, Cleveland, Ohio.

June 25, 2006, Khobar Towers Remembrance, Arlington National Cemetery.

July 19, 2006, "Becoming a Star," Summer Associate Class, Kirkland & Ellis, Washington, D.C. (notes only).

August 2006, "Lessons of the Enron Era," Directors' Roundtable, Washington, D.C.

October 20, 2006, Induction of Charles Rosenberg as U.S. Attorney for Eastern District of Virginia, U.S. Courthouse, Alexandria, Virginia (notes only).

May 20, 2007, "Lesson of the Enron Era," Commencement Address at William Mitchell School of Law, St. Paul, Minnesota (notes only).

June 14, 2007, Defense Industry Initiative on Business Ethics and Conduct, J.W. Marriott Hotel, Washington D.C. (copies not located).

October 10, 2007, Brookings Institution Conference on Prosecutorial Misconduct (notes only).

November 15, 2007, "Can We Talk? Seeking Common Ground in Fighting Terrorism," ABA Standing Committee on National Security, Washington, D.C.

December 4, 2007, "Meaning of AUSA/Meaning of Life," EDVA District Conference, Alexandria, Virginia.

February 9, 2008, Charter Day, College of William and Mary, Williamsburg, VA.

February 21, 2008, "Lessons from the Enron Era," University of North Carolina Law School, Chapel Hill, NC (please see notes from August 2006 and October 2, 2009).

March 4, 2008, "Integrity, Public Trust, and Prosecution," Vera Institute Justice Address, Harvard Club, New York, New York.

March 14, 2008, "Lessons from the Enron Era," Barristers Conference, Maui, Hawaii.

April 16, 2008, Green Award Luncheon, University of Richmond Law School, Richmond, Virginia.

June 3, 2008, "Integrity and Prosecution," UJA Criminal Justice Committee, Harmonie Club, New York, New York.

September 10, 2008, Practicing Law Institute, New York, New York (notes only).

September 15, 2008, District of Oregon U.S. Attorney Conference, Bend, Oregon (notes only).

September 16, 2008, "Seeking Common Ground on National Security," Seattle University Law School, Seattle, Washington (notes only)

October 2, 2008, Mandel Legal Aid Clinic, University of Chicago Law School, Chicago, Illinois.

October 28, 2008, "To be an AUSA," National Advocacy Center, Columbia, South Carolina (notes only)

February 23, 2009, "Why Public Service," Public Service Forum, Dickenson College, Carlisle, Pennsylvania.

March 31, 2009, "Can We Talk? Seeking Common Ground in Fighting Terrorism," Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, Minneapolis, Minnesota.

May 8, 2009, NYU Center on Administration of Criminal Law, New York, New York (notes only)

June 4, 2009, Chief Legal Officer Forum, New York, New York (notes only)

August 28, 2009, Convocation Address, College of William and Mary, Williamsburg, Virginia.

September 10, 2009, "Leading as a GC," General Counsel Roundtable, Arlington, Virginia.

September 25, 2009, George Wythe Lecture, William and Mary Law School, Williamsburg, Virginia.

October 2, 2009, "Lessons from the Enron Era," District Conference, Northern District of Mississippi, Oxford, Mississippi (notes only).

October 15, 2009, Richmond Crimestoppers 25th Anniversary, Richmond, Virginia.

March 23, 2010, All-U.S. Attorney Conference, Tempe, Arizona (notes only).

April 14, 2010, "Making a Profit," Board of Contract Appeals Judges Association, Alexandria, Virginia.

May 6, 2010, "Can We Talk? Seeking Common Ground in Fighting Terrorism," National Security Law Committee of the D.C. Bar Association, Washington, D.C.

March 14, 2011, William and Mary Law School Lowance Fellowship Lunch.

November 13, 2011, DNI Inspector General staff (notes only).

March 9, 2012, dinner remarks about charity and character to Friendly Sons of St. Patrick, Westchester Dinner, Tarrytown, New York.

April 12, 2013, Columbia Law's Center for Constitutional Governance Conference on "The Next Four Years: Major Issues In Constitutional Governance."

April 17, 2013, "How to be a Star," Columbia Law Students (notes only).

May 21, 2013, "Institutional Culture and Leadership," Conference of Inspectors General, Patent and Trademark Office Conference Center, Alexandria, Virginia (notes only).

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Date	News Source	Title
1. 08/08/05	<i>Washington Post</i>	"Lockheed Puts Faith In Tough Lawyer; Compliance Is Focus Of New Legal Chief"
2. 04/27/05	<i>Buffalo News (New York)</i>	"Rigases Called 'Crooks' Who Corrupted Firm; Head of Fraud Squad Said Rigas Case Had 'Everything You See In Corporate Crime'"
3. 03/03/05	<i>Las Vegas Review Journal (Nevada)</i>	"Authorities Tout Success of Anti-Crime Initiative"
4. 10/02/04	<i>Richmond Times Dispatch (VA)</i>	"Federal Officials See Progress In Fighting Richmond Gangs"
5. 07/21/04	<i>CNBC News Transcripts</i>	"James Comey Discusses Corporate Fraud Cases"
6. 07/12/04	<i>AP</i>	"Corporate Crackdown Reaches High Point"
7. 06/27/04	<i>CBS News Transcripts</i>	"Dr. Sam Waksal; Bad business decisions that have put the former ImClone CEO in prison"

			for seven years”
8.	06/02/04	<i>CNN.com</i>	“U.S.: Suspected ‘dirty bomb’ plot included plan to blow up apartments”
9.	06/02/04	<i>The Washington Post</i>	“U.S. Details Case Against Terror Suspect”
10.	06/01/04	<i>CNN Live Event/Special</i>	“Justice Department Briefing on Jose Padilla Justice Department Briefing on Jose Padilla”
11.	04/06/04	<i>AP</i>	“Even adversaries have good things to say about new deputy attorney general”
12.	04/06/04	<i>AP State & Local Wire</i>	“New deputy attorney general has admirers among friends, foes”
13.	09/15/03	<i>Los Angeles Times</i>	“Taking Center Stage; Prosecutor James Comey Moves to the Forefront in Wall Street Cases
14.	06/30/03	<i>Today</i>	“US Attorney James Comey Talks About Prosecuting Martha Stewart and Other White Collar Crimes”
15.	06/30/03	<i>Virginia Lawyers Weekly</i>	“Corporate Scandals Keep U.S. Attorney James B. Comey Busy”
16.	06/16/03	<i>New York Observer</i>	“Meet Martha’s Prosecutor”
17.	06/13/03	<i>The Evening Standard (London)</i>	“America’s Celebrity Prosecutors; Chasing the White Collar Crooks Puts Top Lawyers on the Glory Trail”
18.	06/05/03	<i>Chicago Tribune</i>	“Steward Indicted for Stock Fraud, Quits as CEO”
19.	06/05/03	<i>New York Daily News</i>	“Martha hit, the Quits, Pleads Guilty and Steps Down from Jobs
20.	03/05/03	<i>Newsday</i>	“James Comey, U.S. Attorney from Southern District of New York, and Some High Profile Corporate Crime Cases He is Investigating”
21.	01/30/03	<i>The Journal News</i>	“U.S. Attorney Tackles White Collar Crime”
22.	12/29/02	<i>New York Daily News</i>	“At War with Terror: U.S.

			Attorney James Comey's Mission"
23.	12/26/02	<i>The Journal News</i>	"U.S. Attorney Shares Spotlight"
24.	12/21/02	<i>New York Times</i>	"Empathy Shapes a Prosecutor, a Past Victim of Violence and Greed"
25.	11/26/02	<i>The Osgood File (CBS)</i>	"Federal Authorities Break Identity Theft Ring"
26.	09/14/02	<i>The Economist</i>	"Out to Catch the Big Fish"
27.	08/06/02	<i>Business Center (CNBC)</i>	"James Comey, U.S. Attorney for the Southern District of New York, Discusses Corporate Fraud Lawsuits and Penalties"
28.	08/04/02	<i>New York Post</i>	"Wall Street Prosecutor Bullish on His New Job"
29.	11/25/01	<i>Cleveland Plain Dealer</i>	"Richmond, Va., Persuades Bad Guys to Drop Their Guns"
30.	02/04/01	<i>Richmond Times Dispatch</i>	"Pardon of Rich Stunned Prosecutor; Comey was Once Assigned to Case"
31.	09/28/00	<i>The Baltimore Sun</i>	"Md. Crimes Effort Debated. City Should Follow 'Exile' Program in Va., Ehrlich Says. Battaglia Defends 'Disarm'"
32.	04/12/00	<i>Christian Science Monitor</i>	"A Gun Control Plan that Even the NRA Can Love"
33.	04/01/00	<i>Calgary Herald</i>	"Free Ride Out of State; Gun Means Exile"
34.	01/20/00	<i>Los Angeles Times</i>	"Making A Federal Case Out of Guns"
35.	10/10/99	<i>Morning Call</i>	"Feds Help Easton Fight Crime"
36.	10/12/99	<i>Milwaukee Journal Sentinel</i>	"In Virginia, A Tough Stance on Gun Crime Appears to Hit the Target"
37.	09/11/99	<i>Washington Post</i>	"Federal-Local Gun Control Venture Stymied by Success"
38.	09/05/99	<i>The Houston Chronicle</i>	"Tougher Firearms Laws Put Convicted Felon Under Gun"
39.	07/05/99	<i>Richmond Times Dispatch</i>	"Morrissey is Jailed on

		Contempt Charge"
40.	06/10/99	<i>USA Today</i>
41.	05/14/99	<i>Richmond Times Dispatch</i>
42.	04/12/98	<i>Richmond Times Dispatch</i>
43.	02/22/97	<i>Richmond Times Dispatch</i>

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

United States Attorney, Southern District of New York; appointed by President George W. Bush (1/02 to 12/03)

Deputy Attorney General of the United States; appointed by President George W. Bush (12/03-8/05)

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

14. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Law Clerk, Hon. John M. Walker, Jr., Southern District of New York (1985-86)

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Senior Research Scholar and Hertog Fellow on National Security Law
(2/13 to date)
Columbia University Law School
435 West 116th St.
New York, New York 10027

Director (3/13 to date)
HSBC Group plc
London E14 5HQ, United Kingdom

Member (9/12 to date) (unpaid)
Defense Legal Policy Board
United States Department of Defense (Pentagon)
875 North Randolph Street
Arlington, Virginia 22203

General Counsel (9/10-1/13)
Bridgewater Associates, LP
One Glendinning Place
Westport, Connecticut 06880

Board Member and Chair (10/05-9/10) (unpaid)
U.S. Chamber of Commerce
National Chamber Litigation Center
1615 H Street NW
Washington, DC 20062

Senior Vice President and General Counsel (9/05-9/10)
Lockheed Martin
6801 Rockledge Drive
Bethesda, Maryland 20817

Deputy Attorney General (12/03-8/05)
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Chair, President's Corporate Fraud Task Force (est. 2003-2005)
Chair, Presidential Board on Safeguarding Americans' Civil Liberties (est. 2003-2005)

United States Attorney (1/02-12/03)

Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Managing Assistant United States Attorney (9/96-1/02)
United States Attorney's Office, Eastern District of Virginia
600 East Main Street
Richmond, Virginia 23219

Acting Chairman, Weed & Seed of Richmond, Inc. (1998-1/02) (non-profit) (unpaid)
c/o United States Attorney's Office
600 East Main Street
Richmond, Virginia 23219

Adjunct Professor (1994-1/02)
University of Richmond Law School
28 Westhampton Way
Richmond, Virginia 23173

Associate & Partner (8/93-9/96)
McGuireWoods, LLP
901 East Cary Street
Richmond, Virginia 23219

Deputy Special Counsel (6/95-7/95)
U.S. Senate Special Committee to Investigate Watergate
and Related Matters
United States Senate
Washington, DC 20510
(Held position while an associate at McGuire Woods and the firm billed the U.S. Senate for my services.)

Assistant United States Attorney (est. 10/87-8/93)
United States Attorney's Office, Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Associate (est. 9/86-10/87)
Gibson, Dunn & Crutcher, LLP
200 Park Avenue
New York, New York 10166

Law Clerk (9/85-9/86)
Hon. John M. Walker, Jr.
United States Courthouse

Foley Square
New York, New York 10007

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I have spent much of my career as an attorney with the Department of Justice, first as an AUSA investigating and prosecuting a wide range of matters in New York and Virginia, then as the United States Attorney in Manhattan, and finally as the Deputy Attorney General. My time with the Department of Justice was preceded by a year as an associate at a big law firm focused on civil litigation and then broken up by a three-year stint with a large law firm in Richmond, where I did mostly civil trial work. Since leaving government service in 2005, I have been general counsel of a prominent public company and a well-known private investment manager. The focus in both those general counsel roles was on managing lawyers, both inside and outside the companies, supervising complex matters, and advising the senior leadership of the firm on a wide variety of matters.

1986-87: commercial litigation
1987-93: criminal prosecution
1993-96: commercial litigation and criminal defense
1996-2001: criminal prosecution
2001-05: supervising government lawyers/agents/employees
2005-13: general counsel to companies
2013: academic

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

For much of my career, my client was the United States. Outside of government service, I have represented mostly institutions, both as outside counsel and as in-house general counsel. I also did a small amount of criminal defense work representing individuals during my time at a Richmond law firm.

1986-87: large accounting firm, accountant's liability defense
1987-93: federal criminal prosecution

1993-96: manufacturing company, toxic tort defense; railroad, FELA defense; various corporate clients, internal investigations and representation during government investigations; criminal defense trial
 1996 to 2001: federal criminal prosecution
 2001-05: United States government
 2005-13: the companies where I was employed

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

1986-2001: all litigation, 100%
 2002-13: supervising litigation as well as many other areas, est. 75%

Court appearance frequency:

1986-87: not at all
 1987-93: frequently as prosecutor
 1993-96: occasionally
 1996-2003: occasionally
 2003-05: once
 2005-13: not at all

- i. Indicate the percentage of your practice in:

For the periods during which I litigated:

1. federal courts: 100% when with the government; 20% when in private practice);
2. state courts of record: 0% when with the government; 80% when in private practice;
3. other courts;
4. administrative agencies.

- ii. Indicate the percentage of your practice in:

For the periods during which I litigated:

1. civil proceedings: 0% when with the government; 80% when in private practice;
2. criminal proceedings: 100% when with the government; 20% when in private practice.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

25 (sole counsel in 18; chief counsel in 4; co-counsel in 3)

- i. What percentage of these trials were:

1. Jury, 95%; and
2. non-jury, 5%.

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Represented the United States at Oral Argument in Devenpeck v. Alford, November 2004.

Brief of Amici Curiae Kenneth B. Mehlman et al. as Amici Curiae Supporting Respondents, *Hollingsworth v. Perry*, No. 12-144 (2012). Copies attached.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *United States v. John Gambino, et al.*, 88 CR 919 (Judge Leisure, Southern District of New York) (1991-93). Served as lead prosecutor in racketeering, murder, and drug trafficking case against members of La Cosa Nostra in New York. Case was tried during first six months of 1993. Lead defendants John and Joe Gambino were convicted of bail jumping, but jury hung on remaining charges. They and one other defendant (Mannino) then pled guilty before retrial and the fourth defendant (Romano) was convicted at a trial after I left the Southern District of New York for Richmond.

Co-counsel:

Patrick J. Fitzgerald (then Assistant U.S. Attorney in Southern District of New York)
Skadden Arps
155 N. Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

Defense counsel:

George Santangelo (John Gambino)
Suite 2100
225 Broadway
New York, New York 10007-3001
(212) 267-4488

Bruce Cutler (Joe Gambino)
41 Madison Avenue
New York, New York 10010
(212) 233-6100

Charles Carnesi (Lorenzo Mannino)
34 Daniel Rd N
North Massapequa, New York 11758-1915
(718) 855-6646

Howard Leader (Matteo Romano)
111 Broadway 12th Fl
New York, New York 10006-1901
(212) 753-3794

(2) United States v. Paul Tinnirello, et al., 90CR428 (Judge Cedarbaum, Southern District of New York) (1989-93). Served as sole prosecutor of racketeering, robbery, and theft case against group of robbers and fences operating out of Manhattan's 47th Street jewelry district. After two leaders pleaded guilty, seven defendants were tried during April and May 1991. Four were convicted, three acquitted. Affirmed, United States v. Tinnirello, 998 F.2d 53 (2d Cir. 1993).

Defense counsel:

Lawrence V. Carra (Paul Tinnirello)
114 Old Country Road
Mineola, New York 11501
(516) 742-1135

Harriet B. Rosen (Lorenzo Gregory)
240 W 23rd St
New York, New York 10011-2305

(212) 366-6166

Alfred F. Brown (Frank Mucchiello)
655 Mosswood Ave
Orange, New Jersey 07050-3024
(973) 643-8098

Jacob R. Evseroff (Joseph Disomma)
186 Joralemon St
Brooklyn, New York 11201-4326
(718) 875-0903

Anthony L. Ricco (Frank Tinnirello)
361 Broadway
New York, New York
(212) 629-4995

Jo Ann Harris (Michael Pugliese)
Scholar in Residence
Pace University School of Law
78 N. Broadway
White Plains, New York 10603
(914) 422-4401

Howard Mulholland (Charles Lachterman)
83-74 Talbot Avenue, #1E
Kew Gardens, New York 11415
(Last known address)

(3) United States v. Joel Walker Harris , 3:97CR141 (Judge Spencer, Eastern District of Virginia) (1996-98). Served as lead prosecutor in racketeering and fraud case against Richmond businessman, who was former political aide in Richmond, and his wife. Harris had his wife pose as wealthy heiress to obtain bank financing for their corporate schemes. Both pled guilty before trial.

Co-counsel:

Robert E. Trono (then Assistant U.S. Attorney, EDVA)
Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, Maryland 20817
(301) 897-6000

Defense counsel:

Craig Cooley

3000 Idlewood Avenue
Richmond, Virginia 23221
(804) 358-2328

Edward E. Scher
316 W. Broad Street
Richmond, Virginia 23219
(804) 644-0711

(4) United States v. Leonidas Young , 3:98CR302 (Judge Williams, Eastern District of Virginia) (1998-2000). Served as lead prosecutor in racketeering, fraud, and corruption case against Richmond's former mayor. Investigation and indictment exposed kickbacks to Mayor Young, as well as his efforts to obstruct our investigation. Case resolved by guilty plea to racketeering, fraud, and obstruction on eve of trial.

Co-counsel:
Robert E. Trono (then Assistant U.S. Attorney, EDVA)
Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, Maryland 20817
(301) 897-6000

Defense counsel:

Michael Morchower
9 East Franklin Street
Richmond, Virginia 23219
(804) 643-0147

(5) United States v. Thomas Wilkinson and Edward Conk , 3:95CR68-01 (Judge Merhige, Eastern District of Virginia) (1995-96). This was a federal criminal case in which I served as defense counsel for Thomas Wilkinson, a businessman accused of fraud and money laundering. Wilkinson and his partner, Edward Conk, were accused of bilking millions from an investor in their medical management companies. Case tried in federal court in Richmond for two weeks in December 1995. My client was convicted on all charges and went to federal prison. Affirmed , United States v. Wilkinson, 137 F.3d 214 (4th Cir. 1998).

Co-counsel:

Richard Cullen (co-counsel for Wilkinson)
McGuireWoods, LLP
901 East Cary Street
Richmond, Virginia 23219
(804) 775-1000

Dennis W. Dohnal (Conk)

The McCammon Group
6641 West Broad Street, Suite 400
Richmond, Virginia 23230
804-343-0922

Prosecutor:

Assistant U.S. Attorney David Maguire
U.S. Attorney's Office
600 East Main, Suite 1800
Richmond, Virginia 23219
(804) 819-5400

(6) United States v. Anthony Dawkins, 88 CR 526 (Judge Edelstein, Southern District of New York) (1988-89). Served as sole prosecutor of conspiracy and interstate theft charges against leader of ring involved in theft of American Express travelers checks. Case involved Dawkins's use of figures in the New York art world to travel abroad and falsely report large amounts of travelers checks stolen. Tried in April 1989 in U.S. District Court in Manhattan. Dawkins was convicted.

Defense counsel:

Howard Mulholland
83-74 Talbot Avenue, #1E
Kew Gardens, New York 11415
(Last known address)

(7) United States v. Herbert Smith and Joseph Peeples, 85 CR 434 (Judge Keenan, Southern District of New York) (1989-90). Served as sole prosecutor of arms export case based on the defendants' effort to export military helicopters to Iran. Case was tried in November 1989 in U.S. District Court in Manhattan and both defendants were convicted. Affirmed, United States v. Smith, 918 F.2d 1082 (2d Cir. 1990).

Defense counsel:

Michael Sporn (Smith)
Suite 2199
225 Broadway
New York, New York 10013-2909
(212) 791-1200

Martin Fogelson (Peeples)
South Tower 12th Floor
470 Park Ave South
New York, New York 10016-6819
(212) 679-4262

(8) United States v. Osumau Kwakye , 87 CR 962 (Judge Keenan, Southern District of New York) (1988-89). Served as sole prosecutor of drug importation case stemming from investigation of West African heroin trade. Case involved cooperating witnesses and undercover tapping. It was tried in 1989 in U.S. District Court in Manhattan and Kwakye was convicted.

Defense counsel:

Barry Weinstein
888 Grand Concourse
Bronx, New York 10451-2802
(718) 665-9000

(9) United States v. Khoroush Bakhtiari , 88 CR 395 (Judge Sand, Southern District of New York) (1988-90). Served as sole prosecutor of weapons and prison escape case against Iranian national. Bakhtiari was an aspiring terrorist who was arrested with a frightening array of weapons as he tried to rent a high-floor apartment near the United Nations. While in federal custody, he escaped by sliding down a rope made of dental floss from 7th floor of federal jail, but was apprehended. Case was tried in August 1989 in U.S. District Court in Manhattan and Bakhtiari was convicted. Affirmed in part, vacated in part (for resentencing), United States v. Bakhtiari, 913 F.2d 1053 (2d Cir. 1990).

Defense counsel:

John P. Curley
Federal Defender Services
52 Duane Street
New York, New York 10007
(212) 417-8700

(10) United States v. Ramon Coates, 3:97CR73 (Judge Williams, Eastern District of Virginia) (1997-98). Served as sole prosecutor in 1997 of firearms case brought under Project Exile. Coates was a felon connected to a firearm by Richmond police. Case was fairly simple, but very significant because it was one of the early Exile cases and I tried it before a hostile federal judge in an effort to show management support for Project Exile. Coates was convicted after a jury trial. Affirmed, United States v. Coates, 1998 WL 454793 (4th Cir. 1998) (unpublished).

Defense counsel:

JeRoyd Green
2809 North Avenue
Richmond, Virginia 23222
(804) 321-1728

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an attorney, I have participated in a wide range of legal activities, from the trials listed above, to internal investigations, to counseling boards and senior executives, to overseeing mergers, acquisitions, and equity investments. I have been fortunate to touch nearly every area of the law in and out of government. As a government leader, I participated in analysis and decision-making on a host of subjects, from national security to criminal investigative and policy matters. My exposure to legal issues after my government service was similarly broad and also involved leading complex organizations and advising the senior leadership of enterprises. Describing matters in any detail from the periods in which I served as General Counsel would risk breaching my duty of confidentiality to my clients. I have not engaged in lobbying activities.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught trial practice for seven years (1995-2001) at the University of Richmond Law School and appellate advocacy for about three of those years. Copies attached.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon reaching the age of 55, in December 2015, I expect to receive my lump-sum pension payment from Lockheed Martin in the amount of \$400,000.

I expect to receive from Bridgewater Associates, LP, \$163,000 on June 30, 2013, and, if I am confirmed, I will also receive a full payout of my interests in its profit sharing plan, in the amount of \$3,072,654, prior to the date that I assume the position of the Director of the FBI.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached SF 278.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. I am not aware of any other potential conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. I am not aware of any other potential conflicts of interest.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have tried to help the disadvantaged in many ways during my life, including using my skills as a lawyer. Much of my career was devoted to working long hours to protect the disadvantaged from the ravages of violent crime, work that is among the most meaningful I have ever done. I started with the legal aid clinic in law school, have done tutoring, mentoring, and pro bono projects, but I think it is fair to say the work I have tried to do for others in non-legal roles has been more extensive than any pro bono work I have done. For example, my wife and I are licensed foster parents and care for infants and toddlers placed with us by the Connecticut Department of Children and Families. As part of that commitment, in late 2011, we took into our home a newborn boy born prematurely with cocaine in his blood stream and cared for him for six months until he could be placed with a foster/adoptive mother. Because of our interest in foster care, we donated money to create a charitable foundation devoted to supporting children who "age out" of foster care, but struggle to survive. In Richmond, I served on the Board of The Healing Place, a non-profit devoted to reducing drug addiction among the homeless population, and as Acting Chairman of Weed & Seed of Richmond Inc., a non-profit dedicated to reviving crime-ridden neighborhoods. In nearly all the communities in which we have lived, I have taught Sunday school and done volunteer work through our churches.

FINANCIAL STATEMENT**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1	755	309	Notes payable to banks-secured	0		
U.S. Government securities-add schedule				Notes payable to banks-unsecured	0		
Listed securities-add schedule	4	925	260	Notes payable to relatives	0		
Unlisted securities--add schedule				Notes payable to others	0		
Accounts and notes receivable:				Accounts and bills due		20	500
Due from relatives and friends				Unpaid income tax	0		
Due from others				Other unpaid income and interest	0		
Doubtful				Real estate mortgages payable-add schedule	0		
Real estate owned-add schedule	3	900	900	Chattel mortgages and other liens payable	0		
Real estate mortgages receivable	1	745	940	Other debts-itemize:			
Autos and other personal property		76	560				
Cash value-life insurance	0						
Other assets itemize:							
				Total liabilities		20	500
				Net Worth	11	500	569
Total Assets	11	520	069	Total liabilities and net worth	11	520	069
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	0			Are any assets pledged? (Add schedule)	NO		
On leases or contracts	0			Are you defendant in any suits or legal actions?	NO		

Legal Claims	0			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	0						
Other special debt	0						

Schedule of Listed Securities

James and Patrice Comey – Holdings as of 6/17/2013 Market Value
 Joint Account and James Comey IRA – combined
 Sorted by Highest Value to Lowest

Symbol	Description	Current Value
SWGXX	Schwab Government Money Fund	561,352
DBLEX	Doubleline Emerging Mkt Bond Fund	150,885
PELBX	Pimco Emerging Mkt Bond Fund	148,733
ITW	Illinois Tool Works	145,016
XOM	Exxon Mobil Corporation	143,214
JNJ	Johnson & Johnson	126,801
CVX	Chevron Corp.	126,585
PEP	Pepsico	124,661
D	Dominion Resources	118,058
WTR	Aqua America	116,453
NSRGY	Nestle S A Reg B ADR	114,954
BRKB	Berkshire Hathaway Cl B	114,920
NSC	Norfolk Southern Corp	110,425
CYB	Wisdomtree Chinese Yuan	104,280
VZ	Verizon Communications	103,606
TOT	Total S A Adr	101,940
AGN	Allergan Inc	101,576
PTTRX	Pimco Total Return Fund	98,616
INTC	Intel Corp	91,920
TGP	Teekay Lng Partners MLP	91,504
EPD	Enterprise Prd Partners MLP	90,814
EMR	Emerson Electric	89,142
CMP	Compass Minerals Intl	88,200
KMP	Kinder Morgan Energy Partners MLP	86,576
PG	Proctor & Gamble Co	83,841
WAB	Westinghouse Air Brake Technologies	83,266
UNP	Union Pacific Corp	80,020
CME	CMEGroup Inc Cl A	76,949
KO	Coca Cola Company	76,939
GAS	AGL Resources	74,670
MSFT	Microsoft	72,594
BTE	Baytex Energy Corp	67,536
MUR	Murphy Oil	64,262
BHP	Bhp Billiton Ltd Adr	63,270
QCOM	Qualcomm	62,303
HRL	Hormel Foods Corp	61,805

POT	Potash Corp Sask Inc	60,840
CLB	Core Labs	59,912
T	AT&T	58,015
AAPL	Apple Inc	57,093
DE	Deere & Co	55,444
CAT	Caterpillar Inc.	54,868
RIO	Rio Tinto Plc Spon Adr	54,324
KR	Kroger Company	53,271
WDFC	WD-40 Company	52,926
GLD	Spdr Gold TRUST - ETF	50,164
PPL	PPL Corporation	46,306
SO	Southern Company	45,509
DD+A	Du Pont E I \$3.50 Preferred	44,335
MOS	The Mosaic Company	43,845
CSX	CSX Corp	37,705
704549A	Peabody Energy Ind. Bond	33,900
915217U	University Va Muni Bond	28,415
428236B	Hewlett Packard Ind. Bond	24,757
MT	Arcelor Mittal	24,260
02076XA	Alpha Natural Res Ind. Bond	21,625
SLV	Ishares Silver Trust - ETF	21,100
61747WA	Morgan Stanley Ind. Bond	20,250
JOE	St Joe Company	21,000
529772A	LEXMARK INTL INC NOTE - Ind. Bond	20,587
DEM	Wisdomtree Emerging Mkts - ETF	20,572
055299A	Bbva US Senior Ind. Bond	20,184
165167C	Chesapeake Energy - Ind. Bond	20,050
852634F	Stamford Conn - Muni Bond	19,761
941383N	Waterford Conn - Muni Bond	17,661
237266A	Darling Intl Inc - Ind. Bond	16,688
19416QD	Colgate Palmoliv - Ind. Bond	14,908
716495A	Petrohawk Energ - Ind. Bond	14,298
CG	Carlyle Group LP	13,340
570535A	Markel - Ind. Bond	12,214
093851S	Bloomfield Conn - Muni Bond	10,022
013817A	Alcoa - Ind. Bond	9,567
177474A	Citrus Cnty Fla - Muni Bond	5,059

		5,204,904

Schedule of Real Estate Owned

Real Estate Owned	Current Approximate Value
Personal Residence in Westport, Connecticut	3,000,000

AFFIDAVIT

I, James B. Conney, Jr., do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

June 26, 2013
(DATE)

James B. Conney
(NAME)

Rhodora N. Woolner
(NOTARY)

Rhodora N. Woolner
Notary Public, District of Columbia
My Commission Expires May 14, 2015

PREPARED STATEMENT OF CHAIRMAN PATRICK J. LEAHY

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On the Nomination of James B. Comey, Jr. To Be
Director of the Federal Bureau of Investigation
July 9, 2013

Today the Judiciary Committee considers the nomination of James Comey, Jr., to be the seventh Director of the Federal Bureau of Investigation. The current Director, Robert Mueller, started just a week before the terrorist attacks of September 11th. Since then, our world has changed dramatically, and we have often debated how best to ensure our national security while protecting the freedom, liberty, and privacy rights that define us as a great Nation. That debate is alive today and this confirmation hearing provides us another opportunity to evaluate existing policy and to correct our course. Few positions have as much impact on our liberty and national security as the Director of the FBI. As the body that considers the President's nominee, the Senate has an important role in this debate, and that process begins here in the Judiciary Committee.

I welcome Mr. Comey and his family here today. He has had an outstanding career in law enforcement, serving as Deputy Attorney General and as the U.S. Attorney for the Southern District of New York under President George W. Bush. Mr. Comey has also worked in the private sector with Lockheed Martin, Bridgewater Associates, and at the law firm of McGuireWoods.

When Mr. Comey appeared before this Committee in 2007, he described a dramatic hospital bedside confrontation with senior White House officials who were trying to get an ailing John Ashcroft to reauthorize an NSA surveillance program – a program that the Justice Department had concluded was illegal. As Deputy Attorney General, Mr. Comey showed courage and independence by standing firm against this attempt to circumvent the rule of law. I hope he will continue to demonstrate the same strength of character if he is confirmed as Director.

Since the terrorist attacks of September 11th, the FBI has dramatically increased its national security and counterterrorism efforts; a transition that has not been without problems. From National Security Letters to the latest revelations about the use of PATRIOT Act surveillance authorities, I remain concerned that we have not yet struck the right balance between the intelligence-gathering needs of the FBI, and the privacy rights of Americans. We all agree that the FBI must have the tools necessary to help keep us safe from terrorism, but we must also agree that this should not come at the expense of our constitutional rights.

In recent weeks, Americans have become aware of the expansive scope of surveillance authorities granted to the FBI by the PATRIOT Act and other laws. We have heard administration officials defend these programs by saying that they are critical to identifying and connecting the so-called "dots." But there will always be more "dots" to collect, analyze, and try to connect, and when the Government is collecting data on millions of innocent Americans on a daily basis, when is enough, enough? Just because we have the ability to collect huge amounts of data doesn't mean that we *should* be doing so.

Last month, I introduced the FISA Accountability and Privacy Protection Act to ensure that there are proper limits on the Government's surveillance activities, along with strong privacy protections and oversight. As the head of our premier law enforcement agency, the FBI Director bears a special responsibility for ensuring that domestic government surveillance does not unduly infringe upon our freedoms. I have long said that protecting our national security and protecting Americans' fundamental rights are not mutually exclusive. We can and must do both and I look forward to Mr. Comey's testimony about how best to achieve both goals.

I also have concerns about the Justice Department's treatment of journalists. As the son of Vermont printers, the First Amendment is in my blood. The burden falls to the Federal Government to ensure that freedom of speech and of the press is being protected. I am very concerned by allegations regarding the broad collection of the Associated Press's phone records. If confirmed, Mr. Comey will also be tasked with balancing the Government's law enforcement interests with First Amendment rights.

I am concerned that during Mr. Comey's tenure as Deputy Attorney General, he approved a legal memo that authorized the use of waterboarding and other techniques long recognized as torture under both domestic and international law. I have conducted oversight on this issue for years out of my belief that these memos led to the treatment of detainees that was contrary to our laws and our values, and this frankly made us less safe. It is critical that whoever takes over as Director of the FBI has a keen sense of history and an understanding that we must never repeat those mistakes. They have left a permanent stain on this great Nation.

If we learned nothing else from those years following the September 11th attacks, we learned that it matters who leads our Nation – at all levels of Government. We need strong, ethical leaders who will steadfastly adhere to the rule of law.

The next Director must face the challenge of how to sustain the FBI's increased focus on counterterrorism while upholding the FBI's commitment to its historic law enforcement functions. I look forward to hearing from Mr. Comey on what he believes are the most important priorities for the FBI over the next decade. As Director Mueller noted on the 100th anniversary of the FBI, the rule of law, civil liberties, and civil rights are not burdens for the FBI; they are what have made the FBI better for more than a century. I look forward to hearing from Mr. Comey as to how he hopes to lead the FBI in these challenging times.

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QUESTIONS SUBMITTED TO JAMES B. COMEY, JR.,
BY SENATOR DIANNE FEINSTEIN

Senator Feinstein Questions for James Comey, Jr.

Lessons Learned from Your Objections to the CIA's Enhanced Interrogation Techniques

In December 2012 the Senate Intelligence Committee adopted a bipartisan 6,300-page Study of the CIA's former detention and interrogation program. The review is by far the most comprehensive intelligence oversight activity ever conducted by the Committee. The Study—which builds a factual record based on more than 6 million pages of intelligence community records—uncovers startling new details about the management, operation, and representations made to the Department of Justice, Congress, and the White House. I believe the Study will provide an important lessons learned opportunity for Congress, the executive branch, and the American people. You have testified that you raised objections about the CIA interrogation program with Attorney General Gonzales in May 2005 before departing the Department of Justice. In one of your emails that was made public in 2009, you described telling the Attorney General that the CIA interrogation techniques were “*simply awful*,” that “*there needed to be a detailed factual discussion*” of how they were used before approving them, and that “*it simply could not be that the Principles would be willfully blind*.” In your confirmation hearing you expressed frustration that there was not a wider policy discussion on this matter, which you believed—rightfully so—was of great importance and contrary to our values and ideals as a nation.

- *Should you be confirmed, how will your experience raising concerns about CIA's so-called “Enhanced Interrogation Techniques” behind closed doors influence your approach and leadership at the Federal Bureau of Investigation, your interactions with Congress, and your communications with the American people?*

Role in the Indefinite Detention of U.S. Citizen Jose Padilla

As US Attorney for the Southern District of New York you supported, and later as Deputy Attorney General publicly defended, the military detention without charge or trial for several years of Jose Padilla, a U.S. citizen apprehended on U.S. soil on suspicion of involvement in terrorism plots.

- *Is it your current belief that it is Constitutional to indefinitely detain persons apprehended on U.S. soil in military detention without charge or trial?*

- *If so, do you also believe it is Constitutional to indefinitely detain U.S. citizens apprehended on U.S. soil in military detention without charge or trial?*
- *If you believe it is Constitutional to indefinitely detain U.S. citizens apprehended on U.S. soil, are you basing that on the President's Article II powers or are you saying the 2001 Authorization for Use of Military Force (AUMF) provides that authority?*

Ongoing Need for Congress to Receive OLC Opinions

After some unnecessary resistance, earlier this year the Intelligence Committee and the Judiciary Committee were finally able to access all of the OLC opinions related to the targeted killing of Americans outside the United States and *outside* areas of active hostilities, such as Afghanistan.

In the area of surveillance, one of the documents allegedly leaked by Edward Snowden indicates that a 2004 OLC opinion on the legality of a NSA surveillance program was not shared with even the General Counsel of the NSA because it was considered confidential legal advice to President Bush.

- *Does it seem appropriate to you for anyone in the Executive Branch to withhold an OLC opinion on a specific NSA program from the NSA's top lawyer?*
- *Do you believe that the congressional committees of jurisdiction should have access to the legal analysis underpinning the classified operations they oversee?*

Did OLC Reach the Legal Result its Client Wanted?

Several of the OLC opinions on the CIA's interrogation techniques stressed that their legality was a close call, yet this was the same determination even when the legal standard changed. Some OLC memos analyzed whether the CIA's techniques were "torture." Others analyzed whether the techniques were "cruel, inhuman, or degrading." Yet, each time the OLC determined that the CIA techniques were "legal."

- *If the OLC is supposed to be the gold standard for candid, independent, and principled advice—even when that advice is inconsistent with the aims of policymakers—how do you account for what happened at the OLC during the Bush Administration?*

Surveillance Issues

There has been an intense focus on some of the NSA surveillance programs recently. Regarding the Phone Call Records Metadata program, we've been told recently that the program helped disrupt 12 of the 13 U.S. homeland terrorist events since 2007 that have been analyzed by NSA. *Assuming that other counterterrorism tools may have contributed to all or some of these 12 terrorist events as well, what would you say about the effectiveness of the Phone Call Records Metadata program?*

QUESTIONS SUBMITTED TO JAMES B. COMEY, JR.,
BY SENATOR AL FRANKEN

Questions for the Record
Submitted by Senator Al Franken for
James Comey, Nominee to be Director of the Federal Bureau of Investigations

1. In response to a question from Chairman Leahy, you testified that you believe that waterboarding is torture and is illegal. Nonetheless, you concurred in a May 10, 2005, memorandum by Stephen Bradbury, which concluded that waterboarding is not torture and is not illegal. (This was the first of two memoranda issued by Mr. Bradbury on May 10, 2005. It discussed the individualized application of several interrogation techniques. I refer to this memorandum as the Bradbury I Memorandum throughout this document. This memorandum is distinct from the “combined effects” memorandum issued on the same day.) Please explain the discrepancy between the position you took during your confirmation hearing and the position you took when you concurred in the Bradbury I Memorandum. In your response, please state whether you believe that waterboarding is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.
2. In response to one of my questions, you testified that you believe that sleep deprivation, as described in the Bradbury I Memorandum, is torture. Nonetheless, you concurred in the Bradbury I Memorandum. Please explain the discrepancy between the position you took during your confirmation hearing and the position you took when you concurred in Mr. Bradbury’s memorandum. In your response, please state whether you believe that sleep deprivation is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

3. The Bradbury I Memorandum said the following about cramped confinement:

This technique involves placing the individual in a confined space, the dimensions of which restrict the individual’s movement. The confined space is usually dark. The duration of confinement varies based upon the size of the container. For the larger confined space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down. Confinement in the larger space may last no more than 8 hours at a time for no more than 18 hours a day; for the smaller space, confinement may last no more than two hours.

The Bradbury I Memorandum goes on to say that this technique is not torture because it does not involve any significant physical pain or suffering or any severe mental pain or suffering. Do you agree with that analysis? If not, please explain the discrepancy between that position and the position you took when you concurred in the Bradbury I Memorandum. In your response, please state whether you believe that cramped confinement is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

4. Mr. Comey, in response to my question you stated that you believe it is lawful to detain an American citizen, captured on American soil, without access to a lawyer if that citizen is deemed to be a prisoner of war. Previously, when discussing Jose Padilla’s case in a 2004

press conference, you stated you believe it is (1) lawful and (2) good policy for the Federal Bureau of Investigation to transfer citizens to military custody and deny them access to counsel if the government believes they are “enemy combatants.” However, you have also recognized that federal courts are effective at trying suspected terrorists. You published an op-ed in 2009 applauding Attorney General Holder’s decision to try Khalid Sheikh Mohammed in federal court, and Jose Padilla was ultimately convicted in a civilian trial. We have a proud tradition in this country of a strong court system that is effective at trying the most heinous criminals, and we know that ensuring all sides have access to counsel strengthens our justice system, rather than weakens it.

Can you elaborate on your statements regarding when you believe it is appropriate to transfer a suspect from FBI detention to military detention, and when you believe it is acceptable to deny a suspect access to their lawyer?

Can you please identify who you believe has the authority to make the unilateral determination that a suspect should be transferred to military custody or held without access to a lawyer, and what statute provides that authority?

QUESTIONS SUBMITTED TO JAMES B. COMEY, JR.,
BY RANKING MEMBER CHUCK GRASSLEY

Senator Chuck Grassley
Questions for the Record

James B. Comey, Jr.
Nominated to be Director of the Federal Bureau of Investigation

1. The Congressional Research Service (“CRS”) reported in 2012 that illegal cigarette trafficking remains one of the top three funding sources for terrorists and organized crime. Based on this, I have some questions regarding how DOJ prioritizes investigations of domestic cigarette smuggling, given the demonstrated link between such smuggling and terrorist financing. The obvious reason terrorists and organized crime groups smuggle cigarettes is the easy profit. By some estimates, a single case (60 cartons) yields \$3,000 in illegal profit, and criminals can reap illegal profits of \$2,400,000 from a single truckload (typically 800 cases).

The NYPD recently arrested for cigarette smuggling several individuals with ties to Hamas, Hezbollah and other convicted terrorists. The arrested individuals allegedly obtained cigarettes from a wholesaler in Virginia and smuggled the cartons through storage facilities in Delaware and New Jersey for resale in New York. When the New York authorities announced this case, hardly a mention was made of any role by the federal government or DOJ. (May 16, 2013 Press Release <http://www.ag.ny.gov/press-release/ag-schneiderman-nypd-commissioner-kelly-announce-take-down-massive-eastern-seaboard>) DOJ is supposed to be the principal federal law enforcement agency on the issue of terrorism prosecutions.

Unfortunately, a July 2012 memo sent by ATF headquarters (the investigative agency that oversees illicit cigarette trafficking) and obtained by this Committee seems to deprioritize enforcement against cigarette smuggling. This memo indicates that ATF agents should only pursue such smuggling when there is a “nexus” to violent crime.

With this background, it concerns me that the recent New York case was apparently handled by state law enforcement, without much involvement by federal officials. As I mentioned, the press release from the New York Attorney General announcing the case barely mentioned a federal role, and primarily mentioned the federal government as assisting in forfeiture issues.

- a. What role do you foresee the FBI taking in cases such as these?
- b. Do you believe that these potential terrorist financing operations should be pursued by federal authorities only if there is a nexus to violent crime? Please explain.
- c. Do you believe the link between terrorist financing and the violent acts that the terrorists will be able to pursue with such funds is a sufficient nexus to justify federal law enforcement involvement? Please explain.

2. During your hearing before the Committee, we discussed my concerns about the FBI's poor record involving whistleblowers. As I stated, one of my concerns is that whistleblowers involved with national security matters are treated differently than those in other areas of the government. During the hearing, you stated that you were not well versed enough in the law that causes this disparate treatment among whistleblowers.
 - a. Have you had an opportunity to adequately review the applicable law and regulations?
 - b. If so, do you believe whistleblowers who know of problems with matters of national security should be treated differently?
3. Outgoing Director Mueller stated in his recent testimony before this Committee that the FBI was using drones for surveillance and the FBI was in the process of developing guidelines and policies for drone use by the FBI. When evaluating the use of drones by the government, do you think the 4th Amendment provides sufficient privacy protections to American citizens or do you think we need to pass laws to provide greater privacy protection? Please explain.
4. As you mentioned in your testimony, the FBI must address the ever growing cyber threat to both our government and private industry. Outgoing Director Mueller has stated that the FBI must "develop channels for sharing information and intelligence quickly and effectively." While I applaud the fact the FBI has taken a more proactive role in working with the private sector, there are still gaps that need to be filled.
 - a. You spent several years as General Counsel for Lockheed Martin and Bridgewater Associates. In those roles, I suspect that dealt with issues arising from cyber threats that the government and private enterprise face as well as the barriers that make it difficult to minimize cyber attacks. In your experience, what barriers currently prevent a free flow of information sharing between the government and the private sector?
 - b. What incentives could be provided to the private sector to encourage information sharing with the government and with other private businesses?
 - c. Is legislation required to provide these incentives to the private sector? If so, please explain.
5. The Presidential pardon of Marc Rich is a blemish on the record of both President Clinton and Attorney General Holder. In 2008 you wrote a personal letter of recommendation in support of Mr. Holder's confirmation. In that letter you specifically addressed your involvement with the Rich investigation. You condoned Mr. Holder's role in the pardon process. Do you still believe that the Rich pardon made Mr. Holder a "better steward of the Department of Justice?" Please explain.

6. The Director of the FBI is an extremely powerful individual. It is his or her responsibility to set the policies and procedures for the entire agency. Sometimes, Congress passes legislation that, as an individual, the Director may not agree with. The problem arises when that individual uses his or her position of power to reflect personal and not professional guidelines. Unfortunately, this seems to be becoming a regular feature of this administration.

Nonetheless, as Director of the FBI, it will be your job to enforce the laws as written by the legislative branch, regardless of your personal views. Please explain your commitment to enforce the laws and the Constitution, regardless of your personal position on a matter.

7. Inter-Agency cooperation is a vital aspect of successful criminal investigations. Given the complex and interconnected world we live in, it is not uncommon for the FBI to rely on the National Security Agency or the Bureau of Alcohol Tobacco and Firearms to help close a case. Unfortunately, many federal law enforcement agencies have reported that the FBI “does not play well with others.” In fact, recently I have read reports documenting the infighting between the FBI and other agencies, including the New York Police Department.

As the Director of the FBI, you will be responsible for managing both your agency and your agents when they interact with other members of the executive branch. While not the most glamorous aspect of the job, The Bureau’s development of good inter-agency relationships can be the difference between closing a major case or not.

Since the culture of an organization starts at the top, I’m concerned about what may be going on in management at the FBI.

- a. Given your role as the Deputy Attorney General, how did you handle inter-agency disputes? What methods did you use that were successful and what methods were not? How will you apply this experience to being FBI Director?
 - b. Please explain your commitment to the FBI working with all appropriate federal partners in addressing issues such as national security.
 - c. What are your plans to improve the FBI’s working relationships with state and local law enforcement agencies and how do you plan to relay that message to the line agents and supervisors?
8. Former FBI Director William Webster investigated the attack at Ft. Hood by Major Nidal Hasan. Major Hasan attacked the Ft. Hood deployment center on November 5, 2009, killing 12 U.S. soldiers, 1 employee of the Department of Defense, and injuring 42 others. The commission report showed the FBI had information indicating Hasan was in contact with terrorists, but the Washington D.C. Field Office assessed that Hasan was not involved in terrorist activities. However, the San Diego Field Office disagreed. The

report found that neither office took steps beyond this to prevent something from happening.

The Webster Commission made several recommendations, and I know that the FBI has implemented many changes to its procedures since November 2009.

- a. Are you familiar with the Webster Commission Report's recommendations?
 - b. Do you agree with the recommendations of the Webster Commission?
 - c. Will you continue to implement the recommendations, as the FBI has indicated they are doing?
 - d. Do you have any suggestions with how to improve the FBI systems and procedures to ensure something like Ft. Hood does not happen again?
9. With any appointed position, there is some concern that a nominee will succumb to improper partisan or special interest group influence.
- a. Please explain what procedures or safeguards you will continue or put in place to ensure the independence of the FBI from political and partisan influence.
 - b. Please explain what procedures or safeguards you will continue or put in place to guaranty transparency within the FBI?
 - c. Please explain what procedures or you continue or put in place to facilitate Congressional oversight of the FBI.
10. In April, former Attorney General Michael Mukasey wrote an op-ed raising concerns about the FBI's reluctance to look for ties that radical jihadists may have overseas. Mr. Mukasey pointed out that since 9/11, the FBI has questioned five terrorists before they committed their attacks. However, the FBI was unable to prevent the attacks.

In contrast, a Washington Post editorial in the same time period pointed out that "the FBI has devoted considerable resources to sting operations against people it judges to be terror suspects, sometimes on what look like dubious grounds." The editorial concluded: "[I]t's not clear that a sometimes far-fetched plot would have gone forward without the encouragement and help of FBI informants."

- a. Do you think the FBI needs to rethink how it deals with information about radical Jihadists in the United States? Please explain.
- b. Please explain your views on whether or not the FBI should attempt sting operations on people such as the five terrorists mentioned in Attorney General Mukasey's article?

11. A recent *Wall Street Journal* editorial criticized you for supporting the FBI's pursuit of Dr. Stephen Hatfill in the anthrax case. One book about the anthrax investigation states that former Deputy Defense Secretary Paul Wolfowitz recalls speaking with you about the investigation prior to a meeting in the White House Situation Room. According to the book, Wolfowitz recalled that you were "absolutely certain that it was Hatfill." Wolfowitz said you cited the evidence provided by bloodhounds in the case.
- a. Is this account accurate?
 - b. Do you believe the FBI handled the anthrax investigation properly?
 - c. What lessons do you think the FBI should learn from the anthrax case?

QUESTIONS SUBMITTED TO JAMES B. COMEY, JR.,
BY SENATOR AMY KLOBUCHAR

Senator Klobuchar's Questions for the Record
Senate Committee on the Judiciary
"Nominations"
July 12, 2013

James B. Comey, Jr., to be Director of the Federal Bureau of Investigation

1. Earlier this year, I joined Senator Cornyn in introducing the Human Trafficking Reporting Act. It is a simple bill that requires that human trafficking offenses to be reported as Part I violent crimes for purposes of the FBI's Uniform Crime Reports. Requiring this reporting would help us better understand the problem so that we can assist law enforcement and victim advocates to fight this scourge of human trafficking. And, because grant funding levels are often tied to the number of Part I violent crimes in a given jurisdiction, the bill will incentivize for law enforcement to train their officers to identify and investigate potential cases of human trafficking.
 - Is this legislation you could support?
 - From your experience in law enforcement as a former prosecutor, what do you think are the most effective tactics for fighting human trafficking?
 - If confirmed, will you work with us to find ways to step up or fight against human trafficking?
2. During the hearing, you seemed to agree with Senator Grassley about the importance of government whistleblowing and protection of bona fide government whistleblowers who witness and disclose waste, fraud, abuse, illegality and/or risk to public safety.
 - Do you think whistleblower provisions enacted to protect government employees from retaliation should apply to those who work in national security or intelligence agencies?
 - If so, how should such protections vary in those contexts in contrast to the protections for other government workers?
 - If not, what should someone working in the national security or intelligence sector do when they witness fraud, waste or abuse?

QUESTIONS SUBMITTED TO JAMES B. COMEY, JR.,
BY SENATOR SHELDON WHITEHOUSE

Questions for the Record Submitted to James B. Comey, Jr. by Senator Whitehouse

Cybersecurity

At a hearing of the Subcommittee on Crime and Terrorism on May 8, 2013, the Subcommittee heard about the FBI's continued efforts to build up and structure its cyber resources in the manner that best addresses cyber threats from four sets of malicious actors: foreign intelligence services, terrorist groups, organized criminal enterprises, and hackers. Director Mueller subsequently testified to the House Judiciary Committee that he anticipates that "in the future, resources devoted to cyber-based threats will equal or even eclipse the resources devoted to non-cyber based terrorist threats."

Do you agree that we must continue to build up the FBI's cyber capabilities? If you are confirmed, will you work with me and my colleagues to ensure that these resources are appropriately structured and scaled so that the FBI best protects American national security, economic security, and privacy from cyber threats? And will you support continuing meetings and efforts with the Office of Management and Budget and the Justice Department regarding our cyber law enforcement structure and resources?

False statements to the Internal Revenue Service

At a hearing of the Subcommittee on Crime and Terrorism on April 9, 2013 on "Current Issues in Campaign Finance Law Enforcement," the Subcommittee examined a pattern of what appear to be material false statements made to the government by 501(c)(4) organizations and organizations seeking 501(c)(4) status. These apparent false statements, which pertain to how much political activity the organizations have engaged in or plan to engage in, were made on IRS forms 1024 (application for exempt status), and 990 (return of exempt organization).

On first impression, these false statements would seem to violate both 18 U.S.C. § 1001 (false statements) and 2 U.S.C. § 7206 (fraud and false statements made under penalty of perjury).

Both the Department of Justice and the IRS have suggested that the Justice Department, and presumably the FBI, would not take an active role in investigating these apparent false statements until specific cases were referred by IRS to the Justice Department. This is in spite of the fact that 18 U.S.C. § 1001 false statement cases are, as Acting Assistant Attorney General for the Criminal Division Mythili Raman described them, "bread-and-butter" cases that investigators and prosecutors handle on a regular basis. Meanwhile, as a number of witnesses and experts have stated, the IRS is ill-equipped to investigate these cases. Neither the Justice Department nor the IRS was able to provide examples of any referrals having been made.

- Do you believe that where "open and notorious" violations of material false statement statutes are alleged, the FBI should step in to investigate regardless of action or inaction by the IRS?
- Would you, if confirmed, act to ensure that the FBI exercises its authority to investigate potential violations of criminal statutes pertaining to material false statements regarding political activity on IRS forms?

Political Interference with Prosecutions

On April 15, 2002, Attorney General Ashcroft issued a memorandum to the heads of Justice Department components and the United States Attorneys. This memorandum established Department policy regarding communications between the Department and the White House. Because of an exception in this policy, its practical effect was to permit, by the Committee's count, 417 individuals within the White House to speak with 42 individuals at the Department of Justice about criminal investigations.

On May 4, 2006, Attorney General Gonzales issued a memorandum that affirmed the Ashcroft memorandum and further expanded the exception so that, by the Committee's count, 895 individuals at the White House were permitted to speak with 42 individuals at the Department of Justice about criminal investigations and prosecutions.

It is my opinion that these policies created an environment in which undue political interference with the administration of justice could flourish, and were one cause of the scandal relating to the firing of United States Attorneys.

The Ashcroft memorandum was in effect during your tenure as the Deputy Attorney General. In light of this fact please: (a) describe your awareness of this policy and of any inappropriate consequences during your time as the Deputy Attorney General; (b) explain your views about political interference in criminal investigations by the White House, elected officials, or other political actors; and (c) provide assurance that you will protect the FBI and the Justice Department from political interference by the White House if you are confirmed.

RESPONSES OF JAMES B. COMEY, JR., TO QUESTIONS SUBMITTED
BY SENATOR DIANNE FEINSTEIN

Questions for the Record
Senator Dianne Feinstein

James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation

Lessons Learned from Your Objections to the CIA's Enhanced Interrogation Techniques

1. In December 2012 the Senate Intelligence Committee adopted a bipartisan 6,300-page Study of the CIA's former detention and interrogation program. The review is by far the most comprehensive intelligence oversight activity ever conducted by the Committee. The Study—which builds a factual record based on more than 6 million pages of intelligence community records—uncovers startling new details about the management, operation, and representations made to the Department of Justice, Congress, and the White House. I believe the Study will provide an important lessons learned opportunity for Congress, the executive branch, and the American people. You have testified that you raised objections about the CIA interrogation program with Attorney General Gonzales in May 2005 before departing the Department of Justice. In one of your emails that was made public in 2009, you described telling the Attorney General that the CIA interrogation techniques were “*simply awful*,” that “*there needed to be a detailed factual discussion*” of how they were used before approving them, and that “*it simply could not be that the Principles would be willfully blind*.” In your confirmation hearing you expressed frustration that there was not a wider policy discussion on this matter, which you believed—rightfully so—was of great importance and contrary to our values and ideals as a nation.

Should you be confirmed, how will your experience raising concerns about CIA's so-called “Enhanced Interrogation Techniques” behind closed doors influence your approach and leadership at the Federal Bureau of Investigation, your interactions with Congress, and your communications with the American people?

RESPONSE: My experience as Deputy Attorney General reinforced my long-standing view about the importance of fostering a culture of transparency, which I will bring to the FBI if I am confirmed as its new Director. I believe, as I did when I served as Deputy Attorney General, that if there are questions about whether proposed conduct is appropriate—consistent with our values—we should seek a vigorous debate about that conduct before going forward. In those circumstances, I am prepared to detail my concerns and reasoning to the relevant stakeholders, as I have done in the past. If confirmed, I intend to foster a culture at the Bureau that encourages subordinates to provide their candid advice to me and transparency with Congress and the American people, consistent with the Bureau's law enforcement and national security responsibilities, and long-standing Executive Branch confidentiality interests.

Role in the Indefinite Detention of U.S. Citizen Jose Padilla

2. As US Attorney for the Southern District of New York you supported, and later as Deputy Attorney General publicly defended, the military detention without charge or trial for several years of Jose Padilla, a U.S. citizen apprehended on U.S. soil on suspicion of involvement in terrorism plots.
 - a. *Is it your current belief that it is Constitutional to indefinitely detain persons apprehended on U.S. soil in military detention without charge or trial?*
 - b. *If so, do you also believe it is Constitutional to indefinitely detain U.S. citizens apprehended on U.S. soil in military detention without charge or trial?*
 - c. *If you believe it is Constitutional to indefinitely detain U.S. citizens apprehended on U.S. soil, are you basing that on the President's Article II powers or are you saying the 2001 Authorization for Use of Military Force (AUMF) provides that authority?*

RESPONSE: It is my view that, as long as the armed conflict with al Qaeda and its associated forces is ongoing, it would be constitutional to detain persons, including U.S. citizens, apprehended on U.S. soil in connection with that conflict. Those persons would have the right to challenge their detention in habeas corpus actions. This detention authority, in my view, stems from the 2001 Authorization for Use of Military Force, which I believe permits detention until cessation of hostilities. The U.S. Court of Appeals for the Fourth Circuit concluded that Padilla's detention was lawful. I understand that the President has stated that, as a matter of policy, his Administration will not hold U.S. citizens in indefinite military detention without trial, and if I am confirmed as FBI Director, the FBI would act consistent with that policy.

Ongoing Need for Congress to Receive OLC Opinions

3. After some unnecessary resistance, earlier this year the Intelligence Committee and the Judiciary Committee were finally able to access all of the OLC opinions related to the targeted killing of Americans outside the United States and outside areas of active hostilities, such as Afghanistan. In the area of surveillance, one of the documents allegedly leaked by Edward Snowden indicates that a 2004 OLC opinion on the legality of a NSA surveillance program was not shared with even the General Counsel of the NSA because it was considered confidential legal advice to President Bush.
 - a. *Does it seem appropriate to you for anyone in the Executive Branch to withhold an OLC opinion on a specific NSA program from the NSA's top lawyer?*

RESPONSE: I am not in a position to comment specifically, except I understand that the President has the authority to seek advice from OLC about any matter and I would be reluctant to opine on whether he has an obligation to share that advice with anyone else.

b. Do you believe that the congressional committees of jurisdiction should have access to the legal analysis underpinning the classified operations they oversee?

RESPONSE: I believe that congressional oversight is important and essential to good government. If confirmed as FBI Director, I will do my best to ensure cooperation with legitimate and appropriate oversight requests from relevant committees. I believe it is important for oversight committees to receive information about the legal bases for classified operations they oversee, but the best method to accomplish that may depend upon a variety of facts and circumstances.

Did OLC Reach the Legal Result its Client Wanted?

4. Several of the OLC opinions on the CIA's interrogation techniques stressed that their legality was a close call, yet this was the same determination even when the legal standard changed. Some OLC memos analyzed whether the CIA's techniques were "torture." Others analyzed whether the techniques were "cruel, inhuman, or degrading." Yet, each time the OLC determined that the CIA techniques were "legal."

If the OLC is supposed to be the gold standard for candid, independent, and principled advice—even when that advice is inconsistent with the aims of policymakers—how do you account for what happened at the OLC during the Bush Administration?

RESPONSE: Although I reviewed three of the opinions to which you refer, I was not involved in the research, analysis, or actual drafting of those opinions. I do not feel that I am in a position to explain the drafters' thought processes or to otherwise comment on OLC opinion practices during the Bush Administration.

Surveillance Issues

5. There has been an intense focus on some of the NSA surveillance programs recently. Regarding the Phone Call Records Metadata program, we've been told recently that the program helped disrupt 12 of the 13 U.S. homeland terrorist events since 2007 that have been analyzed by NSA.

Assuming that other counterterrorism tools may have contributed to all or some of these 12 terrorist events as well, what would you say about the effectiveness of the Phone Call Records Metadata program?

RESPONSE: I am not familiar with that specific program other than what I have learned from public sources. However, as I understand it, the program is congressionally authorized and court approved, with oversight by all three branches of government. We need to use all of the tools that are legally available and appropriate to connect the dots and counter the threats to our national security.

RESPONSES OF JAMES B. COMEY, JR., TO QUESTIONS SUBMITTED
BY SENATOR SHELDON WHITEHOUSE

Senator Sheldon Whitehouse
Questions for the Record

James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation

Cybersecurity

1. At a hearing of the Subcommittee on Crime and Terrorism on May 8, 2013, the Subcommittee heard about the FBI's continued efforts to build up and structure its cyber resources in the manner that best addresses cyber threats from four sets of malicious actors: foreign intelligence services, terrorist groups, organized criminal enterprises, and hackers. Director Mueller subsequently testified to the House Judiciary Committee that he anticipates that "in the future, resources devoted to cyber-based threats will equal or even eclipse the resources devoted to non-cyber based terrorist threats."

Do you agree that we must continue to build up the FBI's cyber capabilities? If you are confirmed, will you work with me and my colleagues to ensure that these resources are appropriately structured and scaled so that the FBI best protects American national security, economic security, and privacy from cyber threats? And will you support continuing meetings and efforts with the Office of Management and Budget and the Justice Department regarding our cyber law enforcement structure and resources?

RESPONSE: As I noted in testimony at my confirmation hearing, I believe that the threat from cyber espionage, cyber crime and cyber terrorism is growing exponentially. Ensuring that the Bureau has appropriate resources that are efficiently structured will continue to be an important part of addressing this growing threat. If confirmed as Director, I would work within the Executive Branch, including the Office of Management and Budget, and with Congress, to ensure that the cyber threat is addressed in the best way possible within the bounds of the law and available resources.

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- a. *Do you believe that where “open and notorious” violations of material false statement statutes are alleged, the FBI should step in to investigate regardless of action or inaction by the IRS?*
- b. *Would you, if confirmed, act to ensure that the FBI exercises its authority to investigate potential violations of criminal statutes pertaining to material false statements regarding political activity on IRS forms?*

RESPONSE: I am committed to the fair, impartial, and responsible enforcement of the law. To that end, I believe that law enforcement should investigate credible evidence indicating violations of criminal statutes and follow the facts wherever they lead. While I am not in a position to determine what investigative decisions I might make if confirmed as Director, I recognize that material false statements that violate 18 U.S.C. § 1001 may warrant appropriate law enforcement action.

Political Interference with Prosecutions

3. On April 15, 2002, Attorney General Ashcroft issued a memorandum to the heads of Justice Department components and the United States Attorneys. This memorandum established Department policy regarding communications between the Department and the White House. Because of an exception in this policy, its practical effect was to permit, by the Committee’s count, 417 individuals within the White House to speak with 42 individuals at the Department of Justice about criminal investigations.

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The Ashcroft memorandum was in effect during your tenure as the Deputy Attorney General. In light of this fact please:

- a. *describe your awareness of this policy and of any inappropriate consequences during your time as the Deputy Attorney General;*

- b. explain your views about political interference in criminal investigations by the White House, elected officials, or other political actors; and*
- c. provide assurance that you will protect the FBI and the Justice Department from political interference by the White House if you are confirmed.*

RESPONSE: When I served as the Deputy Attorney General, I was aware of the policy to limit communications by representatives of the White House to appropriate policy level officials at the Department, and it was my understanding that such contacts were extremely limited. The policy served an important purpose of insulating line level employees from political influence and the perception of political interference. I do not recall any inappropriate contacts during my service as the Deputy Attorney General. Consistent with my testimony before the Committee, I believe that federal law enforcement efforts should be non-partisan and free of any political influence or interference. If I am confirmed as Director of the FBI, I will be committed to protecting law enforcement efforts by the Bureau and the Department from political interference from any source.

RESPONSES OF JAMES B. COMEY, JR., TO QUESTIONS SUBMITTED
BY SENATOR AMY KLOBUCHAR

Senator Amy Klobuchar
Questions for the Record

James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation

1. Earlier this year, I joined Senator Cornyn in introducing the Human Trafficking Reporting Act. It is a simple bill that requires that human trafficking offenses to be reported as Part I violent crimes for purposes of the FBI's Uniform Crime Reports. Requiring this reporting would help us better understand the problem so that we can assist law enforcement and victim advocates to fight this scourge of human trafficking. And, because grant funding levels are often tied to the number of Part I violent crimes in a given jurisdiction, the bill will incentivize for law enforcement to train their officers to identify and investigate potential cases of human trafficking.
 - a. Is this legislation you could support?*
 - b. From your experience in law enforcement as a former prosecutor, what do you think are the most effective tactics for fighting human trafficking?*
 - c. If confirmed, will you work with us to find ways to step up or fight against human trafficking?*

RESPONSE: Human trafficking, whether involuntary servitude or the commercial sexual exploitation of children, is a kind of modern-day slavery. If confirmed, I will vigorously work to combat human trafficking in all its forms. I know the Bureau is dedicated to aggressively fighting human trafficking. I believe a multi-disciplinary approach involving training, outreach and victim services is important because it enlists our valuable law enforcement partners in the fight. While I am not in a position to comment on legislation, it is my understanding that the FBI has announced that its Uniform Crime Reporting Program (UCR) will collect offense and arrest data for human trafficking from participating law enforcement agencies.

2. During the hearing, you seemed to agree with Senator Grassley about the importance of government whistleblowing and protection of bona fide government whistleblowers who witness and disclose waste, fraud, abuse, illegality and/or risk to public safety.
 - a. Do you think whistleblower provisions enacted to protect government employees from retaliation should apply to those who work in national security or intelligence agencies?*
 - b. If so, how should such protections vary in those contexts in contrast to the protections for other government workers?*
 - c. If not, what should someone working in the national security or intelligence sector do when they witness fraud, waste or abuse?*

RESPONSE: Whistleblowers play an important role in discovering and preventing waste, fraud, and abuse in the government. I am not familiar with the particular rules that apply to whistleblowers who seek to disclose information that implicates national security information. All employees who witness waste, fraud, or abuse should be encouraged to report it to appropriate supervisors and, if they choose, to the Inspector General. If I am confirmed, I will work to ensure that FBI employees do not face retaliation for making protected disclosures. I also have long believed that it is the duty of every supervisor to create a climate in which employees feel empowered to call out problems of all kinds and, if I am confirmed, I will bring that approach with me to the Bureau.

RESPONSES OF JAMES B. COMEY, JR., TO QUESTIONS SUBMITTED
BY SENATOR AL FRANKEN

Senator Al Franken
Questions for the Record

James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation

1. In response to a question from Chairman Leahy, you testified that you believe that waterboarding is torture and is illegal. Nonetheless, you concurred in a May 10, 2005, memorandum by Stephen Bradbury, which concluded that waterboarding is not torture and is not illegal. (This was the first of two memoranda issued by Mr. Bradbury on May 10, 2005. It discussed the individualized application of several interrogation techniques. I refer to this memorandum as the Bradbury I Memorandum throughout this document. This memorandum is distinct from the "combined effects" memorandum issued on the same day.)

Please explain the discrepancy between the position you took during your confirmation hearing and the position you took when you concurred in the Bradbury I Memorandum. In your response, please state whether you believe that waterboarding is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

RESPONSE: I appreciate the opportunity to clarify my position on this matter. Ever since I became the Deputy Attorney General, my reaction as a person, a citizen, and a leader has been that waterboarding is torture. It is, therefore, inappropriate. I cannot speak with authority to whether it is effective, but I believe that the FBI's long-standing refusal to participate in such techniques has not in any way impaired the Bureau's effectiveness in gathering information. If I am confirmed as FBI Director, I will continue that tradition.

The first OLC memorandum of May 10, 2005, presented the narrow legal question of whether waterboarding, standing alone and without being combined with other techniques, violates 18 U.S.C. §§ 2340 and 2340A. The opinion, in my view, set forth a serious and reasonable legal analysis of vague statutory language, as it would apply to waterboarding only, on the assumption that the technique could be viewed in isolation. Since I believed that the techniques described, including waterboarding, were always used in combination, I objected strongly to the second OLC memorandum on both legal and policy grounds. I believed that those objections would stop the entire program, if they prevailed, but they did not. Even though I lost on the legal issue, I continued to raise policy objections about the appropriateness of these techniques, but my arguments were rejected. By that time, I had already announced my resignation and I remained as the Deputy Attorney General until my predetermined departure date in order to fulfill other responsibilities, particularly those pertaining to violent crime.

I did not then and do not now believe that the United States government should engage in waterboarding. It is not appropriate for us to do so as Americans. I also believe that, for a variety of reasons, such conduct would be unlawful today.

2. In response to one of my questions, you testified that you believe that sleep deprivation, as described in the Bradbury I Memorandum, is torture. Nonetheless, you concurred in the Bradbury I Memorandum.

Please explain the discrepancy between the position you took during your confirmation hearing and the position you took when you concurred in Mr. Bradbury's memorandum. In your response, please state whether you believe that sleep deprivation is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

RESPONSE: Please see my response to Question 1, above, regarding waterboarding. My response to that question also applies to sleep deprivation.

3. The Bradbury I Memorandum said the following about cramped confinement:

This technique involves placing the individual in a confined space, the dimensions of which restrict the individual's movement. The confined space is usually dark. The duration of confinement varies based upon the size of the container. For the larger confined space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down. Confinement in the larger space may last no more than 8 hours at a time for no more than 18 hours a day; for the smaller space, confinement may last no more than two hours.

The Bradbury I Memorandum goes on to say that this technique is not torture because it does not involve any significant physical pain or suffering or any severe mental pain or suffering.

Do you agree with that analysis? If not, please explain the discrepancy between that position and the position you took when you concurred in the Bradbury I Memorandum. In your response, please state whether you believe that cramped confinement is (1) torture, (2) illegal, (3) immoral, and (4) ineffective as an intelligence-gathering technique.

RESPONSE: Please see my response to Question 1, above, regarding waterboarding. My response to that question also applies to cramped confinement, although my primary focus in 2005 was on waterboarding and sleep deprivation.

4. Mr. Comey, in response to my question you stated that you believe it is lawful to detain an American citizen, captured on American soil, without access to a lawyer if that citizen is deemed to be a prisoner of war. Previously, when discussing Jose Padilla's case in a 2004 press conference, you stated you believe it is (1) lawful and (2) good policy for the Federal Bureau of Investigation to transfer citizens to military custody and deny them access to counsel if the government believes they are "enemy combatants." However, you have also recognized that federal courts are effective at trying suspected terrorists. You published an op-ed in 2009 applauding Attorney General Holder's decision to try Khalid Sheik Mohammed in federal court, and Jose Padilla was ultimately convicted in a civilian trial. We have a proud tradition in this country of a strong court system that is effective at trying the most heinous criminals, and we

know that ensuring all sides have access to counsel strengthens our justice system, rather than weakens it.

- a. *Can you elaborate on your statements regarding when you believe it is appropriate to transfer a suspect from FBI detention to military detention, and when you believe it is acceptable to deny a suspect access to their lawyer?*
- b. *Can you please identify who you believe has the authority to make the unilateral determination that a suspect should be transferred to military custody or held without access to a lawyer, and what statute provides that authority?*

RESPONSE: As a former prosecutor, I agree that we have a strong and effective system of Article III courts. I also believe that it is important to retain our ability to use military tribunals and law of war detentions if deemed necessary to protect national security.

I held the June 1, 2004, press conference because I believed that it was important then, and remains important now, for the American people to understand the President's decision to declare Mr. Padilla an enemy combatant, and for there to be an opportunity for public debate about these issues. When Mr. Padilla was arrested in May 2002, we believed that he posed a significant threat to national security, that he had undertaken a mission to kill Americans, and that he possessed important information about others who sought to harm the American people. He was appointed an attorney and, through that attorney, moved to vacate the material witness warrant that had authorized his arrest. With time running out in our ability to prevent Mr. Padilla's release, which we considered a serious threat to national security, the President ordered the Department of Defense to take Mr. Padilla into custody as an enemy combatant.

Ultimately, we learned from Mr. Padilla's own admissions that he was recruited, trained, and funded by Al Qaeda. He met with senior Al Qaeda operatives including Abu Zubaida and Khalid Sheikh Mohammed, the master mind of the September 11, 2001 attacks. They had asked him to conduct an operation involving devastating natural gas explosions in apartment buildings in American cities, which had the potential to kill hundreds, if not thousands, of Americans, and, by his own admission, Mr. Padilla accepted that assignment. The U.S. Government arrested him when he returned to the United States, equipped by Al Qaeda, for the purpose of carrying out that assignment.

As I described in the press conference, had Mr. Padilla remained in the criminal justice system, on advice of his attorney, he would likely have refused to speak with us, and he would have been set free. Instead, the U.S. Government was able to gather intelligence from Mr. Padilla as an enemy combatant, with the understanding that we would not be able to use that information against Mr. Padilla in an Article III court. Indeed, Mr. Padilla was ultimately charged and convicted in an Article III court of other offenses, including material support to terrorism, and sentenced to 17 years in prison.

It is my understanding that the President has the power to determine whether an individual is an enemy combatant, subject to relevant legal constraints and appropriate judicial review. I would not have that authority if confirmed as Director of the FBI.

RESPONSES OF JAMES B. COMEY, JR., TO QUESTIONS SUBMITTED
BY RANKING MEMBER CHUCK GRASSLEY

Senator Charles Grassley
Questions for the Record

James B. Comey, Jr.
Nominee, Director of the Federal Bureau of Investigation

1. The Congressional Research Service (“CRS”) reported in 2012 that illegal cigarette trafficking remains one of the top three funding sources for terrorists and organized crime. Based on this, I have some questions regarding how DOJ prioritizes investigations of domestic cigarette smuggling, given the demonstrated link between such smuggling and terrorist financing. The obvious reason terrorists and organized crime groups smuggle cigarettes is the easy profit. By some estimates, a single case (60 cartons) yields \$3,000 in illegal profit, and criminals can reap illegal profits of \$2,400,000 from a single truckload (typically 800 cases).

The NYPD recently arrested for cigarette smuggling several individuals with ties to Hamas, Hezbollah and other convicted terrorists. The arrested individuals allegedly obtained cigarettes from a wholesaler in Virginia and smuggled the cartons through storage facilities in Delaware and New Jersey for resale in New York. When the New York authorities announced this case, hardly a mention was made of any role by the federal government or DOJ. (May 16, 2013 Press Release <http://www.ag.ny.gov/press-release/ag-schneiderman-nypd-commissioner-kelly-announce-take-down-massive-eastern-seaboard>) DOJ is supposed to be the principal federal law enforcement agency on the issue of terrorism prosecutions.

Unfortunately, a July 2012 memo sent by ATF headquarters (the investigative agency that oversees illicit cigarette trafficking) and obtained by this Committee seems to de-prioritize enforcement against cigarette smuggling. This memo indicates that ATF agents should only pursue such smuggling when there is a “nexus” to violent crime.

With this background, it concerns me that the recent New York case was apparently handled by state law enforcement, without much involvement by federal officials. As I mentioned, the press release from the New York Attorney General announcing the case barely mentioned a federal role, and primarily mentioned the federal government as assisting in forfeiture issues.

a. What role do you foresee the FBI taking in cases such as these?

RESPONSE: I believe that, as a general matter, the FBI is the lead investigative agency in terrorism cases. I would expect that the FBI’s involvement in a particular case would depend on the facts and circumstances, coordination with other law enforcement agencies, and judgments about the best allocation of FBI resources.

b. Do you believe that these potential terrorist financing operations should be pursued by federal authorities only if there is a nexus to violent crime? Please explain.

RESPONSE: I believe that, as a general matter, the FBI has lead responsibility for investigating terrorism cases, including cases that may involve financing or other material support to terrorists, such as cases brought pursuant to 18 U.S.C. §§ 2339A, 2339B and 2339C.

c. Do you believe the link between terrorist financing and the violent acts that the terrorists will be able to pursue with such funds is a sufficient nexus to justify federal law enforcement involvement? Please explain.

RESPONSE: I believe that, as a general matter, the FBI has lead responsibility for investigating terrorism cases, including cases that may involve financing or other material support to terrorists, such as cases brought pursuant to 18 U.S.C. §§ 2339A, 2339B and 2339C. I would expect that the FBI's involvement in a particular case would depend on the facts and circumstances, coordination with other law enforcement agencies, and judgments about the best allocation of FBI resources.

2. During your hearing before the Committee, we discussed my concerns about the FBI's poor record involving whistleblowers. As I stated, one of my concerns is that whistleblowers involved with national security matters are treated differently than those in other areas of the government. During the hearing, you stated that you were not well versed enough in the law that causes this disparate treatment among whistleblowers.

a. Have you had an opportunity to adequately review the applicable law and regulations?

RESPONSE: No, but I will do so if confirmed.

b. If so, do you believe whistleblowers who know of problems with matters of national security should be treated differently?

RESPONSE: Please see my response to Question 2a, above.

3. Outgoing Director Mueller stated in his recent testimony before this Committee that the FBI was using drones for surveillance and the FBI was in the process of developing guidelines and policies for drone use by the FBI.

When evaluating the use of drones by the government, do you think the 4th Amendment provides sufficient privacy protections to American citizens or do you think we need to pass laws to provide greater privacy protection? Please explain.

RESPONSE: I am not yet familiar with the way in which the FBI uses Unmanned Aerial Systems (UAS) in its work. I recognize that it is important that the Bureau's use of UASs complies with applicable law and, if confirmed, I will review the FBI's policies and practices regarding UASs to ensure such compliance.

4. As you mentioned in your testimony, the FBI must address the ever growing cyber threat to both our government and private industry. Outgoing Director Mueller has stated that the FBI must "develop channels for sharing information and intelligence quickly and effectively." While I

applaud the fact the FBI has taken a more proactive role in working with the private sector, there are still gaps that need to be filled.

- a. You spent several years as General Counsel for Lockheed Martin and Bridgewater Associates. In those roles, I suspect that dealt with issues arising from cyber threats that the government and private enterprise face as well as the barriers that make it difficult to minimize cyber attacks. In your experience, what barriers currently prevent a free flow of information sharing between the government and the private sector?*

RESPONSE: Although I cannot comment specifically about particular concerns of my former employers, I do know that industry groups are keenly interested in working with the government to thwart cyber attacks, but some have expressed concerns that information they share with the government not be disclosed publicly or be used for other government purposes outside of the cyber security purpose for which it was shared. In addition, some industry representatives have expressed concern about the risk of civil liability for sharing information with the government. These concerns should be addressed so as to ensure a coordinated public/private effort to protect our nation and its valuable intellectual property.

- b. What incentives could be provided to the private sector to encourage information sharing with the government and with other private businesses?*

RESPONSE: There are a variety of incentives that could be given to the private sector to encourage sharing. These may include assurances about the way the information is stored and processed, liability protections, and privacy protections.

- c. Is legislation required to provide these incentives to the private sector? If so, please explain.*

RESPONSE: Some of the possible incentives could be achieved without legislation but others may require legislative action.

5. The Presidential pardon of Marc Rich is a blemish on the record of both President Clinton and Attorney General Holder. In 2008 you wrote a personal letter of recommendation in support of Mr. Holder's confirmation. In that letter you specifically addressed your involvement with the Rich investigation. You condoned Mr. Holder's role in the pardon process.

Do you still believe that the Rich pardon made Mr. Holder a "better steward of the Department of Justice?" Please explain.

RESPONSE: I spoke in my confirmation hearing about my belief in the importance of learning from one's mistakes, because some mistakes are inevitable. In my 2008 letter in support of then-nominee Holder, I explained that I believed he is a man of integrity, committed to the rule of law, who made a serious mistake with respect to the pardon of Marc Rich.

6. The Director of the FBI is an extremely powerful individual. It is his or her responsibility to set the policies and procedures for the entire agency. Sometimes, Congress passes legislation that, as an individual, the Director may not agree with. The problem arises when that individual uses his or her position of power to reflect personal and not professional guidelines. Unfortunately, this seems to be becoming a regular feature of this administration. Nonetheless, as Director of the FBI, it will be your job to enforce the laws as written by the legislative branch, regardless of your personal views.

Please explain your commitment to enforce the laws and the Constitution, regardless of your personal position on a matter.

RESPONSE: If I am confirmed as Director of the FBI, I will faithfully discharge my responsibilities to enforce the laws and uphold the Constitution of the United States with vigor and to the best of my ability.

7. Inter-Agency cooperation is a vital aspect of successful criminal investigations. Given the complex and interconnected world we live in, it is not uncommon for the FBI to rely on the National Security Agency or the Bureau of Alcohol Tobacco and Firearms to help close a case. Unfortunately, many federal law enforcement agencies have reported that the FBI “does not play well with others.” In fact, recently I have read reports documenting the infighting between the FBI and other agencies, including the New York Police Department.

As the Director of the FBI, you will be responsible for managing both your agency and your agents when they interact with other members of the executive branch. While not the most glamorous aspect of the job, The Bureau’s development of good inter-agency relationships can be the difference between closing a major case or not.

Since the culture of an organization starts at the top, I’m concerned about what may be going on in management at the FBI.

- a. Given your role as the Deputy Attorney General, how did you handle inter-agency disputes? What methods did you use that were successful and what methods were not? How will you apply this experience to being FBI Director?*

RESPONSE: I agree that interagency cooperation is essential to successful criminal investigations. Even before my experience as Deputy Attorney General, I understood the importance of using the full interagency team in the criminal cases I worked on when I was a United States Attorney and an Assistant United States Attorney. Throughout my career, I have been successful at working within the interagency structure and resolving disputes among various components. At the center of my approach was treating others with respect and listening well to their concerns and ideas. If I am confirmed, I will use the skills I have gained in these positions to continue Director Mueller’s work in building strong alliances with the FBI’s partner agencies.

b. Please explain your commitment to the FBI working with all appropriate federal partners in addressing issues such as national security.

RESPONSE: I know that Director Mueller believes that it is important that the Bureau interact effectively and cooperatively with other law enforcement agencies and, if I am confirmed as Director, I intend to continue his work in this area by reinforcing that message from senior management down and throughout the Bureau.

c. What are your plans to improve the FBI's working relationships with state and local law enforcement agencies and how do you plan to relay that message to the line agents and supervisors?

RESPONSE: Please see my response to Question 7b, above.

8. Former FBI Director William Webster investigated the attack at Ft. Hood by Major Nidal Hasan. Major Hasan attacked the Ft. Hood deployment center on November 5, 2009, killing 12 U.S. soldiers, 1 employee of the Department of Defense, and injuring 42 others. The commission report showed the FBI had information indicating Hasan was in contact with terrorists, but the Washington D.C. Field Office assessed that Hasan was not involved in terrorist activities. However, the San Diego Field Office disagreed. The report found that neither office took steps beyond this to prevent something from happening.

The Webster Commission made several recommendations, and I know that the FBI has implemented many changes to its procedures since November 2009.

a. Are you familiar with the Webster Commission Report's recommendations?

RESPONSE: I am not.

b. Do you agree with the recommendations of the Webster Commission?

RESPONSE: Please see my response to Question 8a, above.

c. Will you continue to implement the recommendations, as the FBI has indicated they are doing?

RESPONSE: I am not familiar with what the FBI is doing in this area. I am unable to answer this question based on my current knowledge, but I will promptly review this matter if I am confirmed.

d. Do you have any suggestions with how to improve the FBI systems and procedures to ensure something like Ft. Hood does not happen again?

RESPONSE: I am not familiar with what the FBI is doing in this area. I am unable to answer this question based on my current knowledge, but I will promptly review this matter if I am confirmed.

9. With any appointed position, there is some concern that a nominee will succumb to improper partisan or special interest group influence.

a. Please explain what procedures or safeguards you will continue or put in place to ensure the independence of the FBI from political and partisan influence.

RESPONSE: I can assure you that if I am confirmed as Director, partisan political considerations will play no role in the discharge of my responsibilities. The FBI is and must be an independent entity, and it cannot be associated with any political party or partisan interest. In accordance with law and long-standing traditions, the FBI will carry out its law enforcement mission independent of political and partisan influence. If confirmed, I will expect all FBI agents and employees to carry out their work as I will, with fairness and with uncompromising personal and institutional integrity. I cannot say at this point whether there are procedures or safeguards that would be helpful.

b. Please explain what procedures or safeguards you will continue or put in place to guaranty transparency within the FBI?

RESPONSE: In general, I believe that transparency and openness within a government agency strengthens the agency and our democracy. If confirmed as Director, I will support a culture of transparency within the FBI. I cannot say at this point whether there are procedures or safeguards that would be helpful.

c. Please explain what procedures or you continue or put in place to facilitate Congressional oversight of the FBI.

RESPONSE: Oversight is an important function of Congress and is a necessary part of our system of checks and balances. If confirmed, I will work to respond to oversight by relevant congressional committees and accommodate their needs, consistent with the FBI's law enforcement and national security responsibilities.

10. In April, former Attorney General Michael Mukasey wrote an op-ed raising concerns about the FBI's reluctance to look for ties that radical jihadists may have overseas. Mr. Mukasey pointed out that since 9/11, the FBI has questioned five terrorists before they committed their attacks. However, the FBI was unable to prevent the attacks.

In contrast, a Washington Post editorial in the same time period pointed out that "the FBI has devoted considerable resources to sting operations against people it judges to be terror suspects, sometimes on what look like dubious grounds." The editorial concluded: "[I]t's not clear that a

sometimes far-fetched plot would have gone forward without the encouragement and help of FBI informants.”

a. Do you think the FBI needs to rethink how it deals with information about radical Jihadists in the United States? Please explain.

RESPONSE: I am familiar with the FBI’s actions in this area only from publicly available information. If confirmed, I will consider how the FBI addresses ties that radical jihadists may have overseas and will implement any changes that are necessary to protect our national security.

b. Please explain your views on whether or not the FBI should attempt sting operations on people such as the five terrorists mentioned in Attorney General Mukasey’s article?

RESPONSE: I am familiar with the FBI’s actions in this area over the last eight years only from publicly available information. I know from my prior experience that sting operations can be a useful tool against those inclined to terrorist acts. If confirmed, I will consider how the FBI addresses sting operations against would be terrorists and will implement any changes that are necessary to protect our national security.

11. A recent *Wall Street Journal* editorial criticized you for supporting the FBI’s pursuit of Dr. Stephen Hatfill in the anthrax case. One book about the anthrax investigation states that former Deputy Defense Secretary Paul Wolfowitz recalls speaking with you about the investigation prior to a meeting in the White House Situation Room. According to the book, Wolfowitz recalled that you were “absolutely certain that it was Hatfill.” Wolfowitz said you cited the evidence provided by bloodhounds in the case.

a. Is this account accurate?

RESPONSE: I have no recollection of such a conversation with Mr. Wolfowitz.

b. Do you believe the FBI handled the anthrax investigation properly?

RESPONSE: The anthrax investigation was a matter of national importance. The investigation was extensive, complex, and involved significant FBI resources. I do not have all of the information about the investigation because it remained active long after I left the Department. Therefore, I am not in a position to assess the manner in which the investigation was handled.

c. What lessons do you think the FBI should learn from the anthrax case?

RESPONSE: Again, given the level of complexity of this investigation and the fact that I left the Department while it remained on-going, I cannot offer an opinion on this matter.

LETTERS RECEIVED WITH REGARD TO THE NOMINATION OF JAMES B. COMEY, JR.,
TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION



International Association of
Chiefs of Police

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Executive Director
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Alexandria, VA

Deputy Executive Director
James W. McMahon
Alexandria, VA

June 21, 2013

The Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of James Brien Comey to serve as the next Director of the Federal Bureau of Investigation (FBI).

Throughout his career, Mr. Comey has demonstrated an unyielding commitment to safeguarding our nation. His years of experience as Deputy Attorney General of the United States have provided him the opportunity to work with law enforcement agencies and he has gained a unique understanding of the challenges and the complexities agencies face in combating crime, terrorism, and other daily threats to our communities and the citizens they serve.

The IACP believes that Mr. Comey's years of experience, his expertise, and his record of success are evidence of his outstanding qualifications to serve as the next FBI Director. The IACP urges the Judiciary Committee and the members of the United States Senate to confirm Mr. Comey's nomination in a timely fashion.

Please do not hesitate to contact us if the IACP may be of further assistance.

Sincerely,

Chief Craig Steckler
President

Serving the Leaders of Today, Developing the Leaders of Tomorrow



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Vancouver, British Columbia
Virginia Beach, Virginia
Washington, DC
Winnipeg, Manitoba

June 28, 2013

The Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy,

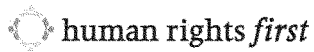
On behalf of the Major Cities Chiefs Association, representing the 63 largest local law enforcement agencies in the nation, I am writing to support the nomination of James Comey as Director of the Federal Bureau of Investigation.

Mr. Comey has led a distinguished career in public service, including serving as the United States Attorney for the Southern District of New York, and the Deputy Attorney General under President Bush. He has overseen the investigation and prosecution of a wide variety of crimes that affect the public each day.

The Nation continues to face a serious threat from terrorism, so it is prudent to promote stability and experience at the FBI. Mr. Comey possesses the experience and knowledge necessary that will make him successful in leading the federal government's preeminent investigative law enforcement agency. We look forward to continuing our partnership with the FBI under Mr. Comey to protect the communities we are sworn to serve.

Sincerely,

Commissioner Charles H. Ramsey
Philadelphia Police Department
President
Major Cities Chiefs Association



July 1, 2013

Re: Confirmation Hearing for James B. Comey

The Honorable Patrick J. Leahy
Chairman
Judiciary Committee
United States Senate
Washington D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Judiciary Committee
United States Senate
Washington D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The undersigned organizations concerned with human rights and civil liberties write regarding the upcoming confirmation hearing for James B. Comey to be Director of the Federal Bureau of Investigation (FBI). We are particularly concerned with two legal memoranda that approved the use of waterboarding and other forms of torture, the use of which Mr. Comey later wrote that he “concurred,” even as he objected to a third memorandum that approved the use of these tactics in combination.

We urge the Senate to determine the full extent of Mr. Comey’s role in the approval and use of torture and abuse before voting on whether to confirm him. Not only is the FBI the lead federal agency in interrogating criminal suspects, but it also is charged with conducting criminal investigations into allegations of torture and other ill treatment by government officials. The Senate cannot make an informed decision on whether to confirm Mr. Comey as FBI Director without having a

complete understanding of his actions at a time when torture and abuse were being used and top government officials were taking extraordinary steps to avoid criminal liability.

During the prior administration, several legal memoranda provided the basis for the use of various forms of torture and other abuse of detainees. One of the most egregious was an August 1, 2002 memo, known as "Bybee I," which was signed by then Assistant Attorney General for the Office of Legal Counsel Jay Bybee. That memo asserted that in order for abuse of detainees to meet the definition of torture under the federal anti-torture statute, it must produce pain similar to that of organ failure or death. In a memo dated the same day known as "Bybee II," the Justice Department approved the use of waterboarding and other torture or inhumane techniques against Abu Zubaydah, a suspect in US custody.

Mr. Comey was serving as Deputy Attorney General in 2004 when Bybee I was leaked to the press. He reportedly concurred in the decision by Bybee's successor at the Office of Legal Counsel (OLC), Jack Goldsmith, to withdraw Bybee I. However, Bybee II was not withdrawn, and in early July 2004, Mr. Comey advised CIA General Counsel Scott Muller that the CIA could continue to use all of the Bybee II techniques other than waterboarding.

Later, OLC re-authorized waterboarding as well. In December 30, 2004, OLC released the replacement memo for Bybee I, which was addressed to Mr. Comey. Footnote eight in the legal memo addressed to Mr. Comey specifies that conclusions reached in prior opinions from the Office of Legal Counsel with respect to detainee treatment would not be any different under the new guidance: "While we have identified various disagreements with the August 2002 Memorandum, we have reviewed this Office's prior opinions regarding issues involving treatment of detainees and do not believe any of their conclusions would be different under the standards set forth in this memorandum." The following spring, Mr. Comey wrote in an email that he "concurred" with another new legal memo, signed by Stephen Bradbury of the Office of Legal Counsel on May 10, 2005, that authorized torture techniques designed to inflict pain or terror, such as cramped confinement, wall-standing, water dousing, extended sleep deprivation, and waterboarding.

Mr. Bradbury also wrote a separate memo discussing the use of interrogation techniques in combination. Mr. Comey's emails from that time were published by the *New York Times* in 2009 and make clear that, although he viewed the techniques as "simply awful" and strongly recommended against issuing a second memo that permitted them to be used in combination, he "concurred" with the first Bradbury memo that evaluated and authorized the CIA's use of the techniques.

The Bybee II and first Bradbury memos authorized waterboarding, 180 hours of sleep deprivation, and other techniques long recognized as torture or cruel, inhuman or degrading treatment in violation of both domestic and international law – contrary to the advice of experienced FBI interrogators, who believed that these

techniques were wrong. Mr. Comey's apparent view that these techniques were lawful is deeply troubling and raises important questions that need to be answered.

Beyond questions related to approval of legal memos authorizing waterboarding and other forms of torture, the Senate Judiciary Committee should examine related aspects of Mr. Comey's record in office. Specifically, the Committee should examine Mr. Comey's role in meetings and deliberations of the National Security Council on interrogations, any role he had as Deputy Attorney General in deciding whether, where, or how criminal investigations of the use of torture by civilians would proceed, and any role he had—either as Deputy Attorney General or as the US Attorney for the Southern District of New York—in decisions related to the indefinite military detention and abuse of Jose Padilla, an American citizen taken into custody in May 2002 and detained within the United States.

We are aware that Mr. Comey raised concerns about using the proposed CIA interrogation techniques, particularly in combination, and that he urged Attorney General Gonzales to argue against them on policy and other grounds to the Principals Committee. This does not, unfortunately, change the acknowledged fact that he concurred in OLC's legal judgment that waterboarding, lengthy sleep deprivation and other abusive techniques did not constitute torture and did not violate US law. It does reinforce our request that the Committee thoroughly examine these issues and have Mr. Comey clarify his views and actions.

The public does not know the full scope of Mr. Comey's role in the approval and use of torture and other abuse. We urge you to have him explain that role during his confirmation process. One key lesson from the post-9/11 abuses is that we need moral and legal clarity from top-level leadership positions. The director of the FBI must not only be committed to the administration's policies opposing torture and indefinite detention, but he or she also must be a candidate who in the many years to come will steadfastly adhere to the rule of law regardless of what crisis the nation may face.

Sincerely,

American Civil Liberties Union
 Center for Victims of Torture
 Human Rights First
 Human Rights Watch
 National Religious Campaign Against Torture
 Open Society Policy Center
 Physicians for Human Rights

cc: Members of the Senate Judiciary Committee

THE CONSTITUTION PROJECT



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July 2, 2013

The Honorable Patrick J. Leahy
Chairman
Judiciary Committee
United States Senate
Washington D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Judiciary Committee
United States Senate
Washington D.C. 20510

Re: Confirmation Hearing for James B. Comey

Dear Chairman Leahy and Ranking Member Grassley:

We are writing in regard to the confirmation hearing of James Comey, nominated to become the new director of the Federal Bureau of Investigation (FBI). The Constitution Project (TCP) takes no position on whether Mr. Comey, or any nominee, should be confirmed. But we do urge that, in considering the nomination, the committee explore his role in approving the CIA's use of what The Constitution Project's Task Force on Detainee Treatment concluded was the use of torture and other forms of abuse on detainees held by our country.

As Deputy Attorney General from December 2003 to August 2005, Mr. Comey played an important role in discussions and decisions about the legality of the CIA's treatment of detainees. Based on the publicly available evidence, Mr. Comey warned his superiors at the Department of Justice (DOJ) that the CIA program was "simply awful," and approving it "would come back to haunt" DOJ. But he also stated that he concurred with a May 2005 OLC memorandum by Steven Bradbury, which advised the CIA that brutalizing detainees by waterboarding them; locking them into coffin-sized "confinement boxes"; depriving them of sleep by shackling them in a standing position for up to 180 hours at a time; and a variety of other methods of mistreatment would not violate the torture statute.¹

Mr. Comey's concurrence with that OLC memo contradicts the findings of TCP's bipartisan, independent Task Force on Detainee Treatment, co-chaired by former Congressmen Asa Hutchinson (R-AR) and James Jones (D-OK). On April 16, 2013, after two years of study and deliberation, the Task Force published its exhaustive report on the treatment of detainees taken into U.S. custody in connection with counterterrorism operations. The Task Force unanimously found that it was "indisputable" that the United States had engaged in torture after September 11. This finding applied, though it was not limited to, the CIA's use of several techniques discussed in the May 2005 OLC memo.

The CIA's detention and interrogation program has been ended by Executive Order, but if confirmed, Mr. Comey will serve as FBI Director for ten years, under multiple presidents. It is crucial for the committee to fully explore whether he approved torture and other detainee abuse, to determine his current views on the subject, and to get a firm commitment from him that he would never authorize detainee mistreatment as FBI director. Some suggested questions and a short background paper on Mr. Comey's role are attached.

Sincerely,

Virginia Sloan
President

Katherine Hawkins
Investigator, Task Force on Detainee Treatment

cc: Members of the Senate Judiciary Committee

¹ See Department of Justice Office of Professional Responsibility Report, Jul. 29, 2009; Memorandum from Steven Bradbury to John Rizzo Re: Individual Techniques, May 10, 2005; Emails from James Comey to Chuck Rosenberg, April & May 2005.

SUGGESTED QUESTIONS FOR JAMES COMEY

- 1) While serving as Deputy Attorney General, were you involved in authorizing the “enhanced interrogation techniques” of any individuals? How many individuals? Please explain as many details as you can in an unclassified setting.
- 2) According to a document released under the Freedom of Information Act, on July 2, 2004, you met with CIA General Counsel Scott Muller regarding the interrogation of a detainee. A memorandum from Muller states that you authorized the use of all of the “techniques previously approved for use with Abu Zubaydah, with the exception of the waterboard.” Is that accurate?
- 3) A July 7, 2004 memo from Jack Goldsmith to Scott Muller states that you asked Goldsmith to emphasize to Muller that your authorization “presupposes that the techniques will adhere closely to the assumptions and limitations stated” in the August 1, 2002 Memorandum from Jay Bybee to Acting CIA General Counsel John Rizzo, (Bybee II). Why did you send that clarification?
- 4) Did you take any steps to verify whether the CIA did, in fact, adhere to the limits in the Bybee II memo in interrogating the detainee discussed in the July 2 meeting?
- 5) As of July 2004, were you aware of the means that the CIA used to prevent detainees from sleeping?
- 6) Aside from the detainee discussed during your July 2, 2004 meeting with Muller, did CIA or OLC attorneys inform or consult with you before authorizing the use of “enhanced interrogation” on any other detainee? If so, how frequently?
- 7) Is waterboarding torture? Is it a crime?
- 8) Is sleep deprivation for up to 180 hours torture? What if it is carried out by shackling naked, diapered detainees to the ceiling for hours/days at a time? Is it a crime?
- 9) Is locking detainees inside confinement boxes torture? Is it a crime?
- 10) If you believe that any of these practices constitute torture, why did you state that you “concurred” with the conclusion in a May 10, 2005 memo from then Principal Deputy Assistant Attorney General Steven Bradbury to John Rizzo, then Senior Deputy General Counsel at the CIA, which found that none of the techniques above were torture?
- 11) In a May 31, 2005 email from you to Chuck Rosenberg, you described telling Attorney General Alberto Gonzales that the CIA interrogation techniques were “simply awful,” that “there needed to be a detailed factual discussion” of how they were used before approving them, and that “it simply could not be that the Principles were willfully blind.”

Why did you believe that there was a danger that the NSC Principals were unaware of or “willfully blind” to the details of the CIA program?
- 12) Steven Bradbury’s May 2005 memos re-authorizing the interrogation program relied heavily on the CIA’s factual representations regarding:
 - (a) the degree of pain and suffering inflicted by the “enhanced interrogation techniques”
 - (b) the lack of any symptoms of “serious physical pain” or “prolonged mental harm” in detainees subjected to those techniques

- (c) the independence of the Office of Medical Services clinicians responsible for monitoring interrogations
- (d) the efficacy of the CIA techniques

Based on what you know now, were the CIA representations cited in the Bradbury memos accurate? (Please answer separately for each category). Based on what you knew at the time, was Bradbury's reliance on the CIA's representations justified?

13) What is your opinion now about your advising the CIA that it would be permissible to use all of the Bybee II techniques other than waterboarding on a detainee? About your approval of the first Bradbury memo? About any other actions or omissions regarding the CIA black site program?

14) In 2002, FBI agent Ali Soufan called his supervisors to protest the interrogation techniques that CIA contractors were using against Abu Zubaydah, including sleep deprivation, nudity, and placement in a "confinement box", which Soufan viewed as "borderline torture." What would you have done if you had been Ali Soufan's supervisor or the FBI director at that time? What would you have done if you were FBI director in 2004 or 2005, and a field agent called you with similar concerns about interrogation techniques whose legality OLC had approved? What would you do if confirmed as FBI director and you are faced with that situation in the future?

15) Please describe your role in Attorney General John Ashcroft's decision to refer criminal investigations of detainee abuse cases to the Eastern District of Virginia. Did Attorney General Ashcroft consult with you before he made that decision? Did you agree with it?

16) Were you informed of the reasons for subsequent declinations of prosecution? Did you concur in the prosecutors' judgment?

17) If a future President rescinded President Obama's executive order on interrogation and re-instated the CIA program, would you allow FBI agents to take part? Would you criminally investigate FBI agents' allegations that they witnessed torture or war crimes by other government agencies?

18) Do you support declassification and release of the Senate Intelligence Committee's 6,000 page study into the CIA program?

19) As United States Attorney for the Southern District of New York you supported, and later as Deputy Attorney General publicly defended, the military detention without charge or trial for several years of Jose Padilla, a U.S. citizen apprehended on U.S. soil on suspicion of involvement in terrorism plots. Is it your current belief that military detention without charge or trial for persons apprehended on U.S. soil is lawful? If so, for what category of people and under what authority? Specifically, is it permitted under the 2001 Authorization for Use of Military Force?

**BACKGROUND PAPER REGARDING JAMES COMEY'S
POSITION ON "ENHANCED INTERROGATION"**

- James Comey served as Deputy Attorney General from December 2003 until August 2005.
- In May/June 2004, with Comey's support, Office of Legal Counsel head Jack Goldsmith withdrew John Yoo and Jay Bybee's August 1, 2002 memo (the Bybee I memo) narrowly defining "torture" and arguing that the anti-torture statute could not be used to prosecute individuals following orders from the President.¹
- Goldsmith did *not* withdraw a separate memo by Bybee and Yoo signed on the same date, authorizing the use of a series of specific abusive techniques to interrogate Abu Zubaydah (the Bybee II memo).² The Bybee II memo authorized waterboarding, sleep deprivation, "close confinement" for several hours in a coffin-sized wooden box and for longer periods in a slightly larger box, slamming detainees into a plywood wall, stress positions, and slaps to the face and body. On May 27, 2004, Goldsmith "strongly recommended" that the CIA suspend the use of waterboarding until OLC could examine its use more thoroughly, but did not recommend suspension of any of the other "enhanced techniques" in the Bybee memo.³
- On July 2, 2004, Comey met with CIA General Counsel Scott Muller to discuss "the use of interrogation techniques on a certain high-value detainee."⁴ Public sources suggest that the detainee was most likely Hassan Ghul, but this has not been definitively confirmed. Comey approved the use of all the techniques discussed in the August 1, 2002 Bybee/Yoo memo other than waterboarding.
- On July 7, 2004, Goldsmith wrote to Muller to emphasize that Comey's approval "presupposes that the techniques will adhere closely to the assumptions and limitations" in the Bybee techniques memo.⁵ (A May 2004 report by the CIA's Inspector General's Office had found that the CIA did not consistently follow those limits in the past.)⁶
- From July 2004 through September 2004, the Office of Legal Counsel wrote several letters to the CIA that provided individualized legal authorization to use abusive interrogation techniques—including waterboarding, nudity, and "water dousing," soaking detainees with cold water. Comey's level of knowledge of and participation in those authorizations is not known.

¹ Memorandum from Jay Bybee to Alberto R. Gonzales, Aug. 1, 2002 (Bybee I Memo), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf>.

² Memorandum from Jay Bybee to John Rizzo, Aug. 1, 2002 (Bybee II Memo), available at http://media.luxmedia.com/aclu/olc_08012002_bybee.pdf.

³ Letter from Jack Goldsmith to Scott Muller, May 27, 2004, available at <http://www.justice.gov/olc/docs/memo-muller2004.pdf>.

⁴ Fax from Scott Muller to James Comey, July 2, 2004, available at <http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc43.pdf>.

⁵ Letter from Jack Goldsmith to Scott Muller, July 7, 2004, available at <http://www.justice.gov/olc/docs/memo-muller2004-2.pdf>.

⁶ CIA Inspector General, *Special Review: Counterterrorism Detention and Interrogation Activities* (May 7, 2004), available at http://media.washingtonpost.com/wp-srv/nation/documents/cia_oig_report.pdf.

⁷ Letter from Daniel Levin to John Rizzo, Aug. 6, 2004, available at <http://www.justice.gov/olc/docs/memo-rizzo2004.pdf>; Letter from Daniel Levin to John Rizzo, Aug. 26, 2004, available at

- In December 2004, OLC publicly issued a memo addressed to Comey from OLC Attorney Daniel Levin, which replaced the Bybee I memo's interpretation of the torture statute. A footnote to Levin's memo stated that despite "various disagreements with the August 2002 [Bybee I] Memorandum, we have reviewed this Office's prior opinions regarding issues involving treatment of detainees and do not believe any of their conclusions would be different under the standards set forth in this memorandum."⁸
- In May 2005, OLC issued three memoranda by Steven Bradbury re-authorizing the CIA's use of "enhanced interrogation" techniques:
 - A 46 page memo on whether the individual CIA techniques, including waterboarding, violated the torture statute (Bradbury I), issued on May 10, 2005.⁹
 - A 20 page memo on whether the combined use of the CIA techniques violated the torture statute. (Bradbury II), also issued on May 10, 2005.¹⁰
 - A 40 page memo on whether the CIA's treatment of detainees violated the prohibition on cruel, inhuman, or degrading treatment or punishment. (Bradbury III), issued on May 30, 2005.¹¹
- According to an email from Comey to his deputy Chuck Rosenberg, published by the *New York Times* in 2009, Comey "concurred" with Bradbury I, but he strongly recommended against issuing Bradbury II.¹² Comey's emails do not discuss Bradbury III. According to a report by the Department of Justice's Office of Professional Responsibility (OPR), Comey told investigators that he was never informed of the third memo.¹³
- In an email dated April 27, 2005, Comey recounted telling Attorney General Alberto Gonzales that:

I was here to urge him not to allow the 'combined effects' memo to be finalized. I told him it would come back to haunt him and the Department. I told him the first

<http://www.justice.gov/olc/docs/memo-rizzo2004-3.pdf>; Letter from Daniel Levin to John Rizzo, Sept. 6, 2004, available at <http://www.justice.gov/olc/docs/memo-rizzo2004-4.pdf>; Letter from Daniel Levin to John Rizzo, Sept. 20, 2004, available at <http://www.justice.gov/olc/docs/memo-rizzo2004-2.pdf>.

⁸ Memorandum from Daniel Levin to James Comey, Dec. 30, 2004, note 8, available at <http://f1.findlaw.com/news.findlaw.com/cnn/docs/terrorism/doitorture123004mem.pdf>.

⁹ Memorandum from Steven Bradbury to John Rizzo Re: Individual Techniques (Bradbury I Memo), May 10, 2005, available at http://media.luxmedia.com/aclu/olc_05102005_bradbury46pg.pdf.

¹⁰ Memorandum from Steven Bradbury to John Rizzo Re: Combined Techniques (Bradbury II Memo), May 10, 2005, available at http://media.luxmedia.com/aclu/olc_05102005_bradbury_20pg.pdf.

¹¹ Memorandum from Steven Bradbury to John Rizzo Re: Article 16 of the Torture Convention (Bradbury III Memo), May 30, 2005, available at http://media.luxmedia.com/aclu/olc_05302005_bradbury.pdf.

¹² Email from James Comey to Chuck Rosenberg, Apr. 27, 2005, available at <http://graphics8.nytimes.com/packages/images/nytint/docs/justice-department-communication-on-interrogation-opinions/original.pdf>. See also Department of Justice, Office of Professional Responsibility Report (Jul. 29, 2009) ("OPR Report") at 141-143, available at <http://judiciary.house.gov/hearings/pdf/OPRFinalReport090729.pdf>.

¹³ OPR Report at 150, available at <http://judiciary.house.gov/hearings/pdf/OPRFinalReport090729.pdf>.

opinion was ready to go out and I concurred. I told him I did not concur with the second and asked him to stop it.¹⁴

- Comey's emails state that one reason for his concern about the Bradbury II memo was its "prospective nature."¹⁵ OPR later wrote that Comey's "main concern was that the memorandum was theoretical and not tied to a request of specific techniques on an individual detainee. Comey believed it was irresponsible to give legal advice about the combined effects of techniques in the abstract."¹⁶
- Comey has never spoken publicly about why he concurred with the Bradbury I memo.
- The tactics that the Bradbury I memo concluded were not torture included: placing detainees in completely dark "confinement boxes" that restricted their movement; soaking them with cold water; physically assaulting detainees in various ways—allegedly with a level of force that was carefully controlled to prevent injury; stress positions; and providing only limited amounts of Ensure or other commercial nutrition supplement instead of normal food.¹⁷
- Bradbury wrote that his conclusion that the above techniques were not torture was "straightforward," but two others raised more "substantial questions": waterboarding and sleep deprivation. The Bradbury I memo described sleep deprivation, as implemented by the CIA, as follows:

The primary method of sleep deprivation involves the use of shackling to keep the detainee awake. In this method, the detainee is standing and is handcuffed, and the handcuffs are attached by a length of chain to the ceiling. The detainee's hands are shackled in front of his body, so that the detainee has approximately a two- to three-foot diameter of movement. The detainee's feet are shackled to a bolt in the floor....the detainee is not allowed to hang from or support his body weight with the shackles....should the detainee begin to fall asleep, he will lose his balance and awaken, either because of the sensation of losing his balance or because of the restraining tension of the shackles....

A detainee undergoing sleep deprivation is generally fed by hand by CIA personnel so that he need not be unshackled....Detainees subject to sleep deprivation...will at times be nude and wearing a diaper...

The maximum allowable duration for sleep deprivation authorized for the CIA is 180 hours.¹⁸

¹⁴ Email from James Comey to Chuck Rosenberg, Apr. 27, 2005, available at <http://graphics8.nytimes.com/packages/images/nytint/docs/justice-department-communication-on-interrogation-opinions/original.pdf>.

¹⁵ Email from James Comey to Chuck Rosenberg, Apr. 28, 2005, available at <http://graphics8.nytimes.com/packages/images/nytint/docs/justice-department-communication-on-interrogation-opinions/original.pdf>.

¹⁶ OPR Report at 141, available at <http://judiciary.house.gov/hearings/pdf/OPRFinalReport090729.pdf>.

¹⁷ Bradbury I Memo, available at http://media.luxmedia.com/aclu/olc_05102005_bradbury46pg.pdf.

¹⁸ *Id.* at 11-12.

- The Bradbury I memo authorized sleep deprivation in part based on the CIA's representations that medical and psychological personnel from the Office of Medical Services constantly monitored detainees undergoing this procedure and would intervene if there was any danger to detainees; that the technique was not "significantly painful"; and that no detainee subject to sleep deprivation "has suffered any harm or injury."¹⁹
- The Bradbury I memo authorized waterboarding based on similar CIA assertions about careful medical monitoring, and lack of harm to detainees:

the waterboard has been used by the CIA on three high level Al Qaeda detainees, two of whom were subjected to the technique numerous times, and, according to OMS, none of these three individuals has shown any evidence of physical pain or suffering or mental harm in the more than 25 months since the technique was used on them.²⁰

- The Bradbury I memo's reliance on representations regarding medical monitoring of interrogations is highly problematic. It is a grave violation of professional ethics for doctors to participate in torture or cruel treatment, including by monitoring interrogation sessions where torturous or cruel methods are used.²¹ The Constitution Project's bipartisan Task Force on Detainee Treatment unanimously concluded that

The Department of Justice should formally prohibit the Office of Legal Counsel from approving interrogation techniques based on representations that health providers will monitor the techniques and regulate the degree of physical and mental harm that interrogators may inflict. Health professionals cannot ethically condone any deliberate infliction of pain and suffering on detainees, even if it falls short of torture or cruel treatment.²²

- The Bradbury I memo's representations about lack of pain, suffering or harm to detainees resulting from the approved techniques contradict the detainees' detailed accounts to the International Committee for the Red Cross, and court findings regarding detainees subjected to similar treatment in CIA prisons in Afghanistan.²³ The Obama administration takes the position that former black site detainees' medical records are classified, as are the detainees' memories about their treatment in CIA custody. However, one former CIA detainee, Abd al Rahim al-Nashiri, was recently diagnosed with depression and posttraumatic stress disorder by a military commission "sanity board."²⁴ Another, Abu Zubaydah, is alleged by his counsel to suffer from severe pain, memory loss, and frequent seizures as a result of his treatment at CIA black sites.²⁵

¹⁹ *Id.* at 11-12.

²⁰ *Id.* at 15.

²¹ Report of the Constitution Project's Task Force on Detainee Treatment (Apr. 2013) 233-241, available at <http://detaineeetaskforce.org>.

²² *Id.* at 19.

²³ *Id.* at 212-218, 367-369.

²⁴ R.M.C. 206 Sanity Board Evaluation of Abd Al Rahim Hussayn Muhammad Al Nashiri, ISN#10015, Mar. 28, 2013, available at <http://media.miamiherald.com/smedia/2013/06/11/09/50/1iVHzSo.56.pdf>.

²⁵ Report of the Constitution Project's Task Force on Detainee Treatment (Apr. 2013) 211, available at <http://detaineeetaskforce.org>.

- According to Comey's emails, on May 31, 2005 he met with Attorney General Gonzales before a National Security Council principals committee meeting on the CIA program. Comey said he described the CIA techniques to Gonzales in graphic detail:

to demonstrate that some of this stuff is simply awful. I told him it would all come out some day and be presented in the way I was presenting it. I mentioned that I had heard there was a video of any early session, which would come out eventually....I explained that even he and Bradbury believed that the legal question was extremely close; and the details of what we are talking about, there needed to be a detailed factual discussion, followed by a full policy discussion. It would land on the President eventually [and] it simply could not be that the Princip[als] would be willfully blind.²⁶

²⁶ Email from James Comey to Chuck Rosenberg, May 31, 2005, available at <http://graphics8.nytimes.com/packages/images/nyint/docs/justice-department-communication-on-interrogation-opinions/original.pdf>.

July 3, 2013

The Honorable Patrick Leahy
Chairman
The United States Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
The United States Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Bipartisan Endorsement of Jim Comey to be FBI Director from Former United States Attorneys

Dear Chairman Leahy and Ranking Member Grassley:

We are friends, admirers, and former Justice Department colleagues of Jim Comey, and we write in strong bipartisan support of his nomination to be the next Director of the Federal Bureau of Investigation.

Jim is an extraordinary public servant. He is a man of tremendous integrity – principled, thoughtful, dignified, and smart. In case after case, as an Assistant United States Attorney in two districts, as the United States Attorney for the Southern District of New York, and as the Deputy Attorney General of the United States, he demonstrated a steadfast adherence to the rule of law and to the principles of federal prosecution. He found facts, and he followed them. He understood the law, and he applied it. He paid no heed to politics. He made decisions without fear or favor.

Jim speaks often and eloquently of the role of the Federal Bureau of Investigation and the Justice Department in safeguarding the liberty and security of all Americans. It is a balance he knows well, because he spent so many years striving to strike the right balance, under all circumstances and in every case. Indeed, it was his principled leadership that helped the Department of Justice through challenging times. Some of those are well known. Others, however, are not. Often, Jim's leadership revealed itself through a phone call or a short note – a word of encouragement or appreciation – to a hardworking, and underappreciated, agent or prosecutor.

Jim is also a gifted manager. As Deputy Attorney General, he was responsible for the oversight and management of the entire Department of Justice, and all of its component parts, including the FBI, which reported to him. He also supervised the United States Attorney community – it was in that capacity that so many of us worked with him and for him. And that is why we know, with certainty, that Jim is an honorable and dedicated friend, colleague, leader, and manager.

We know Jim well. We have watched him from up close and from far away. We like him, we admire him, we trust him, we respect him, and we can think of no better person to take on this remarkably important job – as Director of the Federal Bureau of Investigation.

Respectfully,

A. Brian Allbritton
Former United States Attorney
Middle District of Florida

Robert C. Balfe
Former United States Attorney
Western District of Arkansas

Michael A. Battle
Former United States Attorney
Western District of New York

Steven M. Biskupic
Former United States Attorney
Eastern District of Wisconsin

Bill Blagg
Former United States Attorney
Western District of Texas

Robert Bonner
Former United States Attorney
Central District of California

Congresswoman Susan W. Brooks
Former United States Attorney
Southern District of Indiana

Greg Brower
Former United States Attorney
District of Nevada

John Brownlee
Former United States Attorney
Western District of Virginia

Mary Beth Buchanan
Former United States Attorney
Western District of Pennsylvania

Wayne Budd
Former United States Attorney
District of Massachusetts

Benton Campbell
Former United States Attorney
Eastern District of New York

Leura G. Canary
Former United States Attorney
Middle District of Alabama

Zachary W. Carter
Former United States Attorney
Eastern District of New York

Paul K. Charlton
Former United States Attorney
District of Arizona

Governor Chris Christie
Former United States Attorney
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Former United States Attorney
Western District of Pennsylvania

Tom Colantuano
Former United States Attorney
District of New Hampshire

Colm Connolly
Former United States Attorney
District of Delaware

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Former United States Attorney
District of Rhode Island

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Former United States Attorney
Eastern District of Virginia

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Former United States Attorney
Eastern District of Virginia

Bud Cummins
Former United States Attorney
Eastern District of Arkansas

Margaret Ellen Curran
Former United States Attorney
District of Rhode Island

Richard H. Deane, Jr.
Former United States Attorney
Northern District of Georgia

Russ Dedrick
Former United States Attorney
Eastern District of Tennessee

Don DeGabrielle
Former United States Attorney
Southern District of Texas

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Former United States Attorney
Middle District of Louisiana

Matt M. Dummermuth
Former United States Attorney
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Former United States Attorney
District of Colorado

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David Fein
Former United States Attorney
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Patrick Fitzgerald
Former United States Attorney
Northern District of Illinois

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Former United States Attorney
Western District of New York

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Former United States Attorney
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Former United States Attorney
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Rodger Heaton
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Central District of Illinois

Thomas B. Heffelfinger
Former United States Attorney
District of Minnesota

Karen P. Hewitt
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WILLIAM J. JOHNSON
 Executive Director

July 3, 2013

The Honorable Patrick Leahy
 Committee on the Judiciary
 United States Senate
 Washington, D.C. 20510

Dear Chairman Leahy:

On behalf of the National Association of Police Organizations (NAPO), I am pleased to inform you of our support for the nomination of James Comey to serve as the next Director of the Federal Bureau of Investigations (FBI).

NAPO is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement through legislative and legal advocacy, political action, and education. Founded in 1978, NAPO now represents more than 1,000 police units and associations, 241,000 sworn law enforcement officers, and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

Mr. Comey is one of our nation's most skilled and respected national security and law enforcement professionals. Throughout his career, Mr. Comey has demonstrated that he is exceptionally qualified to handle the full range of challenges faced by today's FBI, especially during his time as Deputy Attorney General of the United States. Mr. Comey has been a dedicated career public servant, and has continually evidenced his integrity, strong judgment, and commitment to the law enforcement mission.

We urge the Senate Judiciary Committee to act swiftly in confirming Mr. Comey for this critical position. If NAPO can provide any additional information to support Mr. Comey's nomination, please do not hesitate to contact me at: (703) 549-0775.

Sincerely,

William J. Johnson
 Executive Director

July 5, 2013

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, DC 20510



Chuck Wexler
Executive Director

Dear Senator Leahy:

I am writing to endorse the nomination of Mr. James Comey to become Director of the Federal Bureau of Investigation. As executive director of the Police Executive Research Forum (PERF), an organization of police chiefs from across the country that conducts research on best practices in policing, I have some experience with Mr. Comey and I believe he has a record of working well with local law enforcement agencies on important issues. In fact, I think Jim Comey was far ahead of his time in recognizing the importance of federal-local partnerships in law enforcement.

I first met Mr. Comey in 1996 when he was the managing Assistant U.S. Attorney in Richmond, Virginia. At that time, the surge in crack cocaine use was a major issue, and gun crime was impacting Richmond and other cities across the country.

PERF saw what was happening in Richmond as reflective of a major crisis impacting many cities. And I believe that Jim Comey saw the role of the federal government somewhat differently compared to other federal prosecutors. He recognized the need to take a leadership role and go shoulder to shoulder with local police chiefs in taking on this epidemic of violence.

My sense is that most federal prosecutors are so busy with their own enforcement responsibilities that they do not always have the same sense of urgency that I saw in Jim Comey about developing strategies to complement the work of local officials. Operation Exile, which was developed out of the U.S. Attorney's office in Richmond, was one of the first programs of its kind to recognize the value of federal prosecutors taking gun cases to federal courts, where the penalties are significantly stronger.

At the time when Jim was dealing with gun violence in Richmond, I was working in Minneapolis with a task force of local, state and federal officials on strategies for reducing homicides. And the U.S. Attorney in Minneapolis heard about the Richmond model, and soon began taking gun cases federally. This had an immediate impact on homicides in Minneapolis, and I know that it also helped in other cities like Boston.

The role of the federal government in addressing the difficult issue of gun crime was shaped by the Richmond model, and prosecutors across the country saw Jim Comey as someone who recognized the importance of local/federal partnerships well before this became commonplace.

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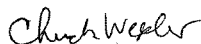
In fact, in 2009 PERF conducted a survey of local police agencies serving populations of 100,000 or more, and asked them about more than 40 different gun crime enforcement strategies – from tracing guns recovered at crime scenes and having special units to investigate gun “hot spots,” to gun buyback programs and investigation of illegal “straw purchases” of firearms. We asked local police whether they used each of these strategies – and about which strategies they found most effective. And by far, submitting information about gun felons to the local U.S. Attorney’s Office was the single strategy that local police agencies often used and found most effective.

When I think of how far the FBI has come since 9/11 with respect to developing partnerships, I think of Jim Comey and his leadership in gaining the trust and confidence of local police departments and police chiefs. I think Mr. Comey will be an outstanding director of the FBI, based upon my own experience working with him and on his outstanding record of public service.

Finally, on a personal level, I have found Jim Comey to be a man of character and integrity as well as someone who is down to earth and unassuming. I believe these qualities will help ensure that Mr. Comey will intuitively do what is right.

Please let me know if I can answer any questions, and thank you for your consideration.

Most sincerely,



Chuck Wexler
Executive Director
Police Executive Research Forum
Washington, DC

Cc: Commissioner Charles Ramsey
Philadelphia Police Department
President of PERF



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 Drug Enforcement Administration
 Federal Bureau of Investigation
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 LABOR - OIG & Racketeering
 NATIONAL AERONAUTICS & SPACE ADMIN - OIG
 NUCLEAR REGULATORY COMMISSION - OIG
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 RASHEED TAHIR
 Public Affairs Officer
 JENNIFER MATTINGLEY

July 8, 2013

The Honorable Patrick Leahy
 Chairman
 Senate Committee on the Judiciary
 Washington, DC 20510

Dear Chairman Leahy:

On behalf of the Federal Law Enforcement Officers Association (FLEOA), including Special Agents of the Federal Bureau of Investigation (FBI), I am writing to you to memorialize our support for the nomination of James Comey as the next Director of the FBI.

Attempting to convince you of Mr. Comey's qualifications for the position is like trumpeting out, "Water is wet!" It is readily obvious that he is more than qualified on paper. Mr. Comey has had a distinguished career working for the Department of Justice, and has vast experience working the mission areas covered by the FBI.

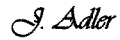
However, Mr. Comey is equally, if not more, qualified by virtue of his strength of character. The "FBI" proudly stands for Fidelity, Bravery and Integrity, and Mr. Comey exudes them all. Not only does he possess the symbolic law enforcement "blue" in his veins, but he also has the "blue honor" in his heart. As witnessed throughout his distinguished career, Mr. Comey has demonstrated sound judgment and strong leadership under challenging circumstances.

Among the field ranks in law enforcement, in particular in the opinionated kingdom of the Southern District of New York, Mr. Comey has earned the reputation as a dedicated "true believer" in the law enforcement mission. Mr. Comey has earned the respect of working field agents, and can be described as a man wearing a General's stars, while also wearing a soldier's boots. He possesses the requisite leadership, integrity and experience to lead the proud men and women in the FBI.

The FLEOA membership respectfully asks that the Senate Judiciary Committee apply its routine due diligence and expeditiously move to confirm Mr. Comey as the next Director of the FBI.

Please do not hesitate to contact me directly should you require any additional input regarding the qualifications of Mr. Comey.

Respectfully yours,

A handwritten signature in black ink, appearing to read "J. Adler". The signature is written in a cursive, slightly stylized font.

J. Adler
National President
Federal Law Enforcement Officers Association

July 8, 2013

The Honorable Patrick Leahy
Chairman
The United States Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
The United States Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Bipartisan Endorsement of Jim Comey to be FBI Director from Former Senior Department
of Justice Officials

Dear Chairman Leahy and Ranking Member Grassley:

We are friends, admirers, and former Justice Department colleagues of Jim Comey, and we write in strong bipartisan support of his nomination to be the next Director of the Federal Bureau of Investigation. All of us have held, at one time or another, senior positions within the Justice Department, giving us both a perspective on what Jim's prior positions have demanded of him and how Jim's experience and personal qualities have prepared him to be the Director.

The Federal Bureau of Investigation fulfills an important role in our society, ensuring our safety and preserving our liberty. It is also a remarkably complex organization – its men and women serve around the globe and around the clock, in extraordinarily important and difficult assignments. In turn, we know, from our own experience, what it takes to lead the FBI – integrity, intelligence, independence, dedication, vision, compassion, judgment, and a steadfast adherence to the rule of law.

Jim Comey possesses all of these traits. He has, for instance, the judgment that comes from experience and from having faced difficult decisions. He has integrity and independence born of his innate sense of what is required of senior public servants. He is smart and compassionate. He never expects more of anybody else than he expects of himself.

We know he will be a strong and effective leader and that our country would be well-served to see him confirmed.

Respectfully,

Lanny Breuer
Assistant Attorney General
Criminal Division
2009-2013

Paul Clement
Solicitor General
2005-2008

Jamie Gorelick
Deputy Attorney General
1994-1997

Neal Katyal
Acting Solicitor General
2010-2011

Peter Keisler
Acting Attorney General
2007

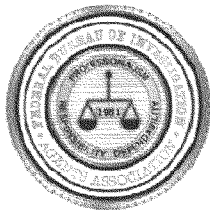
Craig Morford
Acting Deputy Attorney General
2007-2008

Eileen J. O'Connor
Assistant Attorney General
Tax Division
2001-2007

David Ogden
Deputy Attorney General
2009-2010

Larry Thompson
Deputy Attorney General
2001-2003

Christopher Wray
Assistant Attorney General
Criminal Division
2003-2005



July 8, 2013

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley Ranking
Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of James B. Comey Jr.

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the FBI Agents Association ("FBIAA"), a voluntary professional association currently representing over 12,000 active duty and retired FBI Special Agents, I write to express the FBIAA's support for the nomination of Mr. James B. Comey Jr. to serve as the next Director of the Federal Bureau of Investigation ("FBI" or "the Bureau").

The FBI faces variety of significant challenges in the coming years, ranging from increasingly complex criminal and national security threats to challenges resulting from sequestration and other budget cuts. These challenges make it more important than ever that the Bureau be led by an individual who understands the central role of Agents and criminal investigative skills to the work done by the Bureau.

Mr. Comey has strong reputation among Agents, and the FBIAA believes that he understands the nature of investigative work and the central role of Agents in the FBI. The FBIAA looks forward to working with Mr. Comey to effectively confront the challenges facing our country.

Sincerely,

Konrad Motyka
President

Post Office Box 12650, Arlington, Virginia 22219
A Non-Governmental Association
(703) 247-2173 Fax (703) 247-2175



FBINAA
FBI National Academy Associates, Inc.

Academy Office:
FBI Academy, Quantico, VA 22135
PH: 703-632-1990 • FAX: 703-632-1993

National Office:
422 Garrisonville Road, Suite 103, Stafford, VA 22554
PH: 540-628-0834 • FAX: 540-628-0862

July 9, 2013

The Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy,

On behalf of the Federal Bureau of Investigations National Academy Associates, Inc., I would like to offer our support for the nomination of James B. Comey to serve as the next Director of the Federal Bureau of Investigations (FBI).

Mr. Comey has been steadfast in his commitment to safeguarding our nation throughout his career. His years of experience as Deputy Attorney General of the United States have given him the opportunity to work with law enforcement agencies across the nation. He fully understands the challenges and complexities agencies face in fighting crime, terrorism and everyday threats that exist in our communities and the citizens they serve.

The FBINAA believes that Mr. Comey's years of experience, his expertise and his record of success are evidence of his outstanding qualifications necessary to serve as the next FBI Director. The FBINAA urges the Judiciary Committee and the members of the United States Senate to confirm Mr. Comey's nomination.

Please feel free to contact us if we can be of any further assistance.

Sincerely,

Douglas F. Muldoon
President, FBINAA

The World's Strongest Law Enforcement Network
www.fbinaa.org

The FBI National Academy Associates is a private non-profit organization and is not part of the Federal Bureau of Investigation or acting on its behalf.

July 10, 2013

The Honorable Patrick Leahy
Chairman
The United States Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
The United States Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

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We know he will be a strong and effective leader and that our country would be well-served to see him confirmed.

Respectfully,

Mark Filip
Former Deputy Attorney General
2008-2009

Alice Fisher
Former Assistant Attorney General
Criminal Division
2005-2008

Paul McNulty
Former Deputy Attorney General
2006-2007

